



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P(MD) No.1739 of 2017
and C.M.P(MD)No.9432 of 2017

1.Murugesan
2.Chinnaponnu

... Petitioners/Respondents/Plaintiffs

Vs.

1.Karupia
2.Alagar

... Respondents/Petitioners/1 & 3 Defendants

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order passed in I.A.No.7 of 2017 in O.S.No.308 of 2012 on the file of the Additional Sub Court, Dindigul dated 07.06.2017.

For Petitioner : Mr.K.Hariharan
For R1 & R2 : Mr.D.Venkatesh

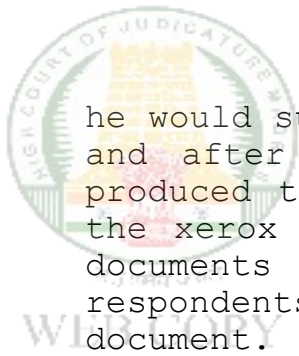
O R D E R

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.7 of 2017 in O.S.No.308 of 2012 on the file of the Additional Sub Court, Dindigul, dated 07.06.2017.

2. The petitioners are the plaintiffs. The respondents are the defendants 1 and 3. The petitioners filed the suit in O.S.No.308 of 2012 on the file of the Additional Sub Judge, Dindigul, for partition and separate possession.

3. After filing of written statement by the defendants, the trial commenced. On the side of the plaintiffs, the first petitioner was examined as P.W.1. An unregistered and unstamped xerox copy of the partition deed was marked as Ex.A.1 Thereafter, the respondents/defendants filed a petition before the trial court to reject the document Ex.A.1 as inadmissible in evidence since because it is not properly stamped and the same is unregistered more so, it is only xerox copy. The trial court rejected the document Ex.A.1. Aggrieved by the order of the trial court, the plaintiffs have filed the present revision before this Court.

4. The learned counsel for the petitioners/plaintiffs would submit that the respondents/defendants 1 and 3 admitted the partition and now they cannot dispute the document Ex.A.1. Further,



he would submit that the original is with the defendants/respondents and after giving notice to produce the document, they have not produced the document and the petitioners were constrained to mark the xerox copy of the document. Though on the date of marking the documents sufficient opportunity was given to the respondents/defendants, they have not objected for marking the document. The trial court has made an observation that sufficient opportunity has been given from morning to evening but they have not made any objection and therefore, the document was marked. Now they cannot dispute the same. Once the document was marked, the same cannot be disputed and therefore, the order of the trial court warrants interference.

5. The learned counsel for the respondents/defendants 1 and 3 would submit that even though a memo was filed stating that the original document is not with them and also denied the document Ex.A.1., in their absence the trial court failed to consider the validity of the document. According to them, the document is inadmissible in evidence. Subsequently, they filed a petition for rejection. The trial court has considered their objections and rejected the document which was marked as Ex.A.1. Therefore, the order of the trial need not be interfered with.

6. Heard both sides and perused the materials available on record.

7. The suit is one for partition and separate possession. After completion of pleadings and framing of issues, the trial commenced and at the time of Ex.A.1 was marked, Ex.A.1 is said to have stated as a xerox copy of partition deed. A perusal of the records would show that in the plaint itself it is stated that Ex.A.1 is a xerox copy of the partition deed and they have stated that original is with the defendants and they will take effective steps to get back the original partition deed from the defendants. The court has passed the order to produce the original document. On the date of marking of Ex.A.1, the respondents/defendants were not present and in the absence of the respondents/defendants, the document was marked. Subsequently, when the petition was filed to reject the document, the trial court realized the fact that it is inadmissible in evidence and therefore, the document was rejected. The document Ex.A.1 is stated to be a xerox copy of partition deed and it is unregistered and unstamped. Therefore in the absence of original or without explaining about the original, the xerox copy cannot be marked. Since the petitioner has not satisfied the ingredients given under Section 65 of Indian Evidence Act, this Court does not find any perversity in the order of the trial court. There is no merits in the revision and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



8. However, the petitioner is at liberty to mark the document after satisfying the ingredients contemplated under Section 65 of the Indian Evidence Act.

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Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To,
The Additional Sub Court, Dindigul

+1 CC to M/s.V.MUTHUKAMATCHI, Advocate (SR-10535[F]

+1 CC to M/s.D.VENKATESH, Advocate (SR-10591[F] dated 09/03/2020)

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SMA/06/05/2020/3P/4C