



CRP (PD) No.4080 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.06.2023
Pronounced on	28.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

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and

CMP.No.19129 of 2017

1.Kaliya Padayachi @ Kaliyamurthy (died)

... Petitioner/ Plaintiff

2.Kamala
3.Parameswari
4.Valli
5.Jeevetha
6.Seenuvasan
7.Gowthami

(Sole petitioner died. Petitioner 2 to 7 brought on record as legal heirs of the deceased sole petitioner viz.Kaliya Padayachi alias Kaliyamurthy vide Court order dated 15.11.2022 made in C.M.P.No.19596, 19598 and 19600 of 2022 in CRP.No.4080 of 2017 by TVTSJ)

Vs.

1.Govindan
2.Azhagammal

... Respondents/defendants



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order dated 26.07.2017 made in I.A.No.376 of 2017 in O.S.No.85 of 2014 on the file of the learned Principal District Munsif, Ulundurpet.

For Petitioner : Mr.D.Vasanth

for Mr.N.Suresh

For Respondents : Mr.V.Suguna

for MR.C.Munusamy

ORDER

The revision petition is preferred by the plaintiff against the order dated 26.07.2017 made in I.A.No.376 of 2017 in O.S.No.85 of 2014 on the file of the Principal District Munsif, Ulundurpet, wherein and whereby the learned judge has dismissed the above interlocutory application preferred by the petitioner/plaintiff.

2.The brief facts which are necessary for adjudicating the dispute involved in the present revision petition, in a nut shell, are as follows:



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The petitioner/plaintiff filed O.S.No.85 of 2014 on the file of the District Munsif, Ulundurpet, against the respondents/defendants for declaration of title in the suit property and for consequential relief of permanent injunction restraining the respondents/defendants from interfering with the plaintiff's peaceful possession and enjoyment in the suit property.

3.It is the specific case of the petitioner/plaintiff that the suit property in Survey No.142/9 to the extent of 0.08 cent in the total extent 0.56 cent originally belong to one Pavadai Padaiyachi on 01.02.1929, who executed a settlement deed in favour of his grand son namely Perumal Padayachi. After the demise of the said Perumal padayachi, his legal heirs are in possession and enjoyment of the said 0.08 cent in Survey No.142/9 at Mambakkam Village, Ulundurpet.

4.The remaining 0.48 cent in total extent of 0.56 ~~cm~~² in survey No.142/9 originally belong to one Ramalingam Padayachi and Dharmalingam Padayachi. They were in possession and enjoyment of the above 0.48 cent in



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Survey.No.142/9. While so, on 15.10.1960 the said Dharmalingam Padayachi, died intestate. Thereafter, the sons of Dharmalingam Padayachi, namely Kaliyamoorthy, the plaintiff herein and other legal heirs of Dharmalingam Padayachi, were enjoying the above 0.48 cent as joint property along with Ramalingam Padayachi. Thereafter, the son of Dharmalingam Padayachi, namely Rajendiran and his daughters Kalamani and Thaiyanayagi died and the above 0.48 cent was enjoyed by the plaintiff and Ramalingam Padayachi, as joint family property. On 27.04.1978 there was a oral partition between Ramalingam Padayachi, and the plaintiff Kaliyamoorthy in which 0.24 cent was allotted to Ramalingam Padayachi, and another 0.24 cent was allotted to the plaintiff Kaliyamoorthy. After the said oral partition the plaintiff Kaliyamoorthy and Ramalingam Padayachi, were in possession and enjoyment of their respective shares. Thereafter, the said oral partition was executed into writing and the said document was not registered. The petitioner/plaintiff has filed the suit for declaration of title in respect of 0.24 cent which according to the petitioner/plaintiff was allotted to him in the oral partition and in his possession and enjoyment. The plaintiff



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also sought for the relief of permanent injunction against the defendant not to interfere in the peaceful enjoyment and possession of the petitioner/plaintiff in the suit property.

5. On the other hand, the defendants resisted the claim of the petitioner/plaintiff stating that the entire suit property to the extent of 0.56 cent originally belong to one Pavadai padayachi. He was in peaceful possession and enjoyment of the suit property. On 04.11.1929, the said Pavadai Padayachi executed a Will in favour of Narayanan Padayachi. Even before executing the said Will, the said Pavadai Padayachi on 01.02.1929 executed a settlement deed in favour of one Perumal Padayachi in respect of 0.8 cent in the suit survey Number. Again the said Pavadai Padayachi orally sold an extent of 0.5 cent in favour of one Nallammal. The remaining extent of 0.43 cent was in the enjoyment of Perumal Padayachi and the legal heirs of Nallammal were enjoying the above 0.05 cent in the suit property and on 06.07.1949, they executed a registered sale deed in favour of one Pooraniammal wife of Ramalinga Padayachi. In respect of remaining extent in the suit survey Number the said Narayana padayachi was in possession and enjoyment and after his demise his sons Ramalinga Padayachi and



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Dharmalinga Padayachi were enjoying the above property as legal heirs of Narayana Padayachi. There was a oral partition between the sons of Narayana Padayachi namely Ramalinga Padayachi and Dharmalinga Padayachi and in the oral partition 0.43 cent in the suit survey number and other properties were allotted to the share of Ramalinga Padayachi. The properties which are not the subject matter of the suit were allotted to the share of Dharmalinga Padayachi. After the said partition, the properties allotted to the share of Ramalinga Padayachi to the extent of 0.43 cent and the property purchased by his wife to the extent of 0.5 cent was in the possession and enjoyment of Ramalinga Padayachi. On 22.07.1971 and 25.02.1973, the sons of Ramalinga Padayachi namely Mannankatti padayachi and Ganesan relinquished their shares in the properties by executing two registered release deeds in favour of Ramalinga Padayachi. Therefore, the total extent of suit property i.e., 0.48 cent belong to Ramalinga Padayachi and his wife Pooraniammal. Thereafter, the property to the extent of 0.5 cent which was in the enjoyment of Pooraniammal was settled in favour of her grand son namely Manikandan by executing a settlement deed dated 24.03.1982. On



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27.03.2000 the said Manikandan along with his mother executed a registered sale deed in favour of the 2nd defendant. The 2nd defendant took possession of the said property and he is residing in the thatched house situated in the said property and also paying tax to the said property. After the demise of Ramalinga Padayachi the property to the extent of 0.43 cent was in the possession and enjoyment of his sons, the 1st defendant and another son Subramani. The entire suit property is in the possession and enjoyment of the defendants. The plaintiff herein with malafide intention to grab the properties of Narayana Padayachi has filed the above suit. The alleged partition deed dated 27.04.1978 is a fabricated document and the suit filed based on the above fabricated document is liable to be dismissed.

6. During the pendency of the above suit, the plaintiff has filed I.A.No.376/2007 in O.S.No.85 of 2014 for receipt of the unregistered partition deed dated 27.04.1978 as additional evidence to establish the factum of oral partition. The above petition was resisted by the respondents/defendants stating that the said partition deed is a fabricated



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document and the same is invented for the suit in order to grab the property owned by Naryana Padayachi. It is further contended that, since the plaintiff is claiming title through the unregistered partition deed, the same cannot be received even for collateral purpose.

7.The trial Court gave a specific finding that the alleged partition deed 27.04.1978 is an unregistered document. The plaintiff is claiming title based on the alleged unregistered partition deed dated 27.04.1978, which required registration. As such it cannot be received in evidence even for collateral purpose.

8.Aggrieved by this, the present revision is preferred by the petitioner/Plaintiff.

9.Heard on both sides, records perused.

10.It is urged by the learned counsel appearing for the



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petitioners/plaintiffs that the said unregistered partition deed can be looked into for collateral purpose of division in status and also for considering the nature and character of possession. He would submit that under Section 17 (1) (b) of the Registration Act, 1908, unregistered document in respect of immovable property is not admissible in evidence for primary purpose of division of joint properties by metes and bounds. But it can be relied upon for collateral purposes of severance of title and nature of possession. His further contention is that unregistered document though cannot be the basis for proving title can be looked into for deciding the nature and character of possession.

11.To support his contention he has relied upon the following judgements reported in:

1. (2015) 16 Supreme Court Cases 787

2. 2012 III CTC 160

12.Hence, the order passed by the learned Judge in I.A.No.376/2017 is liable to be set aside.



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13. On the other hand, the learned counsel for the respondents/defendants would submit that the unregistered partition deed dated 27.04.1978 cannot be received as evidence even for collateral purpose. The claim of the plaintiff is based on the above unregistered partition deed. The document requires compulsory registration. Hence, no interference calls for in the findings of the lower Court.

14. Upon consideration of rival contentions, the following points arise for consideration:

1. Whether the trial Court was right in rejecting the unregistered partition deed dated 27.04.1978?

2. To what relief?

Point No:1

15. The petitioner/plaintiff filed the above interlocutory application in I.A.No.376 of 2017 in O.S.No.85 of 14 stating that the suit property was allotted to the share of the plaintiffs through an oral partition and thereafter the same was reduced in to writing. However, the partition deed dated



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27.04.1978 was not registered. The petitioner/plaintiff intend to file the above

unregistered partition deed for collateral purpose to prove his possession in the suit property. Whether the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person cannot claim a right or title to a property under the said document. However, unregistered document though cannot be the basis for proving title can be looked into for deciding the nature and character of possession **[Ref: 2001 (1) TLNJ 191]**. In the light of the above principles the evidentiary value attached to the unregistered partition deed relied by the plaintiff is to be considered. Though the said partition deed was not registered, it can be looked into for collateral purpose of division in status and also for considering the nature and character of possession. The contents of the said document could be looked into for "collateral purpose" for proving division in status and the subsequent enjoyment of the parties. It is not the case of the plaintiff that he is relying upon the said partition deed for primary purpose of division of joint properties by metes and bounds. According to him, he is relying upon the said document for collateral purposes of severance of title



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and nature of possession. The contention of the plaintiff is that on 27.04.1978 there was a oral partition between the plaintiff and Ramalinga Padayachi in respect of 0.48 cent in suit Survey No.142/9 in which the plaintiff was allotted 0.24 cent. Thereafter, the same was reduced into writing and the plaintiff intended to mark the said document to prove his possession in the suit property allotted to him. The plaintiff is not claiming title based on the alleged partition deed. The trial Court ought to have seen that the unregistered partition deed can be looked into for collateral purpose of division in status and also for considering the nature and character of possession subject to proof and relevancy.

16.For the foregoing reasons, the order passed by the trial Court in I.A.No.376 of 2017 in O.S.No.85 of 2014 is set aside the Civil Revision Petition is allowed. The trial Court shall afford sufficient opportunities to both parties to adduce oral and documentary evidence and proceed with the matter by admitting the said document in evidence for collateral purpose subject to proof and relevancy. The trial Court is also directed to take up the



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matter and dispose of the same at an earlier date. Consequently, connected

miscellaneous petition is closed.

28.07.2023

Index : Yes/No

Internet : Yes

vsn

To

The Principal District Munsif, Ulundurpet.



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K.GOVINDARAJAN THILAKAVADI

vsn

Pre-deliver order made in
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