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C.R.P(PD)No.3362 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2022

PRONOUNCED ON : 08.11.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

C.R.P(PD).No.3362 of 2019

1. Abdul Khadar
2. H.Anwar Shaib
3. Adbul Salam
4. Nawab Jan @ Nawab
5. Razak

... Petitioners/Petitioners
/Defendants 3 to 7

Vs.

1. Kamrunissa
2. Bibijan
3. Gulab Jan
4. Noor Jan
5. Razia Begum

... Respondents/Respondents
/Plaintiffs

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.08.2019 passed by the learned Additional Subordinate Judge, Hosur partly dismissing I.A.No.1 of 2019 in O.S.No.25 of 2009.



For Petitioners : M/s.A.Arulmozhi for
Mr.K.Elango

For Respondents : Mr.R.Jayaprakash

ORDER

This civil revision petition is filed by the defendants 3 to 7 against the fair and decretal order dated 27.08.2019 passed by the learned Additional Subordinate Judge, Hosur, partly dismissing I.A.No.1 of 2019 in O.S.No.25 of 2009.

2. O.S.No.25 of 2009 has been filed by the plaintiffs/respondents herein, for division of suit schedule properties; for appointment of court commissioner to divide the suit property and for permanent injunction and also to declare certain sale deeds as null and void.

3. In the said suit, the defendants 3 to 7/revision petitioners herein filed I.A.No.1 of 2019 and sought permission to produce the documents as per the list of documents numbered 1 to 21.



C.R.P(PD)No.3362 of 2019

WEB COPY

4. The plaintiffs filed counter and resisted the said petition for production of documents by stating that document Nos.15 and 16 are unregistered partition muchalikas, created and fabricated by defendants 3 to 7 and cannot be marked even for collateral purpose as per Section 17 and 49 of Indian Registration Act, 1908.

5. The learned Judge, trial court, after going through the averments in the Interlocutory Application and the counter, found that document Numbers 15 and 16 recitals could make it clear that the parties to the documents divided the properties on the date of the documents and they had not reduced the oral partition that has been already taken place in between them.

6. The learned Judge, opined that the documents sought to be produced required registration. Since Document Nos.15 and 16 are unregistered documents, it is inadmissible in evidence. As per Section 17-A Transfer of Property Act (1-A), it is compulsory that document to be



C.R.P(PD)No.3362 of 2019

registered relating to immovable property of value of one hundred rupees and more than that.

7. The learned Judge also given a finding that the main purpose of marking the said documents is to prove the earlier partition as pleaded by the defendants 3 to 7, but it is not a collateral purpose and that document Nos.15 and 16 cannot be received as evidence even for a collateral purpose. So, Document Nos.15 and 16 are inadmissible in evidence and cannot be received.

8. In respect of other documents sought for by defendants 3 to 7 for marking as evidence, the learned Judge, allowed the same stating that the reasons set out for the non production of documents by the defendants 3 to 7, at the earliest point of time, are convincing. So, the learned Judge, partly allowed I.A.No.1 of 2019 and insofar as the document Nos.15 and 16 are concerned, it has been rejected.

9. Challenging the said order, this revision petition is filed by



C.R.P(PD)No.3362 of 2019

defendants 3 to 7 as revision petitioners.

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10. The learned counsel for the revision petitioners would submit that document Nos.15 and 16 do not require registration under the Personal Laws applicable to the parties; the Chapter II of the Transfer of Property Act, 1882 would not affect any Rule of Muslim Personal Law. The rejection of prayer of defendants in part and not allowing to mark document Nos.15 and 16 would deny the opportunity to substantiate their case and to disprove the case of the plaintiffs.

11. The learned counsel to substantiate his arguments, would rely on the proposition of law laid down by the Supreme Court in the following Rulings :-

(1)2004 AIR SC 4130 [K.G.Shivalingappa (D). by LRs and others Vs. G.S.Eswarappa and others.

(2) 2016 (8) SCC 705 [Subraya M.N. Vs Vittala M.N.and others]

(3) (2015) 3 (SC) 754. [Yellupu Uma Maheswari and others Vs. Buddha



C.R.P(PD)No.3362 of 2019

Jagadheeswara and others]

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12. It has been submitted by the learned counsel for the Revision Petitioners that unregistered document affecting immovable property, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act or as evidence of any collateral transaction not required to be effected by registered instrument, subject to proof and relevance.

13. Per contra, learned counsel for the respondents/plaintiffs would submit that there is no recitals mentioned in the documents 15 and 16 about earlier division between the parties and documents require registration and since the documents are unregistered, they cannot be marked and the learned Judge, trial court, has rightly dismissed the petition in respect of those two documents, which order needs no interference.

14. Heard both sides and perused the typed set of papers carefully.

15. The suit is for partition and separate possession and the same is



C.R.P(PD)No.3362 of 2019

pending for examination of witnesses by the defendants. At that stage, the defendants 3 to 7 filed I.A.No.1 of 2019 with condone delay petition seeking to produce 21 documents and to mark on their side.

16. Since Document Nos.15 and 16 are Panchayat Partition Muchalikas, the learned Judge, after going through the said documents found that there is no mention in the said document about earlier oral partition between the parties.

17. The learned Judge, also found that Document Nos.15 and 16 were written in the insufficient stamp papers and they were not registered in accordance with Section 17 and 49 of Indian Registration Act, 1908. Since registration is compulsory in respect of immovable property, the learned Judge given a finding that without registration, the documents are inadmissible in evidence and that the said documents cannot be received as evidence even for a collateral purpose.

18. In the considered opinion of this court, the Rulings relied on by



C.R.P(PD)No.3362 of 2019

the learned counsel for the revision petitioners/defendants 3 to 7 does not apply to the case on hand. The reasoning of the learned Judge for partly dismissing the said I.A., in respect of document Nos.15 and 16 stating that it is inadmissible in evidence, does not warrant any interference. Accordingly, this Civil Revision Petition is dismissed. No costs.

08.11.2022

nvsri

To

1. The learned Additional Subordinate Judge, Hosur.
2. The Section Officer,
V.R.Section, High Court of Madras.

J.NISHA BANU,J.

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C.R.P(PD)No.3362 of 2019

C.R.P(PD)No.3362 of 2019

08.11.2022