



C.R.P.No.2483 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2483 of 2019
and
C.M.P.Nos.16212 & 23448 of 2019

Thangaswami Petitioner

Vs

Perumal (Died)

1. Senniammal
2. Srinivasan

3. The Thasildar,
Taluk Office,
Cutchery Street,
Gobichettipalayam.

.... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 06.06.2019 passed in I.A.No.1 of 2019 in O.S.No.5 of 2013 on the file of the District Munsif Court, Gobichettipalayam, Erode District.

For Petitioner : Mr.M.Karthik
For R1 and R2 : No appearance
For R3 : Mr.S.P.Karthik
Government Advocate



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ORDER

This Civil Revision Petition has been filed to set aside the fair and final order dated 06.06.2019 passed in I.A.No.1 of 2019 in O.S.No.5 of 2013 on the file of the District Munsif Court, Gobichettipalayam, Erode District, thereby dismissing the petition filed under Order 7 Rule 14(3) and Section 151 of CPC to receive the undertaking deed dated 23.06.1998 entered into between the plaintiff and the first defendant as additional document.

2. The petitioner is the plaintiff. He filed a suit for declaration and injunction. Insofar as the declaration is concerned it was filed with regard to pathway to reach his agricultural land. Pending suit, the undertaking deed dated 23.06.1998 entered into between the petitioner and the first defendant was proposed to be marked before the Trial Court. According to the petitioner, the document has been decided in the main issue. However, it was dismissed on the ground that the said document is not drafted and it is an easement right by grant of cart track in the Perumal Gounder's land. It was also an unregistered document. Though, it was an unregistered document, it can be marked for collateral purposes. But the relief shows that the present document is unregistered document and it is the



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main document for claiming the relief. Therefore, it creates right of grant in the property. Therefore, it became a document of transfer. The registration of document is an important criteria and it must be registered as per Section 35 and 49 of Stamp Act, otherwise it cannot be marked in evidence.

3. The learned counsel appearing for the petitioner would submit that the unregistered document was marked for collateral purpose for payment of stamp duty and penalty. He further submitted that the undertaking deed, which was reduced to writing of the existing rights of the parties, does not create any new right to the parties. Therefore, it can be received in evidence for collateral purpose.

4. Heard, Mr.M.Karthik, learned counsel appearing for the petitioner and Mr.S.P.Karthik, learned Government Advocate appearing for the third respondent. No one appeared on behalf of the respondents 1 and 2.

5. It is well settled that the nomenclature given to the document was not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and the admissibility of a document is entirely depend upon the recitals contained in



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that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question.

6. A perusal of the said document reveals that it is a compulsorily registerable document and the same is an inadmissible in evidence for the purpose of providing the factum of partition between the parties, whereas, it can be used for collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e., severancy of title, nature of possession of various shares but not for the primary purpose i.e., division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded.

7. Hence, if the petitioner wants to mark the said document for collateral purpose, it is open for him to pay the stamp duty together with penalty and get the document impounded. Thereafter, the Trial Court is at liberty to mark the said document for collateral purpose subject to proof and relevance.

8. With the above observation, this Civil Revision Petition is



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disposed of. Consequently, connected miscellaneous petitions are closed.

No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
Lpp

To

The District Munsif,
Gobichettipalayam,
Erode District.

G.K.ILANTHIRAIYAN, J.



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