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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.01.2023

Pronounced on : 20.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1573 of 2019 and
CMP.No.10305 of 2019

Kannaiyan ... petitioner

Vs.

1.Ramaian
2.Kaliamoorthy
3.Balusamy
4.Gowri
5.Kuzhanthaisami
6.Arunachalam
7.Ramalingam
8.Kannaiyan ... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 19.07.2018 passed in IA.No.334 of 2017 in OS.No.372 of 2009 on the file of the District Munsif Court,

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Jayankondam and to dismiss the application filed to mark the unregistered document.

For Petitioner : Mr.S.Nagarajan

For Respondents
For R1 & 3 : Mr.K.Kannan

ORDER

This civil revision petition has been filed to set aside the order and decretal order dated 19.07.2018 passed in IA.No.334 of 2017 in OS.No.372 of 2009 on the file of the District Munsif Court, Jayankondam, thereby allowing the petition to receive the document dated 04.04.1998 for collateral purpose.

2. The petitioner is the first defendant in the suit filed by the respondents 1 to 3 herein. They filed suit for partition in respect of the suit property. Their case is that the respondents 1 to 3 and the petitioner herein were born to one, Ponnambalam. The money which was earned by the respondents 1 to 3 was already handed over to the first defendant/the petitioner herein and purchased some property in the name of the petitioner. Thereafter, the petitioner and the respondents 1 to 3 had entered into unregistered partition deed in the year 1998. However, it was not acted upon and they were not put in possession

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accordingly. In the meanwhile, the property which was allotted in favour of respondents 1 to 3 was sold out by the first defendant in favour of respondents 4 to 8 herein. Therefore, legal notice was caused and suit was filed for partition.

2.1 Resisting the same, the petitioner filed written statement and stated that though the respondents 1 to 3 pleaded that there was partition between them in the year 1998, they failed to produce the same along with the plaint. It shows that there was no partition. Therefore, the respondents 1 to 3 filed petition seeking permission to receive the unregistered family arrangement deed dated 04.04.1998 and the same was allowed. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that unstamped and unregistered partition deed cannot be looked into for any purpose since it is compulsorily registerable and as such, it cannot be marked as an exhibit. As per the document in question i.e. the family arrangement deed dated 04.04.1998 was provided respective shares to the parties and as such, it cannot be marked for collateral transaction without registration. The suit itself has been filed for partition and separate possession. When that being so,

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respondents 1 to 3 could have filed suit for declaration and possession. Further, it is conclusively making division of properties among the parties and it would create contradiction and there cannot be partition for twice. In support of his contention, he relied upon the judgment in the case of ***Narayana Naicker and others Vs. Kannusamy Naicker (died) and others*** reported in ***2019-3-LW.19.***

4. Per contra, the learned counsel for respondents 1 & 3 would submit that the family arrangement partition deed dated 04.04.1998 can be marked for collateral purpose not to prove any right or title over the property.

5. Heard, Mr.S.Nagarajan, the learned counsel for the petitioner and Mr.K.Kannan, the learned counsel for respondents 1 & 3.

6. The learned counsel for the petitioner raised two grounds: (i) The document dated 04.04.1998 is an unregistered and unstamped one and it cannot be marked for any purpose. (ii) Unregistered document is inadmissible in evidence unless such document is duly stamped.

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7. Admittedly, the document dated 04.04.1998 is an unstamped and unregistered one. On perusal of the said document, its recital shows that the third respondent was only allotted some property and the petitioner was not alloted any property. However, the case of the respondents 1 to 3 is that the property which was allotted in their favour was sold out by the petitoner herein without their knowledge in favour of respondents 4 to 8 herein. Therefore, no properties were allotted in favour of respondents 1 to 3 as per the partition deed dated 04.04.1998. Hence, it requires registration as contemplated under Section 17 of the Registration Act. The document which is required to be registered under Section 17, if not registered shall not be used as evidence of any transaction affecting such a property. Only two exceptions are given in Proviso to Section 49 of the Registration Act that (i) an unregistered document can be received in evidence of a contract in a suit for specific performance (ii) or can be received in evidence of any collateral transaction, not required to be effected by registered instrument. Except the above two exceptions, no document, which required to be registered under Section 17 of the Registration Act, can be received in evidence of any transaction affecting such immovable property. Therefore, this Court finds infirmity in the order passed by the court below and it is liable to be set aside.

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8. Accordingly, the order and decretal order dated 19.07.2018 passed in IA.No.334 of 2017 in OS.No.372 of 2009 on the file of the District Munsif Court, Jayankondam are set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.01.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

1.The District Munsif Court,
Jayankondam

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