



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) Nos. 893 & 1572 of 2019

and

CMP (MD) Nos. 5178 & 8322 of 2019

C.R.P. (PD) (MD) No. 893 of 2019

1. Ramiya, Puliyadi, Thimma, Easwari, Kutti
Vagaiyara Dharma Trust, Madurai,
represented by its President,
R.K. Gurumoorthy,
Son of R.V. Krishnamachary,
(Aged about 71 years),
Door No. 43/1, Nadar Vidyasalai Street,
South Veli Street, Madurai - 625001.

2. Ramiya, Puliyadi, Thimma, Eswari, Kutti
Vagaiyara Dharma Trust, Madurai,
represented by its Secretary,
K.R. Govindan,
Son of K.S. Ramakrishna Iyer,
(Aged about 75 years),
Door No. M521, Ellis Nagar,
Madurai - 625016

... Petitioners/Respondents/
Plaintiffs

Vs.

1. T. Dhilpkumar

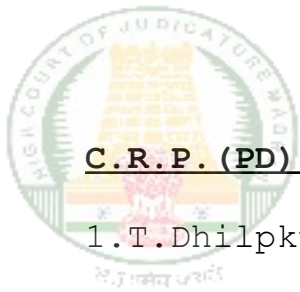
2. D. Thilokchand

... Respondents/Petitioners/
Defendants 3 & 4

Prayer in C.R.P. (PD) (MD) No. 893 of 2019: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31/07/2018 in I.A.No.209 of 2018 in O.S.No.154 of 2012 on the file of the Third Additional Sub Judge, Madurai.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondents : Mr.J.Barathan



C.R.P. (PD) (MD) No.1572 of 2019

1.T.Dhilpkumar

2.D.Thilokchand

... Petitioners/Petitioners/
Defendants 3 & 4

Vs.

1.Ramiya, Puliyadi , Thimma, Easwari, Kutti
Vagaiyara Dharma Trust, Madurai,
represented by its President,
R.K.Gurumoorthy,
Son of R.V.Krishnamachary,
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K.R.Govindan,
Son of K.S.Ramakrishna Iyer,
(Aged about 75 years),
Door No.M521, Ellis Nagar,
Madurai - 625016.

... Respondents/Respondents/
Plaintiffs

Prayer in C.R.P. (PD) (MD) No.1572 of 2019: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 31/07/2018 passed in the application in I.A.No.209 of 2018 in O.S.No.154 of 2012 on the file of the Third Additional Subordinate Court, Madurai.

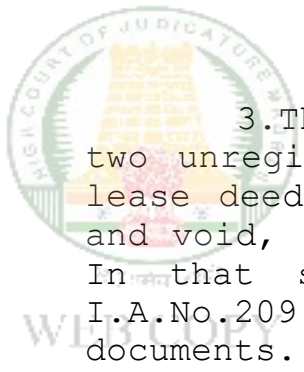
For Petitioners : Mr.J.Barathan

For Respondents : Mr.G.Prabhu Rajadurai

COMMON ORDER

These petitions have been filed to quash the order dated 31/07/2018 in I.A.No.209 of 2018 in O.S.No.154 of 2012 on the file of the Third Additional Sub Judge, Madurai.

2.In C.R.P. (PD) (MD) No.893 of 2019, the petitioners are the plaintiffs and the respondents are the defendants 3 and 4 in the



3. The petitioners filed a suit for a prayer of declaring two unregistered lease deeds dated 10.01.2008 and two registered lease deeds dated 09.11.2006 in favour of the defendants as null and void, for permanent injunction and for recovery of possession. In that suit, the defendants 3 and 4 filed a petition in I.A.No.209 of 2018 for a prayer of impounding the unregistered documents. That Interlocutory Application was allowed by the Trial Court. Against which, the petitioners/plaintiffs preferred this revision.

4. Brief substance of the petition in I.A.No.209 of 2018 is as follows:-

On 22.06.2018, the plaintiff marked two unregistered documents as Ex.A.2 and Ex.A.4. These two documents were unregistered documents and stamp duty was not paid. Hence, these two documents have to be impounded under Section 33 of the Stamp Act and these two documents (Ex.A2 & Ex.A4) are to be rejected as inadmissible.

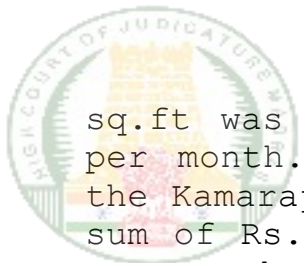
5. The brief substance of the counter is as follows:-

The first defendant was the ex-secretary of the Society. The second defendant was the member of the Society. During the year 2009, one E.A.V.Krishnamoorthi, who was the president of the Society died. In such circumstances, without conducting a general body meeting, the defendants 1 and 2 were misusing the powers of the president and leased out the first item of the property to the third defendant. Only after selecting the present president and the secretary, they came to know about the transaction and about the two registered leased deeds executed in favour of the defendants 3 and 4. The defendants 1 and 2 had signed the documents as individuals and not on behalf of the trust. The defendants 1 and 2 were not empowered to sign the document. There is no resolution permitting the defendants 1 and 2 to execute the documents. Though the defendants 3 and 4 obtained possession of the property, they have not followed the terms of the lease deed. Since the lease documents were not accepted by the defendants, this petition has to be dismissed.

6. After hearing both sides, the Trial Court partly allowed the petition. Against which, both the plaintiffs and the defendants 3 & 4 have preferred these revision petitions. The plaintiffs filed revision petition in C.R.P.(PD)(MD)No.893 of 2019 and the defendants 3 & 4 filed a revision petition in C.R.P.(PD)(MD)No.1572 of 2019.

7. For the sake of convenience C.R.P.(PD)(MD)No.893 of 2019 is taken as the lead case.

8. On the side of the revision petitioners / plaintiffs, it is stated that to swindle the property of the trust item No.1, which is situated in the Azhagarkovil Road an extent of 33964



sq.ft was leased out to the defendants for a sum of Rs.10,000/- per month. Further, the second item of the property situated in the Kamarajar Salai was leased out to the defendants 3 and 4 for a sum of Rs.7,000/- and Rs.5,000/- per month. It is stated that the person who executed the lease deed was not authorised to execute the same. There was no resolution permitting the defendants 1 and 2 to lease out the property and the defendants 1 and 2 signed only as individuals and the petitioners filed a suit for a prayer to declare these documents as null and void.

9.The contention of the revision petitioners / plaintiffs is that two documents regarding the same transactions were already registered, there is no question of paying stamp duty for the unregistered documents and that no right should flow on the basis of an unregistered lease deed and the unregistered lease deeds have no legal effect. It is further stated that even if stamp duty is liable to be paid, it should be paid only by the defendants. The defendants relied upon the documents i.e., Ex.A2 and Ex.A4 and claimed possession through these documents and hence, stamp duty should be paid only by the defendants.

10.On the side of the revision petitioners /plaintiffs, it is stated that the suit is pending for the past 7 years and the documents were not objected at the time of marking. It is further stated that as per the by-laws of the Trust, a lease deed can be executed only by the Executive Committee and not by the Secretary. Permission from the District Court under Section 92 of the Trust Act is not necessary for a suit in favour of the Trust. The defendants 1 and 2 have signed the document in their individual right and that stamp duty cannot be claimed from a person who is not party to the documents.

11.On the side of the respondents / defendants 3 & 4, it is stated that the suit was not filed by a Public Trust. Even in the plaint, the plaintiffs were mentioned only as a Registered Society and not as a public Trust. Only after the petitioners were elected as President and Secretary, they had filed the suit. The lease property is a vacant site. Condition of the lease deed is that the defendants 3 and 4 have to construct a building with their own funds and then to handed over the property with the building. In the written statement the particulars of the Executive Committee and the particulars of the resolutions passed by the Annual General Body Meeting, were all stated. The person who was convened as a president in the plaint was an honorary assistant secretary at that time and the person who was convened as a secretary was then a member. The lease was approved in the Annual General Body Meeting and the plaintiffs were not elected by the trust. The plaintiffs have not obtained permission to file a suit under Section 92 of the Trust Act before the District Court and that if



the petitioners want to mark the documents, they have to pay the stamp duty.

12. On the side of the revision petitioners / plaintiffs, it is stated that permission to file a suit against the Trust is necessary. But, no permission is necessary for filing a suit in favour of the Trust. The plaintiffs are not a party to the document and are not claiming any right over the property through these documents.

13. It is seen that four "lease deeds" were executed by the defendants 1 and 2 in favour of the defendants 3 and 4. Out of the four, two documents were registered and two documents were unregistered. The plaintiff prays to declare all the four lease deeds as null and void. A person, who claim right over the suit property through the documents has to pay the stamp duty. Here, the plaintiffs are not claiming any right through the documents. When the defendants 3 and 4 are claiming right over the property by way of two registered lease deeds and by way of two unregistered lease deeds, no separate transaction has taken place on the basis of those two unregistered lease deeds.

14. In the above circumstances, there is no necessity for the plaintiffs to pay stamp duty for these documents. Those documents are already marked. The admissibility of this documents has to be decided by the trial court on the basis of evidence, after the completion of the trial.

15. Without considering the above facts, the Trial Court has passed the impugned order and that has to be set aside. Hence, the order passed in I.A.No.209 of 2018 in O.S.No.154 of 2012 on the file of the Third Additional Subordinate Court, Madurai, is hereby, set aside and the Civil Revision Petition in C.R.P.(PD) (MD)No.893 of 2019 is allowed. Consequently, connected miscellaneous petition is closed.

16. In view of the decision made in CRP(MD)No.893 of 2019, there is no merits in CRP(MD)No.1572 of 2019 and hence, CRP(MD) No.1572 of 2019 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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and
CMP (MD) Nos. 5178 & 8322 of 2019

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