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C.R.P.(PD).No.2028 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2028 of 2020
and CMP.No.12744 of 2020

Sowkath @ Sowkath Ali

... Petitioner

vs.

1.Iqbal (died)

[cause title accepted vide Court order dated 05.11.2020
made in CMP.12214 of 2020 in CRP.SR.71262 of 2020 (TKRJ)]

2.Shafi

3.Hasena

4.Settu

5.Bashu

6.Husena

7.Rahamathulla

8.The Assistant Executive Engineer,

Town Division,

TANGEDCO,

Subbarayan Road,

Salem – 636 001.

9.S.Shajutha

10.I.Suhail

11.Surhaib

[R9 to R11 resident at No.77/1, Sengoda Gounder Salai,
Vivekanandar Nagar, Gorimedu, Salem – 636 008]

(Respondent – 1 died respondents 9 to 11 brought on record as Lrs of the
deceased R-1 viz., Iqbal vide Court order dated 27.02.2023 made in
CMP.Nos.176, 180 and 181 of 2023 in CRP.No.2028 of 2020 by VBSJ)

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 20.03.2020 in I.A.No.1 of 2019 in O.S.No.94 of 2017 on the file of the III Additional District Judge, Salem by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Prabakar

For Respondents :M/s.Zeentah Begum
for R2 to R7 and R9 to R11
M/s.V.Viswanathan for R8
R1 died

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the respondents to mark a document dated 03.02.2014 styled as consent deed. The respondents/plaintiffs filed a suit for partition of the suit property. When PW.1 was examined on behalf of the respondents, the plaint document No.11 styled as consent deed dated 03.02.2014 was sought to be marked and the same was objected by the revision petitioner on the ground that the said document was unregistered and unstamped therefore could not be admitted in evidence. Therefore, the respondents filed I.A.No.1 of 2019 seeking leave of the Court to mark the said document. In the affidavit filed in support of the petition, it was averred by the



respondents that under the documents no transfer of property had taken place and parties only agree to the manner in which the properties had to be partitioned in future and therefore, the said document did not require any registration. The petition was opposed by the petitioner herein on the ground that recitals found in the document clearly established the transfer of right in an immovable property had taken place under the document. Therefore, the same requires registration and proper stamp duty.

2. The Court below after considering the contention of either parties came to the conclusion that the recitals found in the document are only relating to future division of the property and therefore, it could not be termed as a document which requires compulsory registration. Accordingly, the petition filed by the respondents was allowed by granting permission to the respondents to mark the said documents. Aggrieved by the same, the petitioner has come up before this Court.

3. The learned counsel appearing for the petitioner submitted that under the documents the exclusive right available to the petitioner got



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limited by the recitals that the item No.1 of the suit property belonged to all the parties namely the petitioner and respondents. Therefore, the transfer of property has taken place under the document and as a consequence it requires compulsory registration.

4. The learned counsel appearing for the respondents submitted that the recitals found in the documents only establish tentative arrangement between the parties to enter into pucca partition deed in future. Therefore, such a tentative arrangement need not be registered under Section 17 of Registration Act.

5. The recitals in the said document, with regard to the item No.1 of the suit property, reads as follows:

கோர்ட் மூலம் ஆர்.ஹெளசுத் பெயருக்கு கிரயமாகி இருந்தாலும்
அதுவும் நம் அனைவருக்கும் பொது சொத்துதான் என்பது நம் அனைவராலும் ஒப்புக்
கொள்ளப்பட்ட விஷயமாகும்.

6. A reading of above recitals would suggest that though item No.1 of the suit property was purchased in the name of the petitioner herein,



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the same shall be treated as common property of all the parties to the document. Therefore, the said recitals in the document limits the exclusive right of petitioner under the sale deed in her favour and the said recitals attracts Section 17 (i) (b) of Registration Act. Therefore, the document dated 03.02.2014 is compulsorily registrable one and the same cannot be admitted in evidence for the main purpose of proving the transfer of property that had taken place under the document. However, if the respondents pay required stamp duty together with penalty the document in question can be admitted in evidence to prove the collateral purpose of nature of possession. However, the same cannot be relied to prove any transfer of title or diminishing of interest of the petitioner.

7. With these observations, the Civil Revision Petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

09.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

The III Additional District Judge, Salem.

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