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CRP.No.987 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

CRP.No.987 of 2021

and

CMP.No.7894 of 2021

1.Easwari
2.Parvathi
3.Parasakthi
4.Ravanan
5.Ambikapathy
6.Panchalai

...Petitioners

Vs.

1.Loganayaki
2.Chinnamari
3.Saravanan
4.Vasu

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.11.2020 passed in I.A.No.4 of 2020 in O.S.No.13 of 2015 on the file of the District Munsif Court, Uthangarai, Krishnagiri District.



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For Petitioners : Mr.P.A.Sudesh Kumar

For Respondents : Mr.S.Subramaniya
for Mr.S.Sathish Rajan
for R1
R2 to R4 NDW

ORDER

The brief facts which are necessary to decide this petition are as follows:

The first respondent in the CRP had filed a suit in O.S.No.13 of 2015 on the file of the learned District Munsif, Uthangarai, Krishnagiri District seeking to relief of partition on her 1/4th share in the joint family property. It is the contention of the plaintiff in O.S.No.13 of 2015, that the paternal grand father owned their properties. The plaintiff in O.S.No.13 of 2015 is the daughter of Chinnamari Gounder. The paternal grandfather of the Plaintiff Poonga Gounder had two sons viz., Mari Gounder and Chinamari Gounder. Mari Gounder had five daughters and one son viz., Panjalai, Eswari, Parvathy, Parasakthi, Ambigavathy and son Ramanan. China mari gounder had two sons namely Saravanan and Vasu and the only daughter Loganayagi. The suit in O.S.No.13 of 2015 was instituted by Loganayagi impleading the sons and daughters of Mari Gounder as defendants 4 to 9.



2. It is the further contention of the Plaintiff in O.S.No.13 of 2015 that the properties of Poonga Gounder/paternal Grandfather of the Plaintiff was not partitioned between his two sons Mari Gounder and Chinamari Gounder. Therefore, the Plaintiff Loganayagi daughter of Chinamari Gounder had impleaded her brothers Saravanan and Vasu as Defendants 3 and 7. The other Defendants were the sons and daughters of elder brother of Plaintiff's father Chinamari gounder.

3. The suit was filed for partition of 1/4th share of the Plaintiff. The Defendants in the suit in O.S.No.13 of 15 had filed written statement stating that the suit was filed by the Defendant in O.S.No.174 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Uthangarai. Therefore, the husband of the 9th Defendant Mari Gounder had executed a sale deed in favour of his wife 9th Defendant who had in turn sold the property to Defendants 7 and 8. The 9th Defendant also stated that in the presence of villagers elders, the properties were partitioned in the year 1987 and based on that Defendants 7, 8 and 9 are in possession of the property. The Defendants 7, 8 and 9 had sold the property to the Defendants 2 and 3 who



are the brothers of the Plaintiff. Therefore, the suit properties are enjoyed by the defendant 9 as his self acquired.

4. After framing of issues, the suit was posted in the list for trial. The Plaintiff was examined as P.W.1. In the course of the evidence, it was posted for evidence of the Defendants. At that stage the 7th Defendant had filed I.A. in O.S.No.13 of 2015 seeking to mark the sale deed alleged to have been executed by D-9 in favour of D-7 and D-8. The 7th Defendant wanted to mark those documents as a collateral purpose regarding the claim, where the property was already partitioned. The 4th Defendant as Petitioner in I.A.4 of 2020 in O.S.No.13 of 2015 had stated that she is seeking to mark the documents after impounding the said documents as he has not been paid court fees. The 7th defendant as the petitioner had also stated that in the sale deed sought to mark the documents. Already, there is a reference in the suit properties having been partitioned. Only for the collateral purpose of 7th defendant as petitioner seeking to mark the documents unregistered sale deed executed by D-9 in favour of D-7 and D-8. The 7th Defendant as the Petitioner had undertaken to file the penalty for the same.



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5. The Plaintiff vehemently objected to the marking of such documents. After hearing the enquiry, the learned District Munsif, Uthangarai by an order dated 23.11.2020 had dismissed the petition in I.A.No.4 of 2020 in O.S.No.13 of 2015.

6. The learned Counsel for the Petitioner submitted that the order of the dismissal of the I.A.No.4 of 2020 in O.S.No.13 of 2015 is not a well considered order. It has to be set aside, as the learned District Munsif, Uthangarai, did not ignore the detention of law regarding impounding of unstamped or not properly stamped document only to prove the fact of oral partition.

7. As proof of the fact that the entire properties were allotted to D1 to D3 and therefore the properties are not available for the partitioned, the Defendant-7 had filed this petition.

8. The learned Counsel for the Revision Petitioner relied on Section 33 and 31 of the Stamp Act, in support of his submissions, whereas, the said provisions were not considered by the learned District Munsif, Uthangarai.



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Therefore, the order passed by the learned District Munsif had dismissing the IA.No.4 of 2020 in O.S.No.13 of 2015 seeking permission to mark the documents after paying the penalty which was dismissed and has to be set aside.

9. The learned Counsel for the first Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that the Revision Petitioners are the Defendants in the suit. The written statements filed by the Defendant in the suit in O.S.No.13 of 2015 mentions the fact that the Defendant themselves had filed the suit as Defendants 7, 8 and 9. They had filed the suit in O.S.No.174 of 2013, seeking partition and the same is pending before the very same Court.

10. In the same written statement, it had been stated the Defendants 7, 8 and 9 are in possession of the properties including service connection 117. This suit had been instituted only to harass the Defendants. If the Defendants themselves had filed the suit for partition then the sale deed would not have come into existence. When the Defendants 7, 8 and 9 claims that they have filed suit for partition, the claim of the Revision



Petitioners and the Defendant-7 seeking permission of the Court to file a sale deed, wherein, it is stated that the Defendants had partitioned the property and subsequent to partition of property they have sold the property. Further, the petitioner in I.A.No.4 of 2020, seeking to mark the documents which was not at all registered. It is stated as sale deed, sale of immovable properties the valued more than Rs.100/- has to be necessarily registered.

11. In the civil suit proceedings, an unregistered documents cannot at all be marked. The Revision Petitioner seeks to mark the unregistered documents by paying stamp duty penalty. Even if stamp penalty is imposed, the defects in the document cannot be rectified.

12. In the affidavit of the Petitioner, the Petitioner seeking admission of documents. There is no mention of oral partition by the petitioner herein, as the petitioner in I.A.No.4 of 2022. Therefore, the petition filed by the 7th Defendant has no merit and it is to be dismissed. The petition in I.A.No.4 of 2020 in O.S.No.13 of 2015 is attempting to mark a document that cannot at all be marked as per the Registration Act. When an unregistered sale deed is to be marked. It cannot be permitted, as it is



mandatory, provision that the Court shall not admit unregistered documents.

Therefore, this petition lacks merit and it is to be dismissed.

13. On perusal of the affidavit filed on behalf of the Petitioner in I.A.No.4 of 2020 and the written statement filed by the Defendants 7 to 9 in O.S.No.13 of 2015 and the order passed by the learned District Munsif, dismissing the I.A.No.4 of 2020. As per the order in I.A.No.4 of 2020 in O.S.No.13 of 2015 vide its order dated 23.11.2020 passed by the learned District Munsif Court, Uthangarai, Krishnagiri District is found to be well reasoned order as per the provisions of the Registration Act and Stamp Act.

14. During the arguments, the learned Counsel for the first Respondent furnished a copy of the sale deed that was sought to be admitted, which clearly states that it is a sale deed. If it is a sale deed, it is to be registered as per the Registration Act and unregistered unstamped documents cannot be permitted.

15. Further, when the petitioner in his affidavit had not stated about the partition and mentioned about the defects in the sale deed regarding oral



partitioned. The petition filed by the Defendants 7 to 9 seeking to mark the documents cannot at all be accepted by any Court of law. The learned Counsel for the Petitioner has placed reliance on the decisions of the Hon'ble Supreme Court rendered in the case of ***Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle and another*** reported in (2001) 4 SCC 197 did not help the petitioner's case.

16. The facts of the reported ruling are different from the facts in this case. Here in this case, the Defendants in the suit in O.S.No.13 of 2015 are attempting to mark the documents styled as “unregistered sale deed”. As per the Registration Act, any transactions involving transfer of immovable property from one person to another person has to be necessarily registered.

17. Further, the affidavit of the petitioner does not mention the reason for seeking permission of the Court to mark unstamped unregistered documents. The defect in the documents cannot be set right by paying the additional duty or penalty. As per the Registration Act, an unregistered document is inadmissible in evidence and can not be marked in trial in a civil case. Therefore, the said ruling cited by the leaned counsel for the



petitioner in the decision of the Hon'ble Supreme Court referred supra is found unacceptable.

18. The learned Counsel for the Respondent relied on the decision of this Court in the case of *Sadaiyappan Vs. Muthan* reported in CDJ 2022 MHC 8863 and *Gajendiran vs. V.Seetharaman and others* in C.R.P.(PD).No.1610 of 2016 dated 18.02.2021 is found acceptable in the facts of the case.

19. If the order of the learned District Munsif, Uthangarai, Krishnagiri District is to be set aside, it will result in illegality by setting aside the well reasoned order of the learned District Munsif. It is the settled principles of law that an unregistered and unstamped documents shall not be relied upon by the Trial Court in the civil proceedings.

20. In the light of the above discussion, the order passed by the learned District Munsif, Uthangarai, Krishnagiri District dated 23.11.2020 in I.A.No.4 of 2020 in O.S.No.13 of 2015 does not warrant any interference. Therefore, this Civil Revision Petition is dismissed as having no merits.



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21. This Civil Revision Petition is dismissed as having no merits. No costs. Consequently, connected miscellaneous petition is closed.

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To

The District Munsif Court,
Uthangarai, Krishnagiri District.



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