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C.R.P.(NPD).No.367 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

C.R.P.(NPD).No.367 of 2003

- 1.A.Sengottaiyan (Died)
- 2.S.Saraswathi
- 3.S.Baby
- 4.S.Jothi
- 5.S.Kokhila
- 6.S.Padma

(Petitioners 2 to 6 brought on record as LRS of the deceased Sole Petitioner viz., A.Sengottaiyan vide Court order dated 06.09.2022 made in CMP Nos.4985 and 4986 of 2018 in CRP(NPD).No.367 of 2003.)

... Petitioners

-Vs-

- 1.P.Mani
- 2.Sengoda Gounder (Died)
- 3.Muthammal
- 4.Sellammal
- 5.Nallammal
- 6.Gowrisankar

(Respondents 3 to 6 brought on record as LRS of the deceased 2nd respondent viz., Sengoda Gounder vide Court order dated 06.09.2022 made in CMP.No.224 to 226 of 2014 in CRP.No.367 of 2003.

... Respondents



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Prayer:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the Order and Decree in I.A.No.123 of 2002 in A.S.No.91 of 2001, dated 18.02.2002 on the file of District Judge, Salem.

For Petitioners : M/s.Hema Sampath, Senior Counsel
assisted by B.Balavijayan

For R1 : M/s.C.S.Kiran

ORDER

This Civil Revision Petition has been filed by the petitioner as against the order passed in I.A.No.123 of 2002 in A.S.No.91 of 2001 dated 18.02.2002, wherein the petitioner has filed a petition under Order 41 Rule 27 and the same was dismissed by the Appellate Court along with the main appeal. Hence, the present Civil Revision Petition has been filed by the petitioner.

2. The petitioner is the second respondent in the First Appeal. The suit has been filed for relief of specific performance of contract. According to the plaintiff, the suit property is the sale property of the first defendant. According to the second respondent, the first respondent acquired some properties through partition between the brothers of first respondent and at the time a sum of Rs.500/- was given to the first respondent for overty.



3.The first defendant purchased the property through the said amount of Rs.500/- and thereby the property is an ancestral property and the son of the first defendant also share holders of the property. In order to support the second respondent contention the partition deed, dated 06.06.1955 have to be marked and thereby filed an application to receive the documents. Due to the oversight and a copy of partition deed has not been produced and marked before the Trial Court and now it has to be marked as an additional evidence.

4. The first appellate Court after considering the rival submission made by either parties has dismissed the petition by holding that the second respondent fully aware of the existence of the partition deed dated 06.06.1955 and also to refer the said written statement and cross examined the plaintiff with reference to the said document. In spite of that, he failed to produce the documents before the Trial Court and no any explanation offered for non production of the documents before the Trial Court and thereby dismissing the application. In this suit, the petitioner raised the ground that the additional evidence can be marked at any time, to meet the ends of justice and lower appellate court failed to consider the document of registered partition deed. If the document is not received, grant prejudice would be caused, to the petitioner. As far as order 41 Rule 27 CPC is concerned, the petitioner has to satisfy that the Court from



whose decreed an appeal preferred was refused to admit evidence which ought to have been admitted or the party seeking to produce the additional evidence establishes that notwithstanding the exercise of due diligence such evidence was not knowledge or could not, after the exercise of due diligence produced by him at the time when the decree appeal against was passed or the appellate Court requires any documents to be produced or any witness to be examined to enable it to pronounce the judgment or any other substantial law. But no reasons stated by the petitioner to attract the provision of order 41 Rule 27 of C.P.C. The petitioner purchased the property by holding that the property is a joint family property of the first defendant and his son, while so, he had knowledge about the above said partition deed during the time of purchase itself. But, he did not take any steps to produce the documents before the Trial Court and thereby the first Appellate Court has correctly dismissed the Application. The petitioner has failed to satisfy the conditions mentioned in the order 41 Rule 27 thereby no warrant to interfere the order of 1st appellate Court.

5. The learned counsel appearing for the 1st respondent/plaintiff has argued that the petitioner/appellant/1st defendant is not a party to the document and could not depose anything about the said partition deed dated 06.06.1955.



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Therefore marking of documents will not be served the purpose and mere marking of document is not proof of its contents. To support his contention he relied the judgment in LIC Vs. Rampad Singh Bisan 2010 11 SCC 491 wherein the Hon'ble has in para 31 as follows:

"Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely fling in a court."

6.On careful perusal of the said judgment it will not be applicable to the present facts of the case, because in this case the document itself is not marked and not even decision was taken about the receipt of document there by now it is premature stage.

7.Therefore, as discussed supra, this civil revision petition has no merits and deserves to be dismissed. Accordingly, this civil revision petition is dismissed. No Costs.

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Internet : Yes

Index : Yes/No



Speaking order/Non-speaking order
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P.DHANABAL, J

rjr

To

The District Judge, Salem.

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