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CRP.No.1575 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1575 of 2019 and
CMP.No.10322 of 2019

Arthi

... petitioner

Vs.

Ayyakannu

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree passed in IA.No.79 of 2018 in OS.No.99 of 2018 dated 08.01.2019 pending on the file of the Sub Court, Tiruvarur by allowing the civil revision petition.

For Petitioner : Mr.N.Umapathi

For Respondent : No appearance

ORDER

This civil revision petition is filed as against the the judgment and decree passed in IA.No.79 of 2018 in OS.No.99 of 2018 dated 08.01.2019 pending on the file of the Sub Court, Tiruvarur, thereby dismissed the application filed under Order 13 Rule 3 of CPC to reject the Ex.R1 and Ex.R2 as inadmissible in evidence.



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2. The petitioner is the plaintiff. He filed suit for declaration as against the respondent. While pending the suit, the petitioner filed application for interim injunction in IA.No.67 of 2018. In the said application, the petitioner marked Ex.P1 to Ex.P17. On the side of the respondent, he marked Ex.R1 and R2. They were marked with objections. The petitioner raised objections that Ex.R1 is unregistered one and as such, it is inadmissible in evidence. Insofar as Ex.R2, it is no way connected to the subject property. However, the court below dismissed the said application and concluded that Ex.R1 and Ex.R2 are admissible in evidence.

3. Mr.N.Umapathi, the learned counsel for the petitioner would submit that Ex.R1 is a document which is compulsorily registerable under Section 17(1)(b) of Indian Registration Act. Ex.R1 is sought to be used by the respondent for primary purpose of proving how the respondent had got into the possession of the property. When there is an objection regarding the deficiency of stamp duty of document has been put forward, this objection has to be first set aside before the suit is proceeded with. He further submitted that Ex.R1 is inadmissible in evidence even for collateral purpose and this bar is absolute



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unless the requirements of the first proviso to Section 35 of the Stamp Act are complied with.

4. Heard, Mr.N.Umapathi, the learned counsel for the petitioner. Though notice was served on the respondent and name is printed in the cause list, no one appeared on behalf of the respondent before this Court in person or through pleader.

5. The petitioner is the plaintiff, who filed suit for declaration. While pending the suit, the petitioner filed application for injunction, in which in the enquiry, the petitioner marked Ex.P1 to Ex.P17. On the side of the respondent, he marked Ex.R1 and Ex.R2. Objections were raised by the petitioner. However, both the documents were marked as Ex.R1 and Ex.R2. The only contention raised by the petitioner is that Ex.R1 is unregistered one and Ex.R2 is no way connected to the suit schedule property. On perusal of document i.e. Ex.R1, revealed that it is a relinquish deed as if executed by the father of the petitioner herein. The respondent is claiming through Ex.R1 with regards to his possession and enjoyment of the suit property. It is clear that proviso to Section 35 of the Indian Stamp Act and Section 17(1)(b) of Indian Registration Act



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made it clear that where instrument chargeable with duty is not charged and registered, then it is inadmissible evidence for any purpose whatsoever including collateral purpose. The first proviso to Section 35 of Indian Stamp Act is very clear that the manner in which same could be admitted in evidence and admittedly such a procedure has not been followed in respect of Ex.R1. Therefore, it shall not be admitted for any purpose. Therefore, unstamped and unregistered document i.e. Ex.R1 becomes inadmissible in evidence and it follows that the same cannot be looked into for any purpose. Insofar as Ex.R2, it is related to the property comprised in survey No.83-12 admeasuring 0.24.00 hectares. Therefore it is no way related to the suit schedule property. As such, both the documents are liable to be rejected.

6. In view of the above, judgment and decree passed in IA.No.79 of 2018 in OS.No.99 of 2018 dated 08.01.2019 pending on the file of the Sub Court, Tiruvarur are set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

07.12.2022

Speaking/non-speaking
Index : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To

The Sub Court,
Tiruvavur

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