IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).Nos.627 and 1883 of 2021
and C.M.P.Nos.5376 and 14666 of 2021

Subramani ... Petitioner (in both CRPs)

vs

Kamatchi (Died)

1.Sellamuttu

2.Ganesan

3.Kandasamy

4.Saraswathi ... Respondents (in both CRPs)

Prayer in C.R.P.(PD).No.627 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair order and decretal order in I.A.No. 1 of 2019 in I.A.No.208 of 2008 in O.S.No.68 of 1997, on the file of the Additional District Munsif, Attur, dated 23.12.2020 as illegal, incompetent, erroneous and without jurisdiction.

Prayer in C.R.P.(PD).No.1883 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order passed in I.A.No.280 of 2008 in O.S.No.68 of 1997, on the file of the Additional District Munsif, Attur dated 09.04.2021 is contrary to law, manifestly erroneous and wholly unjust.

For Petitioner : Mr.V.Raghavachari
for M/s.V.Srimathi
(in both CRPs)

For Respondents : Mr.S.T.Bharath Gowtham
for M/s.K.Aswini Devi
(in both CRPs)

COMMON ORDER

The Civil Revision Petition in C.R.P.(PD).No.627 of 2021 is filed by petitioner/1st defendant challenging the order passed by the Trial Court dismissing the application filed by him to impound the unregistered Sale Deeds dated 01.01.1975 and 07.03.1974 and send those documents to the District Collector for collection of deficit stamp duty.

2. The Civil Revision Petition in C.R.P.(PD).No.1883 of 2021 is filed challenging the order passed by the Trial Court allowing application filed by the respondents/plaintiffs with a prayer not to mark the unregistered Sale Deeds dated 01.01.1975 and 07.03.1974 produced by the petitioner/1st defendant.

3. For the sake of convenience, the petitioner in C.R.P.(PD).No.627 of 2021 is referred to as petitioner in this order. The respondents in C.R.P.(PD).No.627 of 2021 are referred to as respondents.

4. The respondents herein filed a suit for declaration of title and injunction against the petitioner and others. The petitioner herein filed a written statement denying the various averments found in the plaint. In his written statement filed on 17.09.1997, the petitioner referred to surrendering of possession by one Sellamuthu Udayar in favour of his father on 07.03.1974 by a document styled as Sale Deed. In the additional written statement filed by the petitioner on 17.03.2004, the petitioner referred to a document dated 01.01.1975 executed by Palanimuthu and his family members regarding suit pathway. Therefore, these two documents under dispute were referred to in the pleadings of the petitioner.

5. When petitioner attempted to mark those two documents, the same was opposed by the respondents and I.A.No.1 of 2019 was filed by the petitioner to impound the unregistered Sale Deeds dated 01.01.1975 and

07.03.1974 and send those documents to the District Collector for collection of deficit stamp duty. The respondents on their part filed I.A.No.280 of 2008 not to mark the unregistered Sale Deeds dated 01.01.1975 and 07.03.1974 as those documents were unregistered. In fact, earlier, the petition filed by the respondents in I.A.No.280 of 2008 was allowed by the Trial Court and aggrieved by the same, a civil revision petition was filed before this Court in C.R.P.No.3410 of 2008 and this Court set aside the order and remanded the matter for fresh consideration in the light of the settled law that unregistered documents can be looked into for collateral purpose. Thereafter, the petitioner filed I.A.No.1 of 2019 for impounding the unregistered Sale Deeds dated 01.01.1975 and 07.03.1974 and send those documents to the District Collector for collection of deficit stamp duty. The Trial Court dismissed the petition filed by the petitioner herein for impounding of the documents and allowed the petition filed by the respondents with a prayer not to mark documents. Aggrieved by the said order, these two civil revision petitions are filed by the petitioner.

6. The learned Senior Counsel appearing for the petitioner submitted that in view of proviso to Section 49 of Registration Act, 1908, an unregistered document conveying right in an immovable property worth more than 100 rupees can be admitted in evidence to prove collateral purpose. The learned Senior Counsel further submitted that inspite of clarification issued by this Court in earlier civil revision petition, the Trial Court failed to follow the same and passed the impugned orders rejecting the documents.

7. The learned counsel appearing for the respondents submitted that document dated 01.01.1975 is not connected with suit property and counsel appearing for the petitioner admitted the same before the Trial Court and he also agreed that the said document need not be impounded. In such circumstances, the Civil Revision Petition is not maintainable in respect of Document dated 01.01.1975. The learned counsel further submitted that other document dated 07.03.1974 does not contain any survey number and in the absence of anything on record to suggest the said document is relating to suit property the Court below was justified in rejecting the said document.

8. A perusal of the impugned order in I.A.No.1 of 2019 would suggest that the learned counsel appearing for the petitioner before Trial Court, during the course of arguments admitted that document dated 01.01.1975 is no way connected with the suit property and the same need not be impounded. The said concession by the counsel was recorded by the Trial Court in the impugned order. When the learned counsel for the petitioner admitted before Trial Court that the document dated 01.01.1975 was not relating to the suit property and the same need not be impounded, the petitioner is not entitled to maintain the revision challenging the said order.

9. It is not the case of the petitioner that no such concession was made by the counsel for the petitioner before the Trial Court. Even assuming no such concession was made by the counsel, the same has to be clarified by approaching the very same Court. Therefore, the Civil Revision Petition is not maintainable in respect of Document dated 01.01.1975. To that extent, the impugned order is confirmed.

10. As far as document dated 07.03.1974 is concerned, in the impugned order, the Trial Court observed that document does not contain the survey number and description of the property also differs from the suit property. It was further observed by the Trial Court that document dated 07.03.1974 was not at all referred to in the pleadings of the petitioner. In fact, the petitioner in his original written statement filed on 17.09.1997 referred to document dated 07.03.1974 in Paragraph No.4. Therefore, the observation made by the Trial Court that it was not referred to in the pleadings is not correct. The relevancy of the document need not be gone into at this stage and the same can be considered at the time of final disposal.

11. In ***Bondar Singh and others vs. Nihal Singh and others*** reported in ***AIR 2003 Supreme Court 1905***, the Hon'ble Apex Court held that the unregistered sale deed can be admitted in evidence for proving collateral purpose namely nature and character of the suit. The relevant observation of Hon'ble Apex Court reads as follows:-

> *"The only defence set up against said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of plaintiffs. Under the law a sale deed*

is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land."

12. Hence, bar under Section 17 read with Section 49 of the Registration Act, 1908 is not total as in the case of Section 35 of Indian Stamp Act, 1899. If the petitioner is willing to pay deficit stamp duty together with penalty then bar created under Section 35 of Indian Stamp Act, 1899 is removed and the petitioner is entitled to take shelter under proviso to Section 49 of Registration Act, 1908. Hence, as per the law laid down in the above mentioned case law, the unregistered document dated 07.03.1974 can be admitted in evidence for collateral purpose of proving nature and character of possession, provided, petitioner pays stamp duty together with penalty. Therefore, the Civil Revision Petition is allowed in respect of document dated 07.03.1974 alone.

13. The Trial Court is directed to impound the said document and collect stamp duty together with penalty. On such payment of stamp duty, the petitioner is entitled to mark the same, subject to objection raised by the respondents with regard to proof and relevancy. Both the Civil Revision Petitions are partly allowed to that extent in respect of document dated 07.03.1974.

14. Accordingly, both the Civil Revision Petitions are partly allowed. As a consequence, I.A.No.1 of 2019 filed by the petitioner is allowed in respect of document dated 07.03.1974 and I.A.No.280 of 2008 filed by the respondents is dismissed in respect of Document dated 07.03.1974. No costs. Consequently, the connected civil miscellaneous petitions are closed.

28.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The Additional District Munsif,
Attur.

S.SOUNTHAR, J.

dm

C.R.P.(PD).Nos.627 and 1883 of 2021

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