



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 29.08.2019
CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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C.R.P.(MD)No.1437 of 2014 (PD)
and M.P.(MD)No.1 of 2014

P.Sureshkumar ... Petitioner/Petitioner/12th Defendant

Vs.

1.Vani ... Respondent/Respondent/Plaintiff
2.A.Velmurugan ... Respondent/Respondent/7th Defendant

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 06.02.2014 made in I.A.No.441 of 2012 in O.S. No.22 of 2010 on the file of the Sub-Ordinate Judge, Theni and allow this Revision Petition.

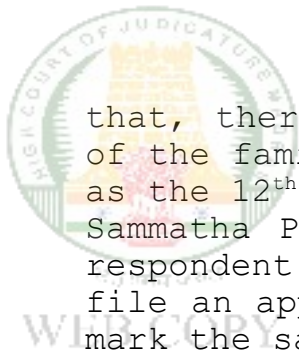
For Petitioner : Mr.D.Jeyam
For R1 : Mr.M.Saravanan
For R2 : No Appearance

ORDER

This Civil Revision Petition is filed to challenge the order dated 06.02.2014 in I.A.No.441 of 2012 in O.S.No.22 of 2010. The said I.A. was filed by the revision petitioner / 12th defendant in the suit so as to mark a document namely "sammadha pathiram" dated 10.01.2007, which is said to be executed by some of the defendants in the suit to and in favour of the revision petitioner, as an exhibit in the suit. The said application was dismissed by the trial Court and the order of dismissal is impugned herein.

2.I heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the first respondent.

3.The learned counsel appearing for the revision petitioner submitted that the revision petitioner purchased a property from the brothers of the first respondent / plaintiff under sale deed dated 08.06.2006. He further submitted that the sisters, including the first respondent / plaintiff, were not available for the execution and registration of the sale deed because they were not in town. Therefore, he submitted that the said sisters executed a Sammatha Pathiram on 10.01.2007, whereby they admitted that they received their share of the sale consideration and that they have no right, interest or title over the said property. He further submitted



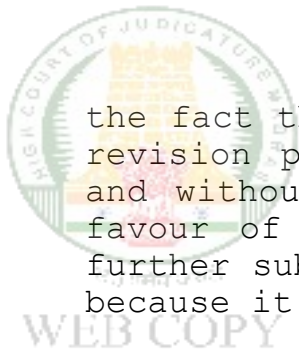
that, thereafter, one sister filed O.S.No.22 of 2010 for partition of the family properties and that the revision petitioner is arrayed as the 12th defendant in the said suit. In view of the fact that the Sammatha Pathiram was not filed as a plaint document by the first respondent / plaintiff, the revision petitioner was constrained to file an application in I.A.No.441 of 2012 in the said suit so as to mark the said Sammatha Pathiram as Ex.P.13.

4.The learned counsel pointed out that a counter was filed on behalf of the first respondent wherein it is stated that the Sammatha Pathiram does not confer any right because it is an unregistered document and it cannot be marked. He also referred to the Sammatha Pathiram and pointed out that it is categorically admitted by the executants of the said document that they received the entire sale consideration in respect of their share in the property. He also pointed out that the executants of the Sammatha Pathiram were not in town when the sale deed was executed and that, therefore, they could not sign the said sale deed. He further pointed out that it is categorically stated that the executants do not have any rights in the property and that they have agreed that the property is the revision petitioner's property.

5.In support of his submissions, the learned counsel relied on a judgment of the Hon'ble Supreme Court in **Thulasidhara and another Vs. Narayanappa and others** reported in (2019) 6 SCC 409 wherein, at paragraph 9.5, the Court held that the family settlement/family arrangement can be used as corroborative evidence, even though the said document is un-registered. He also relied on a judgment of this Court in **Rajendran Vs. T.K.Ramadoss Naidu and another 1999 (3) MLJ 451**, wherein at paragraph 18, this Court held that the Sammatha Pathiram executed by a person, upon reaching the age of majority, so as to ratify a sale that was concluded when he was a minor could be exhibited in evidence although it was unregistered.

6.By relying on the aforesaid judgment, the learned counsel submitted that the trial court committed a material irregularity in refusing to permit the revision petitioner to mark the said sammatha pathiram. In this regard, he further submitted that if the respondents herein have any objections on the basis that the document is required to be registered, the document could be marked as an exhibit subject to such objection, which could be considered at the time of final disposal. Considering the aforesaid facts, he submitted that the order of the trial Court is liable to be set aside.

7.In response and to the contrary, the learned counsel appearing for the respondents referred to the aforesaid sammatha pathiram and pointed out that it is stated therein that under this deed, the executants were conveying their rights over the property in favour of the revision petitioner / 12th defendant. In light of



the fact that it is a document that creates rights in favour of the revision petitioner, it is required to be compulsorily registered and without such registration, no interest or right is created in favour of the revision petitioner in respect of the property. He further submitted that the said document is inadmissible in evidence because it is inadequately stamped.

8. In support of his submissions, he relied on the following judgments:-

(i) **Rajamanickam and three others Vs. Elangovan** and four others reported in **1998 (1) LW 443** wherein at paragraph 8 this Court held that the lower Court erred in holding that the un-stamped and unregistered document could be received in evidence for collateral purpose whereas the document was relied upon to establish the partition.

(ii) **Ramalingam & others Vs. Ramachandran** reported in **2015 (1) LW 137** wherein, at paragraph 8, this Court held that a document that creates rights in favour of the parties certainly requires registration and cannot be admitted in evidence unless it is established that it is relied upon for a collateral purpose.

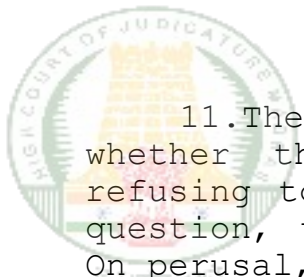
(iii) **Thailammai and others Vs. Karuppanan and others** reported in **2008 (2) CTC II** wherein, at paragraph 14, this Court set aside the order of the lower Court by holding that a document, which is not registered and adequately stamped cannot be marked and relied upon in a legal proceeding by contending that it is for a collateral purpose.

(iv) **S.Baskar Vs. Palanisamy (died) 1.A.R.P. Ayyamperumal** and others reported in **2014 (1) MWN (Civil) 61** wherein, at paragraphs 16 and 18, this Court held that an unregistered sale agreement cannot be permitted to be marked in evidence.

(v) **E. Meganathan & another Vs. M. Samraj** reported in **2016 (2) LW 329** wherein, at paragraphs 3 and 4, this Court held that a letter by which transfer of interest in immovable property is created is required to be registered under Section 17 of the Registration Act, 1908 and in the absence of such registration, it is inadmissible in proof of any right derived under the said document. It was further held therein that the proviso to 17 provides an exemption for the use of a document for collateral transaction and not for collateral purpose.

9. By relying upon the aforesaid decisions, the learned counsel for the respondents concluded his submissions by stating that the Sammatha Pathiram, in this case, is clearly a document by which rights in the property are transferred or released in favour of the revision petitioner and, therefore, the said document is inadmissible.

10. The records were examined and the oral submissions were considered.



11.The question that arises for consideration in this case is whether the trial Court committed a material irregularity in refusing to mark the Sammatha Pathiram. In order to answer this question, the said Sammatha Pathiram should be examined carefully. On perusal, the following is recorded therein or is evident:

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- (a) the document is unregistered;
 - (b) it is executed on non-judicial stamp paper of Rs.20/- in value;
 - (c) the executants received consideration in respect of the sale in favour of the revision petitioner; and
 - (d) under this document, the executants agreed that they have no right; title or interest over the property and that the property is duly transferred to the revision petitioner / 12th defendant.

12.From the above, it is clear that it is a document under which right, title or interest is being conveyed to the revision petitioner / 12th defendant. In other words, it is not a document by which a previously concluded transaction is being recorded in writing. It is also clear that it is not a document in the nature of a family arrangement in as much as title is conveyed under this document to a third party, i.e., not a family member.

13.When the impugned order of the trial Court is examined in the factual context, it is clear that the trial Court duly considered the applicable law both under Section 17 read with Section 49 of the Registration Act and Section 35 of the Stamp Act. In addition, as correctly pointed out by the learned counsel for the respondents, it is not the case of the revision petitioner that he relied upon the document for a collateral purpose or transaction. Therefore, the judgments that were relied upon by the learned counsel for the respondents to the effect that a document, which is required to be mandatorily registered and which is inadequately stamped, cannot be admitted in evidence are undoubtedly applicable to this case.

14.In this connection, the judgments that were relied upon by the learned counsel for the revision petitioner are clearly distinguishable in as much as the judgment reported in **2019 (6) SCC 409** is in the context of a family arrangement whereby a previously concluded oral partition was recorded. Similarly, the judgment reported in **1999 (3) MLJ 451** is in the context of a Sammatha Pathiram executed by the minor upon reaching the age of majority so as to ratify the action of his guardian. These judgments would not apply to the case in hand. In conclusion, the trial Court rightly



refused to mark the Sammatha Pathiram. As a result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Sub-Ordinate Judge,
Theni

+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-84404[F] dated 30/08/2019)
+1 CC to Mr.M.ARUN MURUGAN, Advocate (SR-84807[F] dated
03/09/2019)

C.R.P. (MD)No.1437 of 2014
29.08.2019

gns/rrg

MK (10.10.2019) 5P 4C