



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.09.2019

DELIVERED ON : 28.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)Nos.1646 & 1647 of 2014

and

M.P. (MD)No.1 of 2014

1.K.Packialakshmi

2.M.Kumaresan

.. Petitioners/Respondents/
Defendants
(In both Revisions)

Vs.

1.M.Gomathi

2.A.Maruthappapandian

.. Respondents/Petitioners/
Plaintiffs
(In both Revisions)

Common Prayer : These Civil revision petitions are filed under Article 227 of the Constitution of India, to call for the records and to set aside the fair and decreetal order passed in I.A.Nos.57 & 58 of 2013 in O.S.No.9 or 2010 on the file of the Additional Sub-ordinate Judge, Tenkasi, dated 20.08.2013 by allowing this Civil Revision Petition.

For Petitioners : Mr.Ananth C.Rajesh
(In both Revisions)

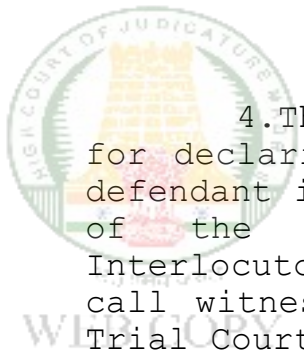
For Respondents : Mr.D.Rajkumar
(In both Revisions)

COMMON ORDER

Heard the learned counsel on either side.

2.These petitions have been filed to set aside the order passed in I.A.Nos.57 & 58 of 2013 in O.S.No.9 or 2010 on the file of the Additional Sub-ordinate Judge, Tenkasi, dated 20.08.2013.

3.The petitioners are the defendants. The respondents are the plaintiffs in the suit.



4.The respondents filed a suit for a prayer of partition and for declaring the document dated 22.01.2010, executed by the first defendant infavour of the second defendant will not affect the share of the first plaintiff. The respondents/plaintiffs filed Interlocutory Application in I.A.No.57 of 2013 for a prayer to re-call witness and I.A.No.58 of 2013 for re-opening the trial. The Trial Court allowed these petitions on payment of cost of Rs.300/-. Against which, the petitioners/defendants preferred this Civil Revision Petition.

5.Substance of the petition in I.A.No.57/2013 and I.A.No.58 of 2013 is as follows:-

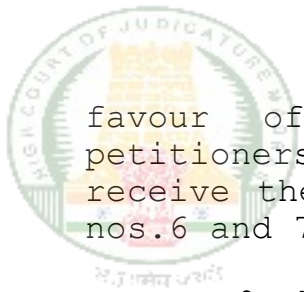
The plaintiffs has filed an Interlocutory Application in I.A.No.58 of 2013 for reopening the trial and they filed I.A.No.57 of 2013 under Section 151 of CPC for re-calling of P.W.1. At the time of cross-examination of P.W.1, questions were raised, based on a gift deed dated 20.10.1976, executed by the father of the first petitioner in favour of their mother which was not marked as an exhibit. Hence, the respondents/plaintiffs prayed for reopening the trial and for re-calling P.W.1 to mark the gift deed dated 20.10.1976.

6.A brief substance of the counter is as follows:-

The plaintiffs filed this Interlocutory Applications at a belated stage. The document dated 20.10.1976 was not at all mentioned in the plaint. The petitioners/defendants filed a counter claim and written statement stating that other properties are also available for partition. Only with an intention to drag on the case, these revision petitions have been filed. Hence, these petitions have to be dismissed.

7.On the side of the petitioners/defendants, it is stated that without filing any petition to receive additional documents, filing petitions to re-call witness and to re-open the case cannot be entertained and further it is stated that there is no provision in the civil procedure code to mark a new document by producing the same along with the proof affidavit filed as chief examination. On the side of the petitioners, it is stated that even in the reply statement, the document in favour of Packiyathammal was left to be marked as an exhibit and this petition is to fill up the lacuna in the case of the defendants.

8.On the side of the petitioners/defendants, it is stated that the property belonging to one Ragupathi Etta Pandian, who is the father of the first defendant and father-in-law of the second defendant. The claim of the petitioners/defendants is that the Ragupathi Etta Pandian executed a will in favour of his wife Packiyathammal on 17.05.1997 who thereafter, executed a gift deed in favour of the first defendant. The gift deed was registered in



favour of Packiyathammal, who is the predecessor of the petitioners/defendants. There is no necessity to file a petition to receive the document. The document was also discussed in paragraph nos.6 and 7 in the affidavit.

9.The necessity of the document and validity of the document has to be decided at the time of trial. Mere marking of a document will not cause any prejudice to the petitioners/defendants. In a suit for partition, all the documents necessary are to be marked to decide the dispute.

10.Considering the above circumstances, an opportunity is to be given to the respondents/plaintiffs to put-forth their case. This Court does not find any illegality or infirmity in the orders passed by the trial Court. Hence, these Civil Revision petitions are dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

The Additional Sub-ordinate Judge,
Tenkasi.

+1 CC to Mr.D.RAJKUMAR, Advocate (SR-102292[F] dated 28/11/2019)

order made in
C.R.P. (PD) (MD) Nos.1646 & 1647 of 2014
and
M.P. (MD) No.1 of 2014
28.11.2019

VB(19.12.2019) 3P 3C