



CRP No.1407 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM

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

CRP.No.1407 of 2019
and C.M.P.No.9245 of 2019

1.Valliammal
2.Lakshmi

..Petitioners

Vs.

1.Parvathy
2.Chithra Selvi
3.Kanakeswari
4.Pushparani

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.01.2019 passed in I.A.No.455 of 2018 in O.S.No.46 of 2018 on the file of the Sub-Court, Palladam.

For Petitioners : Mr.K.Govi Ganesan

For Respondents

For R1 to 4 : Mr.G.Muthurasu
for K.Gangadaran

For R5 : Notice served



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ORDER

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The civil revision petition has been filed as against the fair and decreetal order dated 21.01.2019 passed in I.A.No.455 of 2018 in O.S.No.46 of 2018 on the file of the Sub-Court, Palladam, thereby allowing the petition to receive the documents as additional documents and send the document No.3 for payment of requisite stamp duty and penalty.

2. The petitioners are the plaintiffs and the respondents are the defendants in the suit filed for partition.

3. Pending the suit, the respondents filed an application to receive the additional documents under Order VIII Rule 1 A(3) of C.P.C. A perusal of affidavit filed in support of the application revealed that the documents, which were mentioned in the application were unable to be traced at the time of filing the written statement. Therefore, they were not produced it along with the written statement. The said application was allowed and they were permitted to receive as documents and impounded the document No.3 for payment of requisite stamp duty and penalty. Aggrieved by the same, the present civil revision petition.



4. The learned counsel for the petitioner would submit that the document No.3 is a Release Deed executed by the second petitioner herein in favour of the her father. It is an unstamped and unregistered one. Therefore, it cannot even be marked for collateral purpose by impounding the same for payment of requisite stamp duty and penalty.

5. The learned counsel for the respondents would submit that the second petitioner got married in the year 1995 itself and as such, she cannot claim any right over the suit schedule property. He would further submit that her father Murugasamy Gounder, passed away on 17.07.1997. After his demise, the respondents obtained legal heir certificate from the Tahsildar, Tiruppur. After 12 years from the issuance of legal heir certificate, the petitioners herein claim that they are also legal heirs of the deceased Murugasamy Gounder and filed a suit for partition. The second petitioner categorically admitted his signature and execution of the said documents. Therefore, the Court below rightly allowed the application to receive the same.

6. On perusal of records revealed that the petitioners filed a suit for partition in respect of the suit schedule property as against the respondents herein. On receipt of the summons, they had filed written statements in the year



2010 itself. After a period of eight years, they filed a petition to receive the documents as mentioned in the application. The petitioners have no objection to receive all the documents except the document No.3 datd 25.05.1995 executed by the second petitioner in favour of her father since it is an unstamped and unregistered one.

7. The only point for consideration in this civil revision petition is that whether the unstamped and unregistered Release Deed can be marked as document even for collateral purpose.

8. In this regard, the learned counsel for the petitioner relied upon the judgment reported in **(2011) 5 MLJ 15** in the case of ***Ammamuthu Ammal (Died) and Others Vs. Devaraj and Others***, wherein this Court held that if the recitals in the document do display and demonstrate, express and expatiate that transfer in immovable property was intended to be effected by the deed, then Section 17 of the Indian Registration Act would squarely be attracted.

9. It is seen from the document No.3 that it is nothing but Release Deed executed by the second petitioner herein thereby relinquishing her right in respect of the suit schedule property in favour of her father. Therefore, it



requires registration. The payment of stamp duty and penalty under section 35 of the Indian Stamp Act would not partake the place of registration. If a document is inherently bad for registration, that cannot be cured by paying deficit stamp duty and penalty.

10. The learned counsel for the respondents also relied upon the judgment reported in **2021 SCC OnLine SC 847** in the case of ***Korukonda Chalapathi Rao and Another Vs. Korukonda Annapurna Sampath Kumar***, wherein the Hon'ble Supreme Court of India held that in respect of the family arrangement is compulsorily registrable or not. The registration would be necessary only if the terms of the family arrangement are reduced into writing.

11. In the case on hand, here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and therefore, does not fall under the mischief of Section 17(2) of the Registration Act.



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12. In the case on hand, the recitals categorically revealed that the second petitioner, by the document dated 25.05.1995, relinquished her right over the property in favour of her father. Therefore, it requires compulsory registration. Therefore, except the document No.3, other documents can be received.

13. In fine, the civil revision petition stands partly allowed and the order dated 21.01.2019 passed in I.A.No.455 of 2018 in O.S.No.46 of 2018 on the file of the Sub-Court, Palladam, is hereby set aside in respect of the document No.3 alone. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2023

Speaking/Non-speaking order
Index : Yes/No
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To

The Sub-Court, Palladam.

G.K.ILANTHIRAIYAN.J.

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