



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2020

Delivered on : 20.05.2020

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THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P. (MD)No.1345 of 2019

and

C.M.P. (MD)No.7264 of 2019

Pol Naicker (died)

1.Maheswari

2.Ramamurthy

... Petitioners/Defendants 2&3

Vs.

1.Palraj

... 1st Respondent/Plaintiff

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The Tahsildar
Sivakasi.

4.Muthel Raj

5.Mariappan

6.Kanagaraj

... Respondents 2 to 6 /
Defendants 4&5, 6 to 8

Prayer : This revision petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 01.03.2019 passed in I.A.No.97 of 2019 in O.S.No.270 of 2013 on the file of the learned District Munsif, Sivakasi.

For Petitioners : Mr.M.P.Senthil
For R1 : Mr.K.N.Govardhanan
For R2 & R3 : Mr.K.Mu.Muthu, AGP
For R4 to R6 : No appearance

ORDER

This Civil Revision Petition is filed against the order, passed in I.A.No.97 of 2019 in O.S.No.270 of 2013 on the file of the learned District Munsif, Sivakasi, dated 01.03.2019.



2. The revision petitioners are the defendants 2 and 3, the first respondent herein is the plaintiff, the respondents 2 and 3 herein are the defendants 4 and 5 and the respondents 4 to 6 herein are the defendants 6 to 8 in the suit.

3. The first respondent herein / plaintiff filed a suit in O.S.No.270 of 2013, for a prayer of bare injunction. In the suit, the first respondent / plaintiff filed a petition in I.A.No.97 of 2019 to mark a document and that petition was allowed by the trial Court. Against which, the defendants 2 and 3 /revision petitioners preferred this Civil Revision Petition.

4. Brief substance of the petition in I.A.No.97 of 2019 is as follows:

The suit property belonged to the father of the plaintiff/petitioner viz., Chinna Subbaiah Naicker. Dayamal is the wife of Chinna Subbaiah Naicker and the petitioner / Paulraj, Rajavel and Subbulakshmi are the legal heirs of Chinna Subbaiah Naicker. After the demise of the said Chinna Subbaiah Naicker, the petitioner/ Paulraj, his brother/Rajavel and sister/Subbulakshmi were enjoying the property. Then on 24.03.1993, they entered into a family arrangement, in which, the petitioner's mother, brother and sister were parties. The petitioner was the second party in the agreement. They have divided the property and were enjoying their share separately. Since the first defendant interfered with the possession of the plaintiff, a suit was filed and after the demise of the first defendant, his legal heirs were impleaded as parties to the suit. The petitioner has to mark the documents regarding family arrangements, dated 24.06.1993. Therefore, he sought permission for marking the said document.

5. Brief substance of the counter filed by the defendants 2 to 3 and 6 to 8 in I.A.No.97 of 2019 is as follows:

The suit property situated in Survey No.9/9, Lakshmipuram Village, with an extent of 60 cents, belonged to the Government, classified as Government barren land. The first defendant filed a petition for assignment of the land and he got the assignment order in D.C.1616/79, dated 24.06.1970 and patta was issued in the name of the first defendant and the patta No.1287. The first defendant was enjoying 60 cents of the land as his individual property and he is cultivating the same alongwith his other properties. He has created a mortgage deed in favour of Karisalkulam Palnokku Kutturavu Sangam, on 25.11.1976 and has obtained a loan of Rs.2,000/-. Later, the first defendant executed a settlement deed in favour of the second defendant on 24.11.2010 and the second defendant accepted the gift and is enjoying the property and patta No.2355 was also issued in the name of the second defendant.

6. The suit property is never in the possession and enjoyment of the plaintiff or his predecessors. The unregistered document is not a valid document. The wordings in the



document are that on the date of execution of the document itself, the properties were partitioned and the parties concerned can enjoy the property from that date onwards and there was no oral partition, reduced into writing. Hence, this document has to be registered. Since, the document is not registered, it is not acceptable as an evidence under Order 7 Rule 14(A) of the Code of Civil Procedure and hence, prayed the petition is to be dismissed.

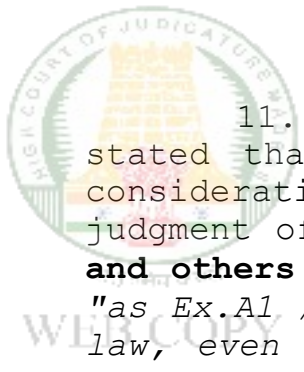
7. After considering both sides, the trial Court allowed the petition.

8. The revision petitioners / defendants 2 and 3 objected the petition and filed this Civil Revision Petition stating that the District Munsif committed an error in allowing the petition under Order 7, Rule 14 (A) of the Code of Civil Procedure. The petition was filed to drag on the proceedings. The property in Survey No.9/9 was allotted to the first defendant. The plaintiff has no locus-standi to claim title under Section 49 of the Registration Act. An unregistered document relating to immovable property can be received in evidence only for collateral purpose and not to establish the title. The plaintiff's object that the defendants 4 and 5 should not be allowed to measure the property, which itself shows the intention of the first respondent / plaintiff and prayed that the impugned order is to be set aside.

9. On the side of the revision petitioners, it is stated that an unregistered document relating to the immovable property can be received in evidence only for collateral purpose and not to establish the title.

10. A judgment of this Court in **A.C.Lakshmipathy and another v. A.M.Chakrapani Reddiar and five others** published in 2001 (1) CTC 112 is cited, wherein it has been held that *"with regard to admissibility of unregistered document relating to immovable properties as evidence in Court, such document could be received in evidence to establish collateral purpose only and not to establish title and no exhaustive list of purposes which could be construed as collateral could be furnished."*

11. On the side of the revision petitioners, it is further stated that a family arrangement, which is unstamped and unregistered, cannot be looked into even for collateral purposes, in view of the specific bar under Section 35 of the Indian Stamps Act. A judgment of this Court in **Nazir Ahamed v. A.Abdul Kaleel and another** published in 2019 (3) MWN (Civil) 504 is cited, wherein, it has been held that *"admittedly, the deed is a Family Arrangement between petitioner and his brothers, consequently creating rights, such document, when unstamped and unregistered, cannot be looked into even for collateral purpose."*

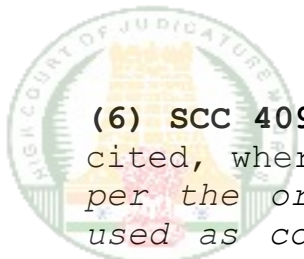


11. On the side of the revision petitioners, it is further stated that an unregistered partition deed cannot be taken into consideration, even if there was no objection by the defendant. A judgment of this Court Published in **2019 (6) MLJ 241 [N.Pandurangan and others Vs. N.Kannaboss]** is cited, wherein it has been held that *"as Ex.A1 / partition deed was not stamped and unregistered as per law, even if admitted as exhibit without objection by defendants, the same could not be taken into consideration for any purpose, even for collateral purpose"*. A similar judgment of this Court published in **2018-1-L.W.965 [L.Keerthika and others Vs. The State of Tamil Nadu rep. By the District Collector, Erode District, Erode-11 and others]** is also cited.

12. On the side of the revision petitioners, it is stated that if a document is not registered, it is wrong to give liberty to the respondent to pay sufficient stamp duty and thereafter, to mark the document. A similar judgment of this Court published in **2019-4-L.W.602 [Thangamuthu and others Vs. A.Jeyaraj]** is cited, wherein it has been held that *"if a document is inherently bad for non-registration, it cannot be cured by paying deficit stamp duty and penalty and it is even a settled position of law that such documents cannot be looked into even for collateral purposes."*

13. On the side of the first respondent, it is stated that the interlocutory application, to receive the document, was filed only to receive the document for collateral purpose. It is stated that the respondent is not relying upon this document alone and this document is only for collateral purpose. The first respondent has to prove the document by way of oral and documentary evidence and the revision petitioners and the respondents 2 to 6 can raise their objections by way of cross-examining the petitioner and an opportunity for the petitioner to put forth his case is to be given. A judgment of this Court published in **2018 (0) Supreme (Mad) 3289 [Balamurugan Vs. Lakshmiammal]** is cited, wherein this Court has observed that *"unregistered and unstamped xerox copy can be accepted as a collateral evidence and whether the document is admissible can be decided at the time of the trial and the validity of this document may be questioned by the respondents by way of cross-examination and the respondents can raise their objections by cross examining the petitioners regarding these points and the trial Court can come to a conclusion as to the admissibility of this documents only after the completion of the trial and at this stage, an opportunity for the petitioners to put forth their case is to be given."*

14. On the side of the first respondent, it is further stated that without registration, a written document namely a family settlement / family arrangement can be used as corroborative evidence. A judgment of the Hon'ble Supreme Court reported in **2019**



(6) SCC 409 [Thulasidhara and another Vs. Narayanappa and others] is cited, wherein, it has been held that *"everybody got right/ share as per the oral partition/ partition and therefore, the same can be used as corroborative evidence as explaining the arrangement made thereunder and the conduct of the parties."*

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15. On the side of the first respondent, it is further stated that when the petitioner is ready to pay the penalty and the registration charges, an opportunity for the petitioner to put forth his case is to be given. A judgment of this Court in **C.R.P. (MD) Nos.1933 and 1935 of 2019 [N.V.Subramanian Vs. Lakshmanan @ Rasu]**, dated 08.01.2020 is cited.

16. On the side of the revision petitioners, it is stated that though the first respondent / plaintiff filed a suit in the year 2013, the first respondent did not attach any document to prove his possession, after the lapse of 43 years from the date of original assignment, the plaintiff is claiming right over the property, without any valid document. The name of Subbulakshmi, who is the sister of the plaintiff was wrongly included in the patta and subsequently, the name was removed by the Tahsildar on 10.12.2010 and against the said order, the first respondent / plaintiff has not preferred any appeal. Only after the removal of the name of Subbulakshmi from the patta, the first respondent / plaintiff created an unregistered and unstamped document in the nature of a partition deed and the document is invalid due to non-registration and non-payment of stamp duty. This petition to receive the document was filed after a lapse of five years from the date of filing of the suit. A family arrangement reduced into writing, is to be compulsorily registered and stamp duty should be paid. This document cannot be marked even for collateral purpose. As per the Amendment Act of the Indian Registration Act, dated 01.12.2012, all the documents relating to immovable properties should be compulsorily registered and hence, prayed to set aside the impugned order.

17. It is seen that the suit is for bare injunction not to disturb the possession of the first respondent / plaintiff against the defendants 1 to 3 and against the fourth and fifth defendants, not to measure the property. Whether the suit property belongs to the family of the first respondent / plaintiff, whether there was an oral partition that took place through a family arrangement whether the first respondent / plaintiff claims title through the document, whether this document is filed only for collateral purpose are to be decided by the trial Court after the completion of the trial. The suit is not for declaration of title. Hence, the title of the first respondent / plaintiff need not be established through the impugned document. The suit is for permanent injunction and it is the duty of the first respondent / plaintiff to prove his possession through oral and documentary evidence. The document is dated 24.06.1993 and



the Amendment Act was implemented only on 01.12.2012. The respondent is at liberty to rebut the document and the evidence of the petitioner.

18. In the above circumstances, the trial Court can receive the document for collateral purpose, subject to proof and maintainability. There is nothing sufficient enough to interfere with the order of the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Is

To

1.The District Munsif,
Sivakasi.

2.The Section Officer,
VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

order made in
C.R.P. (MD)No.1345 of 2019
20.05.2020

MK (26.05.2020) 6P 4C