



C.R.P.(MD) No.2546 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.2546 of 2022

and

C.M.P.(MD) No.12502 of 2022

1.Syed Rafia

2.Arifa Begam

3.Ramzan Begam

4.Ashma

5.Noor Muhamed

... Petitioners

Vs.

Sahul Hameed

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.10.2022 passed in unnumbered I.A.No. of 2022 in I.A.No.1 of 2019 in O.S.No.152 of 2017 on the file of the Additional Sub Court, Srivilliputtur.

For Petitioners : Mr.M.Murugan

For Respondent : Mr.M.Thirunavukkarasu



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ORDER

WEB COPY This Civil Revision Petition has been filed to set aside the fair and decretal order dated 11.10.2022 passed in unnumbered I.A.No. of 2022 in I.A.No.1 of 2019 in O.S.No.152 of 2017 on the file of the Additional Sub Court, Srivilliputtur.

2. The petitioners are the plaintiffs in O.S.No.152 of 2017 on the file of the Additional Sub Court, Srivilliputtur. The said suit was filed by the petitioners for partition of the suit schedule properties.

3. During the course of trial, the respondent who is the third defendant in O.S.No.152 of 2017 has filed I.A.No.1 of 2019 to mark additional unregistered Document which came to be allowed on 11.11.2019 with the following directions:-

6. Hence, the doct.No.3 unregistered sale deed dated 03.10.1994 is hereby ordered to be forwarded to the collector for the purpose of determining the stamp duty and collect the deficit stamp duty with penalty after taking the copy of the said documents. Further the objection regarding the admissibility and reliability of the documents can be decided at the appropriate stage.



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4. Pursuant to the above direction, the unregistered document, i.e. Sale Deed dated 03.10.1994 was sent to the District Collector to collect the deficit stamp duty. The District Collector has called upon the respondent to pay the stamp duty and penalty equivalent to 10 times of stamp duty payable on such unregistered Sale Deed dated 03.10.1994 of Rs.66,638/-.

5. Meanwhile, the petitioners who are the plaintiffs filed unnumbered I.A.No. of 2022 to reject the unregistered Sale Deed dated 03.10.1994. It is submitted that under Section 17 read with Section 47 of the Registration Act, 1908, unregistered document is impermissible and therefore, the court below ought to have rejected the claim of third respondent to mark the unregistered Sale Deed dated 03.10.1994.

6. The learned counsel for the petitioners has placed reliance on the following decisions:-

- i. **K.Kanimozhi Vs. Kandasamy (Died)**, 2022 (2) MLJ 267.
- ii. **Thangamuthu and others Vs. A.Jeyaraj**, 2020 (1) CTC 47.
- iii. **M.S.Haja Rasool Vs. Annadurai and others**, I.L.R. (1997) 2 Madras 1375.



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7. The learned counsel for the respondent appears and submits that the petitioners have not challenged the order passed on 11.11.2019 passed in I.A.No.1 of 2019. The order cannot be diluted by filing a fresh I.A. to reject unregistered Sale Deed dated 03.10.1994. It is submitted that the Court below has refused to entertain the application filed by the petitioners to reject the unregistered Sale Deed dated 03.10.1994, on which, the respondent has paid the stamp duty and penalty equivalent to 10 times of stamp duty of Rs.66,638/- and therefore prayed for dismissal of this Civil Revision Petition.

8. The learned counsel for the respondent has placed reliance on the decision of the Hon'ble Supreme Court in Sikikonda Madhava Rao Vs. N.Hemalatha and others, dated in 14.11.2022, in SLP (C) No.14882 - 14883 of 2022, wherein, the Hon'ble Supreme Court held as under:-

In view of the aforesaid position, we do not think that the impugned judgment passed by the High Court directing that the aforesaid document should be de-marked and not be treated as an exhibit, is correct and in accordance with law. Once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has



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not been duly stamped. Objection as to admissibility of a document on the ground of sufficiency of stamp, has to be raised when the document is tendered in evidence. Thereafter, it is not open to the parties, or even the court to re-examine the order or issue. To this extent, the impugned judgment is set aside and the appeal is allowed.

We clarify that we have not commented or examined the question of effect of purported non-registration of the sale deed in terms of the Transfer of Property Act, 1882 and the Registration Act, 1908. These questions and issues are left open to be decided by the trial court. All pleas and contentions raised by the parties in this regard can be raised before the trial court, which will examine the said aspect and other issues without being influenced by the present order and the impugned judgment.

9. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

10. The purpose of the petitioners for filing of I.A. to dilute the order dated 11.11.2019 passed in I.A.No.1 of 2019 cannot be countenanced as the petitioners cannot indirectly dilute the order dated 11.11.2019 by filing a fresh I.A. to reject the unregistered Sale Deed dated 03.10.1994 that would also amount to impeding the on going trial in O.S.No.152 of 2017 which has been instituted by the petitioners. By



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filing the fresh I.A., the petitioners seek to prolong the longevity of the suit filed by them for partition of suit schedule properties.

11. Therefore, I do not find any merits in the present Civil Revision Petition. As far as the question relating to admissibility, relevancy and proof of the unregistered Sale Deed dated 03.10.1994 is concerned, it is left open for the petitioners to canvass the same before the Court at the time of final arguments.

12. This Civil Revision Petition stands dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

19.06.2023

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

The Additional Sub Court,
Srivilliputtur.



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C.SARAVANAN, J.

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