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C.R.P(MD).No.167 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.06.2023

Pronounced on : .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.167 of 2018

and

C.M.P(MD)No.759 of 2018

K.Xavier Pushparaj

... Revision Petitioner/Defendant

Vs.

1.D.R.Selvanayagam

2.Rajendran Selvanayagam

3.Peter Selvanayagam

... Respondents/Plaintiffs

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.205 of 2017 in O.S.No.253 of 2014, dated 24.10.2017 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.F.X.Eugene

For Respondents : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order passed in I.A.No.205 of 2017 in O.S.No.253 of 2014 dated 24.10.2017 on the file of the Principal District Munsif Court, Nagercoil.

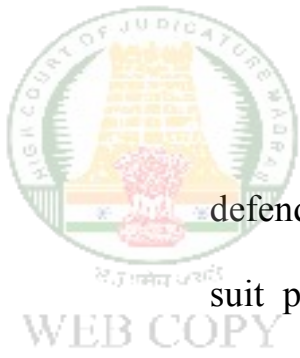


2. The brief facts of the case:

The revision petitioner is the defendant in O.S.No.253 of 2014 on the file of the Principal District Munsif Court, Nagercoil. The revision respondents have filed the main suit for declaration that the sale deed No.1252/2006 in the name of the revision petitioner/defendant is null and void and for permanent injunction. Pending trial, the revision petitioner has filed the petition in I.A.No.205 of 2017 in O.S.No.253 of 2014 to accept the unregistered compromise deed dated 04.11.1994 as secondary evidence to enable him to mark on his side. That petition was resisted by the revision respondents/plaintiffs. After hearing both, the Trial Court has dismissed the petition in I.A.No.205 of 2017 in O.S.No.253 of 2014. Aggrieved by the order of the Trial Court, the revision petitioner/defendant moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has contended that the revision respondents have filed the main suit for the reliefs of declaration that the sale deed stood in the name of the



defendant as null and void and for permanent injunction in respect of the suit property. The revision petitioner has purchased the suit property from its owners on the basis of compromise deed dated 04.11.1994 entered into between one Pitchaikaran Pillai and Subramania Pillai. During pendency of the suit, the revision petitioner sought permission from the court to accept the photocopy of said compromise deed, as the same was given to him during sale transaction and hence, he filed the petition in I.A.No.205 of 2017 and it was dismissed on 04.04.2017. Challenging the said order, the revision petitioner has filed C.R.P.(MD) No.1224 of 2017 before this court. After hearing both, this Court allowed the C.R.P.(MD)No.1224 of 2017 and set aside the dismissal order dated 04.04.2017 and remanded back the matter for fresh disposal giving liberty to the revision petitioner to file a supplementary affidavit. Accordingly, the revision petitioner has filed the supplementary affidavit stating that there was litigation in O.S.No.295/1981 on the file of the Principal District Munsif Court, Nagercoil which was ended in favour of his vendor Pitchakaran Pillai and in the appeal, the case ended on the basis of compromise deed dated 04.11.1994. Though he insisted upon original compromise deed, his vendor only gave photocopy of the compromise deed during sale transaction as the compromise included various other properties. So, the said photo copy of compromise deed is



a vital document to prove his case, but the Trial Court without considering the facts, dismissed the petition. The order of Trial Court may be set aside.

5. Per contra, the learned counsel for the respondents vehemently contended that the alleged compromise deed is forged one and it was created by the revision petitioner. Even after remand, the revision petitioner failed to produce the original compromise deed and failed to produce sufficient material to substantiate his claim. Without producing original deed, a photocopy of same can not be marked as evidence as per provision of Section 17 of Registration Act and more over the alleged compromise deed is also unregistered and under value stamped under Section 35 of the Stamp Act. Unregistered documents are inadmissible and in the absence of original unregistered document its photocopy cannot be accepted as evidence. The Trial Court has correctly observed that the photocopy of a deed cannot accepted for marking as evidence and the revision petitioner has not produced sufficient material for non-production of its original and has correctly come to the conclusion dismissing the petition. Thus the impugned order of the Trial Court need not be interfered and the Civil Revision Petition may be dismissed. In support of his argument, the learned counsel for the



respondents/plaintiffs placed reliance on the following rulings.

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- 1. (2009) 2 Supreme Court Cases 532 (Avinash Kumar Chauhan Vs. Vijay Krishna Mishra)**
- 2. 2013 (2) MWN (Civil) 27 (Chinnammal and Others Vs. Thangavel and another)**
- 3. 2014(3) MWN (Civil) 353 (R.Ramuththevar (died and Others Vs. Selvi)**
- 4. 2018(3) CTC 441 (Sita Ram Bhama Vs. Ramvatar Bhama)**

6. On hearing both and on perusal of records, it is clear that already this Court heard and passed order that the petition is filed under Section 65(a) of Indian Evidence Act, for accepting the photocopy of deed, as per clause (c) of section 65 for non production of original property account should be stated and thereby remanded back the matter to Trial Court giving liberty to the revision petitioner to file supplementary affidavit. In the supplementary affidavit the revision petitioner has simply stated that his vendor retained the original. He has not stated whether he has taken any steps to obtain the original compromise deed from his vendor or vendor's legal heirs since he stated his vendor is no more. After remand back, the petitioner has not even taken any steps to substantiate the reason for non production of original compromise deed



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by letting oral or documentary evidence. As rightly argued by the learned counsel for the respondents relying on the above citations, a photocopy of an unregistered deed in the absence of the original deed, much less undervalued & unstamped original unregistered deed cannot be received as evidence. Therefore, the Trial Court has correctly observed about the photocopy of compromise deed, which is sought to be received as evidence and correctly dismissed the petition in I.A.No.205 of 2017 in O.S.No.253 of 2014 by passing impugned order, which warrants no interference by way of this Civil Revision Petition. Therefore, this Civil Revision Petition fails and the same is liable to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Principal District Munsif Court,
Nagercoil.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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