



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.09.2021

Delivered On : 29.10.2021

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CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.2535 of 2018

and

C.M.P. (MD) .No.11143 of 2018

1.D.Rajkumar

2.D.Rajan @ D.Raamkumar

... Petitioners

Vs.

1.Rajeswari

2.M.D.Srinivasan

... Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of Constitution of India, to call for the records relating to the fair order and decreetal order dated 14.09.2018 made in I.A.No.258 of 2018 in O.S.No.109 of 2015 on the file of the learned II Additional District Judge, Tiruchirappalli and set aside the same.

For Petitioners

: Mr.R.Sundar Srinivasan

For Respondents

: Mr.J.Madhu

ORDER

This petition has been filed to set aside the order in I.A.No.258 of 2018 in O.S.No.109 of 2015 dated 14.09.2018 on the file of the II Additional District Judge, Tiruchirappalli.

2.The petitioners herein are the plaintiffs and the respondents herein are the defendants in the suit. The petitioners herein have filed a suit in O.S.No.109 of 2015 seeking partition. Pending suit, the petitioner herein has filed a petition in I.A.No.258 of 2018 to admit the xerox copy of the family arrangement dated 15.05.2000 entered into between the parties for a collateral purpose.

3.Brief substance of the petition in I.A.No.258 of 2018 reads as follows:

The main suit was filed for partition. On 15.05.2000, a family arrangement has taken place. The original family arrangement is with the defendants and the xerox copy of the same was available with the plaintiffs and the same was produced as document no.5. In



the family arrangement, the first defendant has admitted that the suit item 1 was purchased in her name for the benefit of joint family from the joint family fund and that the property is enjoyed jointly by the family members. Despite a notice to produce the documents, the defendants have not produced the original document and made an endorsement that such a document never come into existence. The said document is essential for deciding the real controversy between the parties. The document is necessary to decide whether the suit property is joint family property or not. Hence, the xerox copy of the document has to be received for collateral purpose. The petitioners undertake to pay the necessary stamp duty and penalty.

4. Brief substance of the counter in I.A.No.258 of 2018 filed by the first respondent and adopted by the second respondent is as follows:

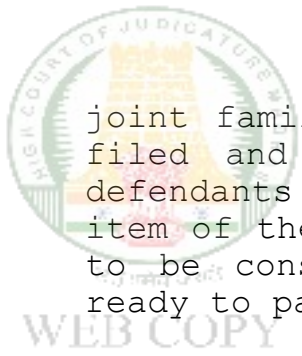
It is false to state that on 15.05.2000, a family arrangement has taken place and that the original agreement is with the defendants and that a xerox copy is available with the plaintiffs. The allegations that the first defendant had admitted that the suit item 1 of the property was joint family property is denied as false. The alleged document is not in existence. No such family arrangement took place between the parties. Copy of the document cannot be marked before the Court. The document, requires compulsory registration under the Registration Act and the same cannot be received and marked as an exhibit. A document, which requires stamp duty and registration, if the same was not done, cannot be received and marked as Exhibit and the petition is liable to be dismissed.

5. After hearing both sides, the trial Court dismissed the petition. Against which, the revision petitioner has preferred this appeal.

6. On the side of the petitioner, it is stated that the trial Court has erred in holding that the document sought to be marked is an unregistered and unstamped document and cannot be permitted to be marked. The reliance on the document is not to establish title, but only to rely upon some of the recitals in the said document. Only for collateral purpose, the document is to be marked. The document was referred to in the plaint itself and notice to produce the original document was served on the defendants. The defendants is complying with the formalities by letting evidence for collateral purpose and prayed the order to be set aside.

7. On the side of the petitioner, it is stated that there are two items of the properties in the suit. The first item is a house property purchased out of joint family funds. The defendants admitted the same in the family arrangement. The xerox copy of the family arrangement was filed as 5th document. The defendants in the written statement has denied the execution of the document and the

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joint family property. Notice to produce the original document was filed and the Court closed the memo, after recording that the defendants are not having the original. Only to prove that the first item of the property is a joint family property, the xerox copy has to be considered only for collateral purpose. The petitioner is ready to pay the stamp duty and penalty.

8. On the side of the respondents, it is stated that the suit is filed for partition and no such family arrangement is in existence. The document is needed not for collateral purpose. The petitioner is trying to prove that the property is a joint family property relying on the xerox copy of the document. A xerox copy of the document cannot be registered even if the penalty and the stamp duty is paid. This document could not be received in evidence even for collateral purpose.

9. On the side of the petitioner, it is stated that even without registration, a written document of family settlement can be used as corroborative evidence. In support of this contention, a judgment of the Hon'ble Supreme Court in the case of **Tulasidhara & Another v. Narayanappa & Others** reported in **2019 (6) SCC 409** is cited, wherein it is stated as follows:

"However, according to him, the same was not reduced in writing. Therefore, even accepting the case of plaintiff that there was an oral partition on 23.04.1971, the document Exhibit D4 dated 23.04.1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and or not considering the document Exhibit D4 dated 23.04.1971."

10. On the side of the petitioner, it is stated that non admission of xerox copy as secondary evidence is against the definition of secondary evidence mentioned in the Indian Evidence Act. In support of this contention, a judgment of this Court in the case of **Jansi Rani and others v. G. Loganathan** in **C.R.P. (MD) No. 882 of 2006** is cited, wherein it is stated as follows:

"I have considered the rival contentions made by the learned counsel for both the parties, and also perused the records. In respect of the first contention of the respective counsel, I am of the considered view that this document falls under Section 63(2) of the Evidence Act, and therefore, it is certainly a secondary evidence and the reasons for



such view."

11. On the side of the petitioner, it is stated that if family arrangement is stamped but not registered, it can be looked into for collateral purpose. In support of this contention, another judgment of the Hon'ble Supreme Court in the case of **A.C.Lakshmipathy v. A.M.Chakrapani Reddier** reported in **2001 (2) CTC 112** is cited.

12. A xerox copy of a family arrangement dated 15.05.2000 was filed by the defendants. A xerox copy is a secondary evidence. But a xerox copy of a document cannot be registered, even after the payment of stamp duty and penalty. The suit is for partition, wherein the petitioners are claiming a share in the first schedule property, claiming the first schedule property as joint family property. To prove the status of the property, the plaintiffs are relying on the alleged family arrangement, the existence of which was denied by the defendants. The main issue to be decided in the original suit is whether the plaintiffs are having share in the property. The plaintiffs are claiming share in the property on the basis of the unregistered and unstamped xerox copy of the document. The request for the marking of the document is not for collateral purpose but to prove the share of the plaintiffs.

13. In the above circumstances, marking of this document for collateral purpose is unbelievable. Hence, this Civil Revision Petition is dismissed and the order passed in I.A.No.258 of 2018 in O.S.No.109 of 2015 dated 14.09.2018 on the file of the II Additional District Judge, Tiruchirappalli is confirmed.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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 II Additional District Judge,
Tiruchirappalli.

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The Section Officer, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-33292[F] dated
29/10/2021)

C.R.P. (PD) (MD) .No.2535 of 2018
29.10.2021

SJ(CO)

KB(18.11.2021) 5P 5C