



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.1266 of 2016

and

C.M.P.No.7044 of 2016

1.R.Poongodi
2.N.Arumugam

.. Petitioners

Vs.

1.M.Palanathal
2.Mahadevan
3.Nagarathinam
4.Poongodi
5.Duraisamy

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.03.2016 made in I.A.No.212 of 2016 in O.S.No.30 of 2014 on the file of the I Additional District and Session Court, Tiruppur.

For Petitioners : Mr.S.Sriram

For Respondents : Mr.B.Pachaiyappan
for Mr.T.Gowthaman for RR1 to 4
No appearance for R5



ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 16.03.2016 made in I.A.No.212 of 2016 in O.S.No.30 of 2014 on the file of the I Additional District and Session Court, Tiruppur.

2.The petitioners are defendants 3 & 4 and respondents are plaintiffs in O.S.No.30 of 2014 on the file of the I Additional District and Sessions Judge, Tiruppur. The respondents filed the said suit for declaration that sale deed dated 16.03.2011 executed by the defendants 1 and 2 in favour of the petitioners is void and for a direction to the defendants 1 and 2 to execute the sale deed as per pre-emption agreement dated 30.10.1995 executed by the father of the 1st defendant to the husband of the 1st respondent and the father of the respondents 2 to 5. The petitioners in the said suit filed I.A.No.212 of 2016, under Order XIII Rule 3 r/w Section 151 of C.P.C., to reject the document which is marked as Ex.A4 as inadmissible evidence. According to the petitioners, the said document is not a security document. The contents of the document reveals that it is only a mortgage deed, which requires stamp duty at 12% and compulsorily to be registered. The respondents ought to have paid the stamp duty. The petitioners have objected for marking of the said



document. The document was marked subject to objection. Therefore, Ex.A4 is an inadmissible evidence and prayed for rejection of Ex.A4.

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3.The respondents filed counter affidavit, denying all the averments in the affidavit and submitted that the petitioners have filed an application only to drag on the proceedings, Ex.A4 is not a mortgage deed. The father of the 1st defendant executed pre-emption agreement on 30.10.1995 in favour of the husband of the 1st respondent and father of the respondents 2 to 5. It is only a security document and the nature of document can be decided only after the conclusion of the trial and prayed for dismissal of the application.

4.The learned Judge considering the averments made in the affidavit, counter affidavit and Ex.A4 dismissed the application holding that the contents of A4 reveals that it is not a mortgage deed as no right to sell the property was given by father of the 1st defendant to husband of the 1st respondent and father of the respondents 2 to 5.

5.Against the said order of dismissal dated 16.03.2016 made in I.A.No.212 of 2016 in O.S.No.30 of 2014, the petitioners have come out with the present Civil Revision Petition.



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6.The learned counsel appearing for the petitioners reiterated the averments in the affidavit and submitted that the learned Judge erroneously dismissed the application, considering only part of the contents of the document for deciding nature of the document. The document filed is only a mortgage deed, which requires stamp duty at 12% at the time of marking itself. The petitioners have objected to mark the said sale document and prayed for setting aside the order of the learned Judge and allowing the application.

7.The learned counsel appearing for the respondents 1 to 4 contended that Ex.A4 was executed by the father of the 1st defendant as security document and rights vested with him and hence, it is not a mortgage deed. The learned Judge considering the contents in Ex.A4 rightly rejected the request of the petitioners and dismissed the application by giving valid reasons. Therefore, there is no error in the order of the learned Judge and prayed for dismissal of the application.

8.Though notice has been served on the 5th respondent and his name is



printed in the cause list, there is no representation for him either in person or through counsel.

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9. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials available on record.

10. From the materials available on record, it is seen that it is the case of the respondents that the father of the 1st defendant has given pre-emption right in respect of the suit property to the husband of 1st respondent and father of the respondents 2 to 5. Contrary to the same, the defendants 1 and 2 have sold the suit property to the petitioners by sale deed dated 16.03.2011. The respondents have filed a suit for declaration that the said sale deed as null & void and for a direction to the defendants 1 and 2 to execute the sale deed as per pre-emption agreement dated 30.10.1995 executed by father of the 1st defendant to husband of the 1st respondent and father of the respondents 2 to 5. During trial, the respondents marked the said document as Ex.A4. At the time of marking of the document, the petitioners objected to mark the said document. The learned Judge has marked the said document subject to the



objection of the petitioners. After the said document being marked, the petitioners have filed the present application in I.A.No.212 of 2016 under Order XIII Rule 3 r/w. Section 151 of C.P.C., to reject the document. Order XIII Rule 3 of C.P.C reads as follows:

“The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection”

The Court has to record the reason for such rejection. The power conferred on the Court under this Rule is a discretionary power and the Court can reject the document when the Court considers that the said document is irrelevant or otherwise inadmissible.

11.In the present case, according to the respondents, Ex.A4 is a security document with a right of pre-emption. Contrary to the said pre-emption given by father of the 1st defendant to husband of the 1st respondent and father of the respondents 2 to 5, the defendants 1 and 2 sold the said property to the petitioners. On the other hand, it is the case of the petitioners that the said document is only a mortgage deed which requires payment of



stamp duty at 12% and compulsorily registrable. The learned Judge considered the said objection and also contents of Ex.A4 and concluded that Ex.A4 is not a mortgage deed, as per Section 58 of Transfer of Property Act. The learned Judge has considered the entire materials and exercised his discretionary power and dismissed the application. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

12.For the above reasons, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.12.2021

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Index : Yes / No
Internet : Yes / No

To

The I Additional District and Session Judge,
Tiruppur.

V.M.VELUMANI, J.



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