

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.2308 of 2015

and

MP.No.1 of 2015

1.Chandra

2.Krishnamurthy

..Petitioners

Vs.

Revathy

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order of the Principal District Munsif Court, Mayiladuturai, in I.A.No.40 of 2015 in O.S.No.249 of 2013 dated 12.03.2015, in so far as it is against the petitioner is concerned and allow the said IA in toto.

For Petitioners : Mr.S.Sounthar

For Respondent : No appearance

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order in I.A.No.40 of 2015 in O.S.No.249 of 2013 dated 12.03.2015 on the file of the learned Principal District Munsif, Mayiladuturai thereby partly allowing the petition filed by the petitioners herein.

2. The learned counsel for the petitioner would submit that the petitioners are the defendants and the respondent is the plaintiff, who had filed a suit for injunction. The case of the plaintiff is that the suit property belong to a temple and her father-in-law was a tenant. The respondent claimed that her father-in-law transferred his tenancy rights in her favour and as such she has been in possession and enjoyment of the suit property.

3. He further submitted that her father-in-law transferred his tenancy rights in favour of the 2nd petitioner after receipt of adequate consideration. He also executed a lease deed to that effect on 24.05.1997. In fact her husband also executed documents in respect of the portion of the suit property surrendering her tenancy rights in favour of the 2nd petitioner herein dated 22.05.1998. The another portion of the properties tenancy right was also transferred in favour of the 2nd petitioner by the document dated 31.01.1998. In fact all the documents have been categorically mentioned in the written statement and the entire property has been in possession and enjoyment of the petitioners even prior to the documents referred in the written statement.

4. At the time of filing of the written statement, the petitioners have not filed those documents since those documents were not traced out. After

filing the written statement those documents were traced out and filed an application to receive those documents and to mark the same before the trial court. He further submitted that it can be ordered to receive subject to proof, admissibility, evidenciary value and objection of the respondent herein. In support of his contention he also relied upon the judgments in ***S.Mohammad Ali Vs. Basheer Ahmed*** reported in **2001 (2) CTC 391** and ***Bondar Singh and others Vs. Nihal Singh and others*** reported in **2003 (4) SCC 161**.

5. Heard Mr.S.Sounthar, learned counsel for the petitioners. Though notice was served to the sole respondent and her name has been printed in the cause list, no one appeared on behalf of the respondent before this Court in person or through pleader.

6. The respondent is the plaintiff and filed a suit for injunction. The petitioners are defendants 1 and 2 in the suit. While filing the written statement they categorically mentioned the documents which were sought to be received before the trial court, but, the petitioners did not file those documents for the reason that they were not found out. After tracing out those documents, the petitioners filed an application for reception of those documents.

7. The trial court partly allowed the application thereby received the document Nos.5 to 9 filed by the petitioners in evidence subject to objection of the respondent. In respect of document Nos.1 to 4 got dismissed. The trial court rejected the document Nos.1 to 4 for the reasons that those documents are insufficiently stamped and un-registered one and as such those could not be received in evidence.

8. In this regard, the learned counsel for the petitioners relied upon the judgment of this court in **S.Mohammad Ali Vs. Basheer Ahmed** reported in **2001 (2) CTC 391**, wherein this court has observed as follows:-

“17. The whole implication of Order 13, Rule 2 of the Civil Procedure Code is to prevent the parties from producing the documents after a particular stage, viz., after the settlement of issues or requiring them to explain 'good cause' for the delay, if any, in producing the document. In other words, in order to serve the ends of justice, the production of document may be accepted by the Court by condoning the delay in producing the same, depending upon the facts and circumstances of each case, subject to production of the same by way of evidence at the relevant time. But merely permitting the production of documents

cannot be construed that the documents thus permitted to be produced under Order 13, Rule 2 of the Civil Procedure Code are automatically admissible in law.

20. Inability to trace the documents and to produce the same at the time of presenting the written statement, in the experience of human beings, are neither improbable nor strange and if that be so, such reasons are neither absurd nor capricious. But, the learned Additional Subordinate Judge while refusing permission to the petitioner to produce the documents sought to be produced under Order 13, Rules 1 and 2 of the Civil Procedure Code, in his order dated 6.10.99, instead of weighing whether the reason, viz., the revision petitioner could not produce the documents earlier had driven himself to decide as to the admissibility of the said documents, which in my considered opinion, is not permissible for the Court while exercising the power under Rules 1 and 2 of Order 13 of the Civil Procedure Code, as condoning of delay in producing the documents belatedly is not beyond the scope of Order 13, Rule 2 of the Civil Procedure Code. On the other hand, expressing any opinion as to the admissibility of the said documents at that stage is beyond the scope of Order 13, Rule 2 of the Civil Procedure Code.”

9. The learned counsel for the petitioners would also rely upon the judgment of the Hon'ble Supreme Court in ***Bondar Singh and others Vs. Nihal Singh and others*** reported in **2003 (4) SCC 161**, wherein, the Hon'ble Supreme Court has observed as follows:-

“5. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized. ”

10. The Hon'ble Supreme Court of India laid down the dictum and the legal position is clear that the documents like sale deed even though not admissible in evidence can be looked into for collateral purpose. The collateral purpose to be seen is the nature of possession and the purpose over the suit land.

11. The above judgments are squarely applicable to the case on hand. In the instant case, the trial court rejected the petition for only reason that the documents are insufficiently stamped and unregistered one. For these reasons the very reception of documents cannot be denied. It can be received as evidence only for collateral purpose. The admissibility of those documents can be seen only at the time of marking those documents. In fact the petitioners are also ready to cure the defect by filing necessary application for payment of stamp duty and penalty.

12. In view of the above discussion, the fair and decreetal order in I.A.No.40 of 2015 in O.S.No.249 of 2013 dated 12.03.2015 on the file of the learned Principal District Munsif, Mayiladuturai is set aside and this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed. The trial court is directed to receive the documents 1 to 4 subject to objection of the respondent, proof, admissibility and evidenciary value.

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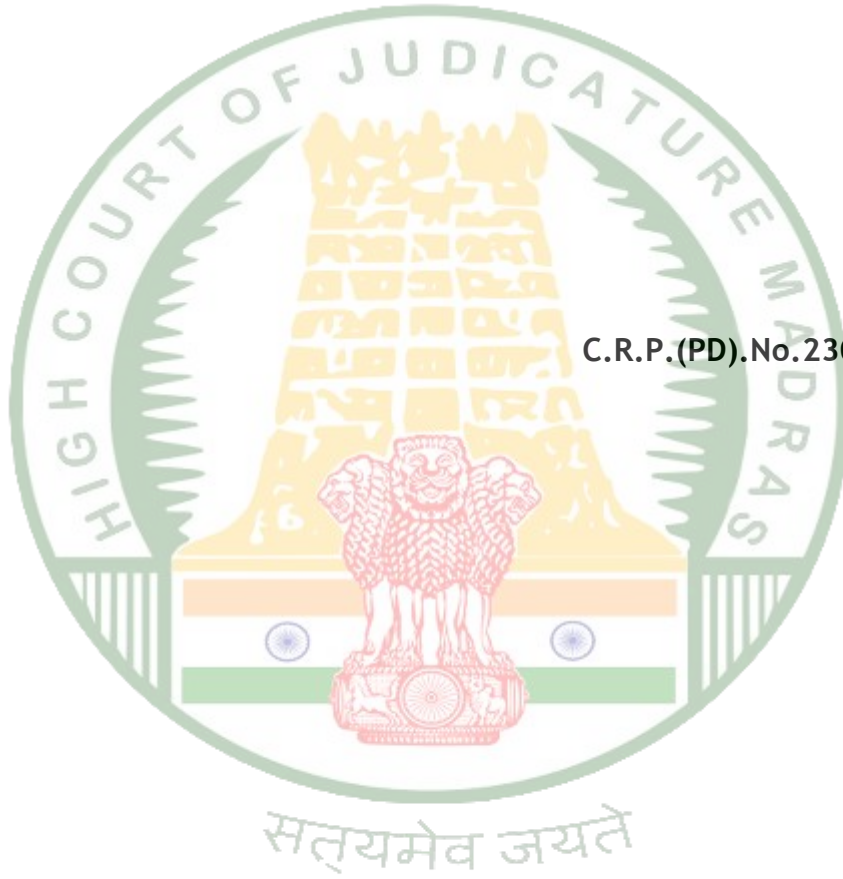
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Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No

G.K.ILANTHIRAIYAN,J.

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To
The Principal District Munsif,
Mayiladuturai.



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