



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.10.2021

Delivered on : 06.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.R.P.(MD)No.249 of 2017

and

C.M.P.(MD)No.1143 of 2017

1.Selvaraj

... Petitioner /Petitioner /
Plaintiff

Vs.

1.Nagaraj

2.Samikannu

3.Paramasivam

4.Ramadevi

5.The Thasildar,

Bodinayakanur Town,

Bodinayakanur Taluk,

Theni District.

6.The District Collector,

Theni Taluk, Theni District.

... Respondents /Respondents /
Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and Decretal order dated 05.01.2017 passed in I.A.No.420 of 2016 in O.S.No.58 of 2011 on the file of the District Munsif cum Judicial Magistrate, Bodinayakanur, Theni District.

For Petitioner : Mr.S.Alagusunar

For R1 & R2 : Mr.R.Suriyanarayanan

For R3 & R4 : Mr.K.Guhan

For R5 & R6 : A.Baskaran

Government Advocate

ORDER

This Civil Revision Petition is filed against the order, dated 05.01.2017 passed in I.A.No.420 of 2016 in O.S.No.58 if 2011 on the file of the District Munsif cum Judicial Magistrate, Bodinayakanur, Theni District.

2.The revision petitioner herein is the plaintiff in the original suit and the petitioner in the I.A. petition. The respondents herein are the defendants in the original suit and the respondents in the I.A. petition.



3. The revision petitioner / plaintiff filed a suit for a prayer of declaration that the alteration in the revenue records in favour of the defendants 1 and 2 are invalid. In the original suit, the revision petitioner filed a petition, in I.A.No.420 of 2016, to receive an unregistered partition deed, dated 25.06.1994 subject to payment of penalty and stamp duty. That petition was dismissed by the trial Court. Against the same, the petitioner has approached this Court by way of filing this revision.

4. Brief substance of the petition, in I.A.No.420 of 2016, is as follows:-

A partition deed, dated 25.06.1994 was executed by Nagammal and Thottappagounder, regarding the suit properties and other properties, that document was not registered and the document is necessary for the suit. The petitioner is ready to pay the stamp duty and penalty and prayed the petition to be allowed.

5. Brief substance of the counter filed by the first and second respondents, in I.A.No.420 of 2016, is as follows:-

Already the suit was dismissed for default, then, it was restored. Only after the restoration of the suit, the petitioner has come forward with this petition. No valuation was mentioned in the document, dated 25.06.1994. The petitioner has not filed any valuation certificate and hence, the penalty cannot be fixed. Without fixing the value, at the time of execution of the document, the balance of stamp duty cannot be fixed under Section 35 of the Indian Stamp Act and the petition is liable to be dismissed.

6. Brief substance of the counter filed by the respondents 3 and 4, in I.A.No.420 of 2016, is as follows:-

If the petitioner/ plaintiff is really interested in paying the stamp duty and penalty, he would have filed this petition six years ago, at the time of filing the suit itself. Only to drag on the case, the petitioner has come forward with this petition and the petition is liable to be dismissed.

7. After hearing both sides, the trial Court has dismissed the I.A. petition. Against the same, the petitioner approached this Court by way of this Revision.

8. On the side of the revision petitioner, it is stated that the petitioner is ready to pay the deficit stamp duty according to the guidelines value prevailing at the time of execution of the said document with fine as determined by the Court under Section 35 of the Indian Registration Act, which enable payment of deficit stamp. The trial Court dismissed the petition only on the ground that the petitioner failed to produce the revenue records and the guideline value. The Court below ought to have seen that there is no specific serious objection on the part of the respondents, without the document, the title of the plaintiff cannot be proved and the trial



Court is erroneous in dismissing the petition.

9. On the side of the revision petitioner, it is further stated that the brother and sister had executed the said document, dated 25.06.1994. There is no averments in the counter regarding the signature of the executors, the unregistered partition deed was executed by the defendants' father and the plaintiffs' mother, who are brother and sister. The petition filed by the petitioner was dismissed only on the ground that no value was mentioned in the document. Non-registration of the document cannot curtail the right of the party and prayed the revision petition to be dismissed.

10. On the side of the respondents 1 and 2, it is stated that the suit is for declaration, based on this document. Under Section 17 of the Registration Act, the deed has to be registered. Unregistered deed cannot be looked into for deciding the title. Only for collateral purpose, a document can be allowed to be registered on payment of stamp duty and penalty and not for deciding the main issue. There is a legal bar under Section 17 of the Registration Act. The petitioner is not having an idea of using the document for collateral purpose. An unregistered document is inadmissible in evidence and the admissibility of the document was questioned before the trial Court.

11. On the side of the respondents 3 and 4, it is stated that the unregistered document is barred under Section 17 and 49 of the Registration Act and the unregistered document is inadmissible in evidence. The purpose of the document is to prove title and hence, the revision petition to be dismissed.

12. On the side of the respondents 5 and 6, it is stated that patta is in the name of the respondents 1 and 2 herein/ defendants 1 and 2 and the patta No. is 2552.

13. It is seen that the trial Court failed to discuss the maintainability of the petition and the maintainability of the document. It is seen that the revision petitioner is claiming title, based on this document. The claim of the revision petitioner in the original suit is to set aside the amendment made in the revenue records. Without claiming title, the revision petitioner / plaintiff has questioned only the revenue records. No suit was filed for partition or for declaration of title. When a person claims title through a document, the document ought to have been registered. The alleged partition deed is an unregistered document, the document is hit by Section 17 of the Registration Act. No collateral purpose is suggested by the revision petitioner. Hence, this Civil Revision petition is not maintainable under Section 35 of the Indian Stamp Act.



14. In the above circumstances, there is nothing sufficient enough to interfere in the order of the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Ls

To

1.The District Munsif cum Judicial Magistrate,
Bodinayakanur, Theni District.

2.The Thasildar,
Bodinayakanur Town,
Bodinayakanur Taluk,
Theni District.

3.The District Collector,
Theni Taluk,
Theni District.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-37447[F] dated 06/12/2021)

+1 CC to M/s.K.GUHAN, Advocate (SR-37547[F] dated 07/12/2021)

C.R.P(MD)No.249 of 2017
06.12.2021

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