

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.04.2021**

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 256 of 2021

And

C.M.P.No. 2456 of 2021

J. Thiagarajan ... Petitioner/Petitioner/Petitioner/3rd Defendant

-Vs-

Devi ... Respondent/Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and Decretal order in I.A.No. 2 of 2019 in I.A.No. 1 of 2019 in O.S.No. 33 of 2009 dated 20.01.2020 passed by the learned Subordinate Court, Tiruvallur.

For Petitioner : Mr. R. Anish Kumar

For Respondent : Mr. R.Veeramani

ORDER

This Civil Revision Petition has been filed questioning the order passed in I.A.No. 2 of 2019 which Interlocutory Application had been filed

in I.A.No. 1 of 2019 which application has been filed in O.S.No. 33 of 2009 pending on the file of the learned Subordinate Court at Tiruvallur.

2. The revision petitioner is the third defendant in the suit. The suit in O.S.No. 33 of 2009 had been filed by the plaintiff Devi seeking partition and separate possession of the schedule mentioned properties. Originally the suit was filed against two defendants. The first defendant unfortunately died and thereafter, his legal representatives were brought on record. The present petitioner is one of the legal representatives, who had been brought on record as third defendant. It must also be mentioned that the pleadings have been completed, issues have been framed and the parties have been invited to tender evidence. The plaintiff had taken advantage of such invitation and had given evidence as PW-1 and has also been cross examined. Documents were marked both during chief examination and also during cross examination.

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3. It is the turn of the defendants now to lead evidence. At that time, I.A.No. 1 of 2019 came to be filed by the present petitioner/third defendant seeking permission to file four documents. The said documents

which were sought to be filed were the Sale Deed dated 05.09.2006 which had already been put during cross examination of PW-1, a Partition Deed dated 15.02.1977, a Settlement Deed dated 14.12.2006, a Release Deed dated 12.01.2007.

4. The issue is with respect to the release deed dated 12.01.2007.

5. The learned counsel for the present revision petitioner, stated that it is not actually a release deed but it is a receipt. Therefore, contending that it is only a receipt, a further application was filed in I.A.No. 2 of 2019 in I.A.No. 1 of 2019 seeking permission to modify the nomenclature of the said document from release deed to a receipt.

6. Counter had been filed raising serious objections.

7. Heard Mr. R. Anish Kumar, learned counsel for the petitioner. The presence of Mr. R. Veeramani, learned counsel for the respondent is acknowledged, but the learned counsel was not called.

8. It must be mentioned that the said document dated 12.01.2007 had actually also been referred to only as a release deed in the written statement filed on behalf of the defendants. Be that as it may, the learned Sub Judge, Tiruvallur had passed an order which is now called in question in the present Civil Revision Petition rejecting the request made to modify the nomenclature of the said document from release deed to a receipt. The learned Judge in the course of his order had also extracted a portion of the written statement wherein the said document was referred only as a release deed.

9. Whether the said document is a release deed or is a receipt, is a matter to be decided only when the document is actually produced in evidence, marked during the course of evidence provided it is admissible, termed relevant and had been proved in the manner known to law. After it had been marked during the course of evidence, the document should also be subjected to cross examination. Necessary explanation will have to be given not only regarding the contents of the document but also with the circumstances surrounding the execution of the said document. All these explanations will also have to withstand test of cross examination.

Thereafter, the learned judge will have to apply his mind during the course of delivering the final Judgment indicating as to what actually was the purpose behind executing the said document. It would be putting the cart before the horse if this Court were to accede to the request made by the learned counsel for the petitioner that the said document is actually a receipt and not a release deed.

10. The nature of the said document will have to be determined as stated above only on analysis of the evidence presented before the Court. The document remains a document. To be termed as an evidence, it has to pass the tests of admissibility, relevancy and proof. Of-course it also have to be a genuine document. Therefore, without observing anything regrading the nature of the document or regarding the circumstances surrounding which the document came into existence, the present Civil Revision Petition is dismissed.

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11. Let the learned Judge now take up for consideration I.A.No. 1 of 2019, pass necessary orders based on the averments made in the affidavit filed in respect of the said application and on the basis of the counter

affidavit filed with respect to the said application and thereafter, let the defendants tender evidence and again be subjected to cross examination. Any observation may in this order will not automatically mean that I.A.No. 1 of 2019 has to be allowed by the learned Judge.

12. The learned Judge will have to apply his independent mind, look into all the circumstances, take a considered decision whether to allow I.A.No. 1 of 2019 or not and thereafter proceed with the trial in manner known to law.

13. Having been invited to participate in trial, after issues have been framed, a duty is cast on the plaintiff and on the defendant to graze the witness box and to state the facts as stated in the pleadings to their direct knowledge in the witness box and subject themselves for cross examination.

14. With the said observations, this Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

vsg

Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

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