



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1338 of 2011

and

M.P. (MD) No.1 of 2011

1.Krishnan (Died)

2.Mariappan

.. Petitioners/Petitioners/Defendants

-vs-

1.Muthumari

2.K.Petchiammal

3.Amma Ponnu @ S.Chitra

.. Respondents/Respondents/Plaintiffs

[RR2 and 3 are brought on record as LR's of deceased
1st petitioner vide Court order dated 30.10.2019 made in
CMP(MD) No.7842 of 2019 in CRP(MD) No.1338 of 2011]

Prayer :- Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 03.03.2011 passed in I.A.No.53 of 2011 in O.S.No.13 of 2010 on the file of the Sub Court, Sankarankoil.

For Petitioner: Mr.D.Nallathambi
For R1 : Mr.R.Manimaran
For RR2 & 3 : Unserved

ORDER

The defendants in the suit in O.S.No.13 of 2010 pending on the file of the Sub Court, Sankarankoil are the petitioners before this Court challenging the dismissal of their application dated 03.03.2011 filed in I.A.No.53 of 2011 in O.S.No.13 of 2010 in and by which, they sought to mark the unregistered relinquishment deed dated 06.06.2007.

2.For the sake of convenience, the parties are referred to as per their rank in the suit. The 2nd and 3rd respondents have been brought on record as legal heirs of the deceased 1st defendant.

3.The brief facts, which are necessary to dispose of this petition, are narrated hereinbelow:-

3.1.The plaintiff had filed the suit in O.S.No.13 of 2010 on
<https://hcservices.ecourts.gov.in/hcservices/>



the file of the Sub Court, Sankarankoil for a partition and separate possession of her 1/3 share in the suit scheduled property.

3.2.It is the case of the plaintiff that the suit property originally belonged to one Venkateswara Aiyar @ Mani and on 23.07.1986, it was jointly purchased by the petitioners herein and K.Petchiammal, the 2nd respondent herein and a Sale Deed was executed in favour of them. The plaintiff and the 2nd defendant are the children of the 1st defendant and K.Petchiammal, the 2nd respondent herein. The 2nd respondent, the mother of the plaintiff, had 1/3 share in the suit property and it was jointly enjoyed by them. The 2nd respondent on 20.01.2010, out of love and affection over the plaintiff, had executed a family arrangement relinquishing her 1/3 share in the suit property in favour of the plaintiff. The plaintiff was jointly enjoying the property from 20.01.2010 along with the defendants. Subsequently the plaintiff was unable to jointly enjoy the property along with the other defendants. Therefore, she has filed the suit for a partition of the same against the defendants 1 and 2, her father and brother respectively.

4.One of the defence that was raised by the defendants in the written statement was that the plaintiff had relinquished her right in the suit III item of property in favour of the 2nd defendant on 06.06.2017 as also her share in respect of the I item of property. The defendants would also plead a right referring to the registered family arrangement entered on 08.04.2009.

5.Learned counsel for the plaintiff would submit that after the evidence of D.W.1 in chief, the defendants had come forward with the impugned application seeking to mark unregistered relinquishment deed dated 06.06.2007.

6.The defendants had countered the same stating that the document cannot be marked, as it is an unregistered one and the contents of which indicate that it is created to convey title over the property which is compulsorily registrable. The learned Subordinate Judge, Sankarankoil after hearing the parties, had dismissed the said application as against which, the defendants have filed the present revision.

7.The learned counsel appearing for the defendants would contend that the document is sought to be marked only for a secondary purpose, which is countered by the learned counsel for the plaintiff, who would contend that the very idea of marking the document is to show that the plaintiff has no right to the I and III items of properties, since she had released her interest in favour of the 2nd defendant, which would amount to establishing a primary purpose, which cannot be permitted through an unregistered document.

8.Heard the learned counsel for the 2nd petitioner and the learned counsel for the 1st respondent.



9.It is an admitted case that the document in question is an unregistered one, which is sought to be marked by the defendants. A perusal of the written statement would show that one of the defence raised by the defendants is that on 06.06.2007, the plaintiff and her mother had relinquished their rights in the I and III items of properties in favour of the 2nd defendant. Therefore, the very document falls within the bar provided under Section 17(1) (b) of the Registration Act.

10.From a perusal of the written statement, it is seen that apart from this relinquishment, a subsequent document dated 08.04.2009, which is a registered family arrangement, has also been put forward in defence by the petitioners herein. The contention of the learned counsel for the petitioner that the document is only sought to be marked to prove possession cannot be sustained. Hence, I do not find any compelling reason to decide against the order of the learned Subordinate Judge, Sankarankoil, dated 03.03.2011 in I.A.No.53 of 2011 in O.S.No.13 of 2010 and the same is confirmed.

11.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1. the Subordinate Judge, Sankarankoil.

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-35058[F] dated 18/11/2021
+1 CC to M/s.R. MANIMARAN, Advocate (SR-35017[F] dated 18/11/2021)

C.R.P. (PD) (MD) No.1338 of 2011

Dated: 17.11.2021

nsn(CO)

TR(06.12.2021) 3P 4C