

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 852 of 2018
and
C.M.P.No. 4701 of 2018

Elumalai ...Petitioner/Respondent/
plaintiff

Vs.

1.Vijayasubramaniam ...Respondent/Respondent/
1st Defendant

2.Anusuya ...Respondents/Petitioner/
2nd Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No. 391 of 2017 in O.S.No. 39 of 2012 dated 08.01.2018 on the file of the learned District Munsif-cum-Judicial Magistrate, Vanur.

For Petitioner : Mr.S.N.Subramani

For Respondents : Mr.S.Anbazhagan for R2

R1 - No Appearance

O R D E R

This revision is against an order of the Trial Court allowing the application filed by the defendant in the suit seeking rejection of the document dated 24.10.2005 on the ground that it is unstamped and unregistered sale deed and therefore, it should not have been admitted in evidence.

2. The suit is one for declaration of title and permanent injunction. The plaintiff would aver in the plaint itself that the parties agreed to have a power of attorney and a sale receipt instead of registered sale deed. Thus, it could be seen that the suit itself is based on this unregistered sale receipt / sale deed dated 24.10.2005.

3. The defendants resisted the suit contending that he had not executed any power of attorney or a unregistered sale deed as claimed by the by the plaintiff. Pending suit, the plaintiff filed an application in I.A.No. 178 of 2017 seeking condonation of delay in producing two documents namely, sale deed dated 24.10.2005 and a partition deed dated 01.10.1970. This application was opposed by the defendants contending that the documents that are sought to be filed are not admissible in evidence. The learned District Munsif by an order dated 23.06.2017 concluded that the application being one for condonation of delay, the admissibility or otherwise of the document need not be gone into at this stage. The learned judge allowed the application leaving the question of admissibility open. Thereafter, after the document was marked as an exhibit the second defendant came up with an instant application in I.A.No. 391 of 2017 seeking to reject the document.

4. This was opposed by the plaintiff contending that once the Court has considered the nature of the document and had allowed the application seeking condonation of delay in producing the document, the same cannot be re-agitated by the defendants. The Trial Court rejected the objections and concluded that the document being a sale deed which is unregistered and unstamped, the same ought not to have been admitted in the evidence. On the said conclusion, the Trial Court allowed the application and rejected the document.

5. Heard Mr.S.N.Subramani, learned counsel for the petitioners and Mr.N.Anbazhagan, learned counsel for the second respondent. First respondent though served, is not appearing either in person or through counsel, duly instructed.

6. Mr.S.N.Subramani, learned counsel for the petitioner would vehemently contend that the document in question is not a sale deed but it is only a sale receipt, which is sought to be marked only for a colateral purpose. He would also contend in view of the order passed in I.A.No.178 of 2017, the Trial Court was not right in entertaining the application in I.A.No. 391 of 2017.

7. I have heard considered the submissions of the learned counsel. I am unable to agree with the contention of the learned counsel for the petitioner though the document is titled as sale receipt and not as sale deed, a reading of the document would show that it contains all the ingredients of a sale. It cannot be said that it is only a sale receipt and not a sale deed. This document in its present form without proper stamping and registration cannot be admitted in evidence. The Trial Court rightly held that the document ought not to have been admitted in evidence therefore, the rejection of the document by

the Trial Court is perfectly justified and I do not see any reason to interfere with the order of the Trial Court. This civil revision petition fails and it is accordingly dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

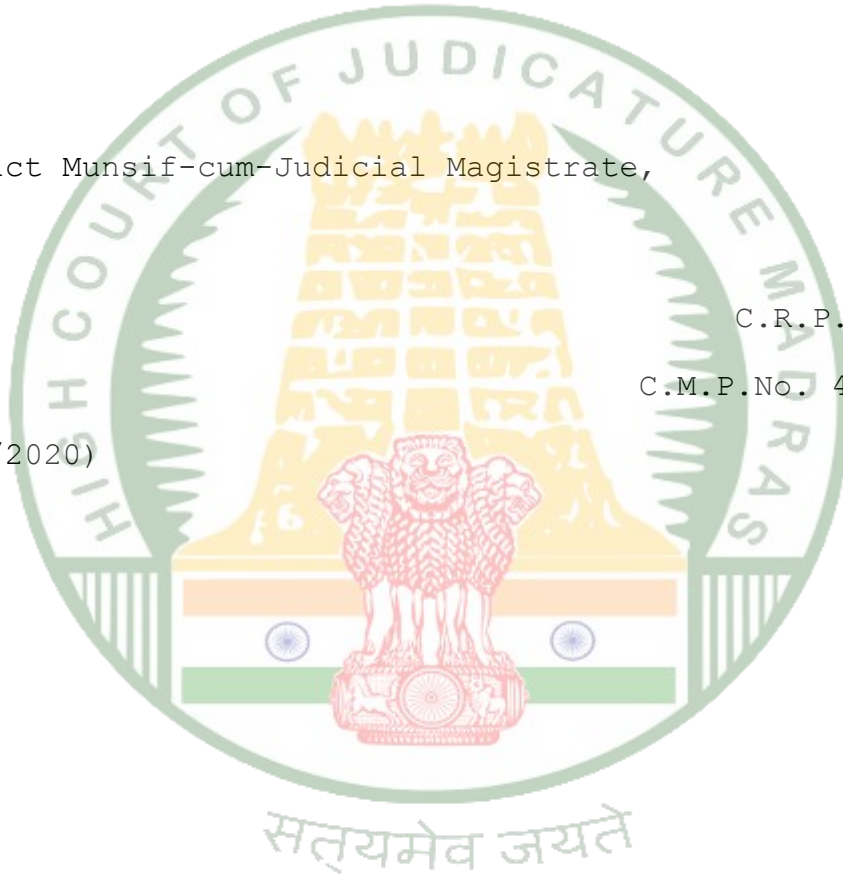
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To:-

The District Munsif-cum-Judicial Magistrate,
Vanur.

AD (CO)
RMP (04/12/2020)

C.R.P.852 of 2018
and
C.M.P.No. 4701 of 2018



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