



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.12.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)Nos.1445 and 1446 of 2019

and

C.M.P. (MD)No.7669 of 2019

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Shanthi .. Petitioner in both C.R.Ps.
Petitioner/1st Defendant

Vs.

1.Vijayakumar ..1st Respondent in both Petitions/1st Respondent/
Plaintiff

2.The Sub Registrar,
Office of the Sub-Registrar,
Devakottai. .. 2nd Respondent in both C.R.Ps.
2nd Respondent/2nd Defendant

Common Prayer: These Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order passed in I.A.Nos.3 and 4 of 2019 in O.S.No.13 of 2014 dated 28.03.2019 on the file of the learned District Munsif, Devakottai.

For Petitioner(in both C.R.Ps.)	: Mr.J.Anandkumar
For 1 st Respondent(in both C.R.Ps.)	: Mr.A.Muralikumar
For 2 nd Respondent(in both C.R.Ps.)	: Mr.M.Murugan, Govt. Advocate

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the order passed in I.A.Nos.3 and 4 of 2019 in O.S.No.13 of 2014 dated 28.03.2019 on the file of the learned District Munsif, Devakottai.

3.The revision petitioner herein is the 1st defendant, the 1st respondent herein is the plaintiff and the 2nd respondent herein are the 2nd defendant in the suit. The 1st respondent herein has filed a suit in O.S.No.13 of 2014 for a prayer of injunction. In that suit, the petitioner herein has filed two petitions in I.A.Nos.3 and 4 of 2019 to reopen the case and to recall the witness. Both the petitions are dismissed by the trial Court. Against which, the petitioner herein has preferred the present petitions.

4.The brief substance of the petitions in I.A.No.3 and 4 of 2019 is as follows:



One Annaraj, son of late Bakiyam was examined as D.W.2. In his chief examination, he has deposed that Sivaraman has executed a registered sale deed in favour of his father Bakiyam for an extent of 45 cents including 20 cents of the suit property. Only for sale, instead of sale deed, a power deed was executed. Along with the affidavit, for the chief examination, D.W.2 has filed a unregistered sale deed executed in favour of Bakiyam by Sivaraman. The sale deed has to be marked in the suit and to mark the document, the case has to be reopened and witness is to be recalled.

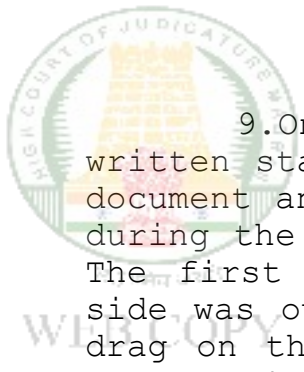
5.The brief substance of the counters in I.A.No.3 and 4 of 2019 is as follows:

The defendants have not filed any counter claim and no evidence can be let in without pleadings and an unregistered deed cannot be marked as a document in a suit for declaration. The unregistered sale deed cannot be entertained. Only after the arguments, the defendants have come forward with the petitions. A person in favour of whom the alleged sale deed was executed was no more and the document can be marked through a proper person. The plaintiff claims the suit property by way of sale deed executed by the power agent of the deceased. Marking an unregistered document is illegal.

6.The trial Court after considering both sides, dismissed the petitions. Against which, the petitioners have preferred this revision petitions.

7.In these civil revision petitions, it is stated that the trial Court failed to consider that an unregistered sale deed in respect of the suit property was executed thereafter, the vendor executed a registered power deed in favour of the father of D.W.2. From that power agent, the defendants purchased the suit property. The document is a document which corroborates the conveyance of the property to the vendor of the first defendant and it is a vital document. The vendor is already having valid title by way of a registered power deed. Only for corroborating purpose, the unregistered document is to be marked and the defendants are entitled to reopen and recall the witness for marking this document. The defendants are entitled to put forth their case.

8.On the side of the revision petitioner, it is stated that the defendants did not rely upon the marking of the document as a title deed and only for collateral purpose, the first defendant want the unregistered document to be marked including the suit property. 25 cents was already sold to the vendor of the first defendant for valuable consideration through an unregistered sale deed and the power deed was executed subsequently, in conformity with the sale deed. The first defendant was aware of this document only at the time of examination of D.W.2. The first defendant are not depending upon this document exclusively.



9. On the side of the respondents, it is stated that in the written statement, there is no pleadings regarding the unregistered document and the plaintiff raised this defence in the counter. Even during the chief examination of D.W.2, the document was not marked. The first defendant, only after the arguments of the plaintiff's side was over, has come forward with the petition with a motive to drag on the proceedings. Even in the plaint itself, the plaintiff has mentioned that only after the death of principal, the power agent has executed the sale deed in favour of the first defendant. The factum of death of Sivaraman was intimated to the second defendant. It is only the power agent who executed the sale deed. The sale deed was marked as Ex.B4 and the same is not valid.

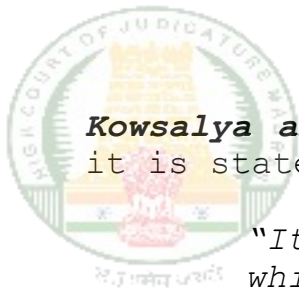
10. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **K.K.Velusamy v. N.Palanisamy** reported in **(2011) 11 Supreme Court Cases 275**, wherein the Hon'ble Supreme Court held that the Court has to consider whether the document to be produced will assist in clarifying the evidence led on the issues or move to the yet adjudication. Whether the application is found to be *bonafide* and whether an additional evidence will assist the Court to clarify the evidence on issues. If such an evidence is permitted and the Court come to a conclusion that reopening of the case and recalling the witness are not the reliefs, it can be a ground for awarding exemplary cost.

11. On the side of the respondents, it is stated that an unstamped and unregistered document cannot be admitted in the evidence even for collateral purpose. A registered document under Section 71(1)(b) of the Registration Act is to be stamped and it is inadmissible in evidence. In support of his contention, the judgment passed by this Court in the case of **Duraisami Naidu and others v. C.Ramakrishnan and others** reported in **(2007) 1 MLJ 424** is cited, wherein it is stated as follows:

"Therefore, there is absolutely no point in saying that the documents can be received and the validity can be decided at the time of trial. What is not receivable in law cannot be relied upon by the Court. In view of the same, there is absolutely no illegality or irregularity in the order of the trial Court."

12. On the side of the respondents, it is stated that in the above cited case, the concerned party depends upon the lease agreement and the entire case raised upon the lease agreement and that this citation is not applicable to the facts of the present case.

13. The learned counsel for the respondents would rely upon the judgment passed by this Court in the case of **Sundarajan v.**



Kowsalya and others reported on **2017 (4) TLNJ 353 (Civil)**, wherein it is stated as follows:

"It has been held unstamped and unregistered documents which are to be stamped and registered cannot be admitted in evidence even for collateral purpose. The said judgment and order are squarely applicable to the facts of the present case."

14. On the side of the respondents, it is stated that this citation is not applicable to the facts of the present case as the entire case vested on the document in that case. But in the present case, the petitioner want to mark the document only for collateral purpose.

15. The learned counsel for the respondents would rely upon the judgment passed by this Court in the case of **Ramalingam and others v. Ramachandran** reported on **2015 - 1 - 1.w. 137**, wherein it is stated as follows:

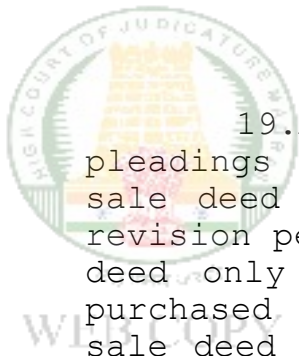
"It is a partition deed, which creates and extinguishes the right, title and interest over the immovable properties on the parties to the document on the date of its execution - document having not been registered, cannot be permitted to be marked- it cannot be looked into for collateral purpose."

The trial Court has rightly allowed the application and rejected the said document to be marked on the side of the petitioners/plaintiffs. I find no error or illegality in the impugned order of the trial Court. Accordingly, the civil revision petition fails and the same is dismissed."

16. The claim in the third citation is based on a family arrangement and it was a vital document, the case was based entirely upon the document and that the facts of the case is not similar to that of the present case.

17. On the side of the revision petitioner, it is stated that by allowing the petition, no new cause of action will raise and that the petitioner is not claiming any right exclusively through the unregistered deed. No prejudice is mentioned in the counter and for proper adjudication, an opportunity for the defendant to prove his case is to be given.

18. It is seen that the first defendant claims title through a sale deed executed by the power agent of one Sivaraman. Sivaraman died on 30.06.1997. But, the sale was executed on 21.04.2008. The claim of the defendants is that the said Sivaraman purchased the property by way of unregistered sale deed and only to substitute a sale deed by the power deed was executed.



19.A perusal of the register clearly reveals that such pleadings is not raised in the written statement. An unregistered sale deed was not at all mentioned in the written statement. The revision petitioner claims that he is aware of the unregistered sale deed only during the examination of D.W.2. The power agent has purchased this property by way of an unregistered sale deed, this sale deed in the hands of the son of the vendor creates suspicion. No evidence can be let in without the pleadings. Under Section 17 of Indian Evidence Act, the sale deed with regard to immovable property is to be registered. The unregistered sale deed cannot be entertained even for collateral purpose. The document cannot be marked and recalling the witness D.W.2 and reopening the case are unnecessary. There is nothing sufficient enough to interfere in the order passed by the trial Court.

20.In the above circumstances, these Civil Revision Petitions are dismissed and the orders passed in I.A.Nos.3 and 4 of 2019 in O.S.No.13 of 2014 dated 28.03.2019 on the file of the learned District Munsif, Devakottai is confirmed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

1.The District Munsif, Devakottai.

2.The Sub Registrar,
Office of the Sub-Registrar,
Devakottai.

+1 CC to Mr.J.ANANDKUMAR, Advocate (SR-103869[F] dated 06/12/2019)

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