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C.R.P(NPD)(MD).No2051 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2023

Pronounced on : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No2051 of 2017

and

S.A(MD)No.59 of 2017

C.R.P(NPD)(MD).No.2051 of 2017

Joseph

...Petitioner/Plaintiff

Vs.

1.Michael

2.Savarimuthu @ Balu

3.Sebastiammal

4.Backiyam

5.Jeganathan @ Michael

6.Jegadeesan

... Respondents/Defendants

PRAYER in C.R.P(NPD)(MD).No.2051 of 2017 Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to allow the Civil Revision Petition with cost by setting aside the fair and final order dated 06.09.2017 in I.A.No.155 of 2017 in O.S.No.141 of 2011 on the file of the Principal District Munsif Court, Manamadurai.



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For Petitioner : Mr.D.P.Sundararaj
for Mr.A.Sivaji
For R1 : Mr.H.Arumugam
for Mr.S.Loganathan
For R4 : No Appearance

S.A(MD)No.59 of 2017

Joseph ...Appellant/Defendant

Vs.

S.M.Michael ... Respondent/Plaintiff

PRAYER in S.A(MD)No.59 of 2017: Second Appeal filed under Section 100 of the Civil Procedure Code, to allow the Second Appeal by setting aside the judgment and decree in A.S.No.8 of 2015 on the file of the Sub Court, Sivagangai dated 21.10.2016 by confirming the judgment and decree in O.S.No.151 of 2010 on the file of the Principal District Munsif Court, Manamadurai dated 19.12.2014.

For Appellant : Mr.D.P.Sundararaj
for Mr.A.Sivaji
For Respondent : Mr.H.Arumugam
for Mr.S.Loganathan



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COMMON ORDER

CRP(NPD)MD.No.2051 of 2017

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This Civil Revision Petition is filed against the fair order and decretal order dated 06.09.2017 passed in I.A.No.155 of 2017 in O.S.No. 141 of 2011 on the file of the Principal District Munsif Court, Manamadurai.

2. The brief facts of the case:

The revision petitioner is the plaintiff in O.S.No.141 of 2011 on the file of the Principal District Munsif Court, Manamadurai. The revision petitioner filed the said suit against the revision respondent for partition of his 1/4th share in the suit properties. The revision respondent filed a detailed written statement. When the said suit was pending for trial, due to non-appearance of the revision petitioner/plaintiff, the suit in O.S.No.141 of 2011 was 'dismissed for default' on 05.07.2016. The revision petitioner filed the petition in I.A.No.155 of 2017 in O.S.No.141 of 2011 to condone the delay of 232 days in filing the petition for restoration of suit, which was dismissed for default. The revision respondent objected the petition. After hearing both, the Trial Court had dismissed the petition on 06.09.2017. Aggrieved by the dismissal order the revision petitioner/plaintiff has preferred this Civil Revision Petition.



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

4. The learned counsel appearing for the petitioner has submitted that the petitioner was suffering from jaundice in the month of June, 2016 and he could not walk and meet his counsel. After his recovery, he met his counsel and came to know that the suit was dismissed for default on 05.07.2016. The petitioner has fair chance to succeed in his case and he may be given an opportunity to conduct the case. Therefore, the Civil Revision Petition may be allowed.

5. Per contra, the learned counsel for the respondent has vehemently contended that the respondent has filed a suit in O.S.No.151 of 2010 against the revision petitioner for declaration and injunction in respect of the suit properties. The suit was decreed on 19.12.2014 and the revision petitioner filed an appeal in A.S.No.8 of 2015 before the Sub Court, Sivagangai and filed the petition in I.A.No.290 of 2015 in A.S.No.8 of 2015 to stay the proceedings in O.S.No.141 of 2011. That petition was dismissed. The revision petitioner filed CRP(MD)Nos.2424 of 2015 and 2425 of 2015 before this Court. This Court passed the order



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dated 04.04.2016 directing the disposal of A.S.No.8 of 2015 and O.S.No. 141 of 2011 as expeditiously not later than 31st day of October, 2016.

The petitioner has also filed another suit in O.S.No.52 of 2015 on the file of the Additional District Munsif Court, Manamadurai and the petitioner has appeared in that suit between 09.02.2016 to 15.09.2016 and also appeared before the Sub Court, Sivagangai in A.S.No.8 of 2015. While so, the petitioner falsely stated that he fell in jaundice and could not meet his counsel and due to his non-appearance the suit in O.S.No.141 of 2011 was dismissed for default on 05.07.2016. The petitioner has not proved his absence by producing acceptable material. Therefore, the Civil Revision Petition may be dismissed.

6. On perusal of records and on hearing both it is clear that the petitioner, who is the plaintiff in O.S.No.141 of 2011 on the file of the Principal District Munsif Court, Manamadurai, has also filed the another suit in O.S.No.52 of 2015 on the file of the Additional District Munsif Court, Manamadurai. The petitioner has also filed the appeal in A.S.No.8 of 2015 on the file of the Sub Court, Sivagangai against the judgment and decree passed in O.S.No.151 of 2010 filed by the revision respondent. The petitioner filed the petition to stay the proceedings in O.S.No.141 of 2011 till disposal of the appeal in A.S.No.8 of 2015. That



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petition was dismissed. The petitioner preferred the Civil Revision Petition in CRP(MD)No.2424 of 2015 before this Court and this Court directed disposal of the suit and appeal within 31.10.2016. While being the facts so, the revision respondent states that the revision petitioner has filed another suit in O.S.No.52 of 2015 and the petitioner has appeared in that case between 09.02.2016 and 15.09.2016 in all hearings and failed to appear in O.S.No.141 of 2011 before the Principal District Munsif Court, Manamadurai which is situated in the very same campus. The revision petitioner has not strongly disputed the above facts nor produced any material to falsify the above facts. In such circumstances, the plea of the petitioner that he fell in jaundice in the month of June, 2016 and he could not walk and meet his counsel and after recovery he filed the present petition on 27.02.2017 to condone the delay of 232 days in filing the restoration of suit which was dismissed for default on 05.07.2016 are all not acceptable. Each and every days delay has to be explained is the principle of law. It is practice in case proceedings the delay caused as if the party was in ailment, however, the same should be established by producing acceptable material. Therefore, this court holds that the revision petitioner failed to properly explain the delay of 232 days in filing restoration petition. The Trial Court has correctly appreciated the facts and correctly dismissed the petition in I.A.No.155 of 2017, which



warrants no interference by way of this Civil Revision Petition and thus, the Civil Revision Petition fails.

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7. This Second Appeal is preferred against the judgment and decree dated 21.10.2016 passed in A.S.No.8 of 2015 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 19.12.2014 passed in O.S.No.151 of 2010 on the file of the Principal District Munsif Court, Manamadurai.

8.The appellant in S.A.No.59 of 2017 is the defendant in O.S.No. 151 of 2010 on the file of the Principal District Munsif Court, Manamadurai.

9.The respondent is the plaintiff, who filed the suit for declaration and permanent injunction against the defendant.

10.For the sake convenience, the parties are referred as plaintiff and defendant in O.S.No.151 of 2010.



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11. It is the case of the plaintiff that the plaintiff and the defendant are brothers. Their father Savarimuthu and mother Irulayee had five sons and two daughters. During the life time of Savarimuthu, one among the brothers, one Balu @ Savarimuthu obtained his share by executing Partition Statement dated 10.07.1983. After demise of their parents, the other legal heirs, partitioned the properties in the presence of Panchayatdars by executing Vennilai Partition Deed dated 06.05.1987. The defendant obtained his share property and also sold one of his share property to one Muthu by virtue of sale deed dated 24.02.2000. So, the partition deed was acted upon. When the defendant disturbed the plaintiff from enjoying his property, the plaintiff filed the suit.

12. It is the case of the defendant that all the brothers and sisters of the parties are still commonly enjoying the properties of their father Savarimuthu. The properties have not been partitioned so far. Much less, no partition deed was executed as pleaded by the plaintiff. The plaintiff has forged the alleged unregistered partition deed. Therefore, the defendant filed a suit in O.S.No.141 of 2011 for partition. The plaintiff is not in separate enjoyment and possession of the suit properties.



13. During trial, the plaintiff examined five witnesses as P.W.1 to P.W.5 and marked 18 exhibits as Ex.A.1 to Ex.A.18 and the defendant has examined three witnesses as D.W.1 to D.W.3 and marked 9 exhibits as Ex.D.1 to Ex.D.9.

14. After hearing both the learned Principal District Munsif, Manamadurai has decreed the suit in O.S.No.151 of 2010 by passing judgment and decree dated 19.12.2014. Aggrieved by the judgment and decree, the defendant preferred Civil Appeal in A.S.No.8 of 2015 before the Sub Court, Sivagangai. The First Appellate Court after hearing both passed judgment dated 21.10.2016 dismissing the appeal and confirming the judgment passed in O.S.No.151 of 2010.

15. The appellant/defendant has now preferred this Second Appeal and the same has been admitted to be numbered on 09.02.2017 on the following substantial questions of law:-

i) Have not the Courts below committed error in law in holding that the documents marked as Exs.A.14 and 15 can be accepted for collateral purpose, when the same are not valid documents in law?



ii) Are the judgment and decree of the Court below are sustainable in law, when the findings are based on documents which are hit by Section 17 of the Registration Act and Section 35 of the Stamp Act?

iii) Is not the judgment of the trial Court vitiated due to the illegal procedure adopted in comparing the signatures of the defendant when the signatures found in those deeds are not of contemporaneous period, that too when the very issue was decided between the parties in CRP (MD) No. 2425 of 2015?

iv) Has not the lower Appellate Court committed error in law in applying section 115 of the Evidence to the facts of this case and rendering a finding based on such inadmissible documents?

v) Have not the Courts below error in law in granting permanent injunction, when the plaintiff failed to prove his exclusive possession and enjoyment based on the documents relied on by him that when admittedly all the revenue records do stand in the name of the father of the litigants after 1983 or 1987 till date?



16. The learned counsel for the appellant/defendant has argued that the plaintiff has marked unregistered documents as Ex.A.14 and Ex.A.15. The defendant has not put any signature in Ex.A.15, while the defendant used to sign in English. Only four sons signed in Ex.A.15. Ex.A.14 is a script on plain paper, which is unregistered and unstamped. Both documents cannot be taken into consideration even for collateral purpose. The plaintiff failed to prove his exclusive title and possession of the suit properties. The Courts below have not considered the fact that the documents under Ex.A.14 and Ex.A.15 were not registered by paying required stamp. Therefore, they are hit by Section 17 of the Registration Act and Section 35 of the Stamp Act. The Courts below erred in passing judgment and decree in favour of the plaintiff by committing error in law. Therefore, the findings of the courts below have to be set aside. In support of his argument, the learned counsel for the appellant/defendant has relied on the following citations:

1) 2022 (3) CTC 862 (Saritha Vs. M.A.Shanmugham and Ors.),

wherein it is held in paragraph No.17 as follows:

“17. A family arrangement or a Muchalika in effect grants right or title to certain portion of property to few individuals and also at the same time takes away rights and title of some of the



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parties to the other portions. This document therefore comes squarely under section 17 of the Registration Act, 1908, as a document which has to be compulsorily registered and under Section 49 of the Registration Act, 1908, a document which has to be compulsorily registered cannot be admitted in evidence.”

2) 2013(4) CTC 145 (D.Srinivasan and Ors. Vs. D.Chairman and Ors.), wherein it is held in paragraph No.14 as follows:

“14.A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in section 35 of the Indian Stamp Act”.

17. Per contra, the learned counsel for the respondent/plaintiff vehemently contended that there are five sons including the plaintiff and defendant and two daughters to the parents Savarimuthu and Irulayee. One of the brother Balu @ Savarimuthu had obtained his share in the suit properties even during life of the father Savarimuthu and executed partition statement dated 10.07.1983 in the presence of Panchayatdars, which is marked as Ex.A.14. Further, after demise of the parents, the other legal heirs partitioned the properties in the presence of Panchayatdars and they executed partition arrangement dated



06.05.1987, which is marked as Ex.A.15 and the four brothers put their signatures. The appellant/defendant has also signed in it. The witnesses and Panchayatdars have also signed in it. The respondent/plaintiff has proved the Ex.A.14 and Ex.A.15 by examining one of witness and Panchayatdars. The learned counsel further contended that the appellant/defendant has also been allotted share and out of his share he sold some property to one E.Subramaniam by virtue of sale deed dated 17.12.1997, which is marked as Ex.A.16. Therefore, the partition arrangement has been accepted by the appellant/defendant and accordingly, acted upon. The Courts below have correctly appreciated the evidences adduced on both sides and correctly decreed in favour of the respondent/plaintiff and there is no error committed in law. Once a party has accepted the unregistered partition deed and acted upon by virtue of the same, he is estopped from questioning it thereafter. In support his argument, the learned counsel for the respondent/plaintiff has relied on the decision of the **Hon'ble Supreme Court in (2020) 9 Supreme Court Cases 706**, wherein it is held in paragraph Nos.25 and 28 as follows:

“25.Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person



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who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.

28.Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it.”

18. Considered both side arguments and perused the material records. It is admitted that the respondent/plaintiff and the appellant/defendant are brothers and there were other three brothers and two sisters. The properties belonged to their parents Savarimuthu and Irulayee. The plaintiff states that before death of father, one brother Balu @ Savarimuthu got his share by executing Ex.A.14 partition statement dated 10.07.1983 and left the family and after death of their parents, the other legal heirs executed Ex.A.15 partition arrangement dated 06.05.1987 in the presence of Panchatdars and witnesses. The defendant denied that no such partition arrangement was executed and both are unregistered and they cannot be taken into consideration. On perusal of



judgement of the Trial Court, the defendant admitted in his evidence that one of their brother Balu @ Savarimuthu got his share by executing partition statement and left the family and also admitted that he executed Ex.A.16 - Sale Deed to one Subramaniam on 17.12.1997. In that Ex.A.16, it clearly stated as “எனக்கு பூர்வீக பாத்தியமானதும் என் பாகத்திற்கு கிடைத்து என் கைவச அனுபவத்திலும் என் ஆளுகையிலும் உள்ள காலி மனையிடத்தை நான் தங்களுக்கு நாளது தேதியில் கிரையம் பேசி முடிவு செய்து.....”. Therefore, it is clear that the defendant himself admitted the partition arrangement and alienated his share property thereby the partition arrangement was acted upon. In such circumstances, as per decision of the Supreme Court, once a party admits the unregistered partition deed and acted upon thereof, he is estopped from questioning the same and the unregistered deed does not require registration. Moreover the plaintiff has clearly proved those documents by examining P.W.2. The defendant has not examined his other brother and sisters to prove that the partition arrangement and partition statement were not executed in the presence of Panchatdars. It is a settled principle of law each and every case has to be considered upon the evidence adduced therein. At the time of marking the Ex.A.14 and Ex.A.15, the defendant has not raised any objection as it requires registration and as they are unstamped. The citation relied on by the defendant are rendered



in Civil Revision Petitions in respect of objection raised during the time of marking of documents and they are not applicable to the facts of this case. The defendant has not denied that he has not sold any property based upon Ex.A.15 family arrangement. Considering the facts and circumstances of the case, the courts below have correctly appreciated the evidences adduced by both and correctly decreed in favour of the plaintiff. The courts below do not commit any error on law. Though the unregistered document needs to be registered, the Exs.A.14 and A.15 unregistered partition statement and arrangement are admitted by the defendant and he acted upon thereof by executing subsequent Sale Deed under Ex.A.16, the said exhibits are not hit by Section 17 of the Registration Act and Section 35 of the Stamp Act, as they do not require registration in view of the decision of the Hon'ble Supreme Court reported in **2022(3)CTC 862** relied on by the plaintiff side. Thus, this Court is of the opinion that the question of law raised in this appeal fail and thereby this appeal is liable to be dismissed.

19. In the result, this Civil Revision Petition in C.R.P(NPD)(MD).No2051 of 2017 is dismissed. No costs.



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20. In the result, the Second Appeal in S.A(MD)No.59 of 2017 is dismissed confirming the judgment and decree dated 21.10.2016 passed in A.S.No.8 of 2015 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 19.12.2014 passed in O.S.No.151 of 2010 on the file of the Principal District Munsif Court, Manamadurai. No costs.

07.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd

To

- 1.The Principal District Munsif Court,
Manamadurai.
- 2.The Sub Court,
Sivagangai.
- 3.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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and
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