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CRP No.2885 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.2885 of 2023

1.S.Siddhan

2. N.Ramakrishnan

... Petitioners

/vs/

1. Rajendran

2. Periyathambi

3. Srinivasan

4. Ayyanar

5. Chinnathayee

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 13.04.2023 passed in I.A.No.8/2023 in O.S.No.252/2013 on the file of the IV Additional District Munsif, Salem.

For Petitioners

... Mr.P.Jagadeesan

For respondents

... Mr.T.S.Sathiyamoorthy

ORDER

This civil revision petition has been filed to set aside the order and decreetal order dated 13.04.2023 passed in I.A.No.8/2023 in O.S.No.252/2013 on the file of the IV Additional District Munsif, Salem.



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2. The petitioners herein are the defendants and the respondents herein are the plaintiffs in O.S.No.252/2013, which was filed for declaration, declaring that the suit properties absolutely belonged to the plaintiffs and consequently, grant permanent injunction restraining the defendants from in anyway put up any construction or cause damage to the suit property and also direct the first defendant to vacate the B schedule property, after removing unauthorized constructions and surrender possession of the suit property to the plaintiffs, within a specified time. Pending suit, the petitioners have filed an application in I.A.No.8/2023 to condone the delay in filing the consent deed, (சம்மதப் பத்திரம்) dated 30.01.1978 for collateral purpose and the same was dismissed. by the trial court. Challenging the above order, this civil revision petition has been filed.

3. The learned counsel for the petitioners submitted that, the above consent deed was executed in favour of the first defendant's father Chinnasamy Gounder and it is a vital document to determine the issues involved in the suit. He further submitted that the boundaries mentioned in



the B schedule property and also in the property mentioned in the consent deed is one and the same and the attesting witness to the consent deed, viz.

Chinnapaiyan is examined as DW3 and hence, the above consent deed has to be marked on behalf of the defendants, for collateral purpose. He also contended that though the earlier petition in I.A.No.4/2021 for impounding the above consent deed to be sent to the Revenue Divisional Officer or to the Registrar of Assurance, it will not be a bar to mark the above document, atleast for collateral purpose. Hence, the impugned order is liable to be dismissed.

4. The learned counsel for the respondents submitted that, the case is now pending for pronouncing judgment and the earlier application to receive the very same document in I.A.No.3/2021 was dismissed and thereafter, the petitioners have filed I.A.No.4/2021 to send the above document to the District Collector, Salem for calculating the stamp duty and penalty, which was also dismissed. In such circumstances, the petitioners have filed the present application in I.A.No.8/2023 to receive the very same document and the Trial court has rightly dismissed the



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petition and hence seeks for dismissal of the civil revision petition.

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5. Heard the learned counsel for the petitioners and I have perused the materials on record.

6. It is not disputed that already, the petitioners have filed I.A.No.3 of 2021 to receive documents, in which, except the consent deed, all other documents were allowed to be received. Subsequently, the petitioners have filed I.A.No.4/2021 to send the document for calculating stamp duty and penalty and the same was also dismissed by the Trial Court. Again, the petitioners have filed the present I.A.No.8/2023 to mark the above consent deed, through DW1, who is the attested witness to the said document and it was also dismissed by the Trial Court.

7. On perusal of the above consent deed dated 30.01.1978, it reveals that, it has been titled as "Sammatha Pathiram". But the recitals of the document shows that, it is a sale deed executed by one Sithan in favour of Chinnasamy Gounder, with regard to the property cited in the schedule



thereon, for a sale consideration of Rs.300/- , which is not a registered document.

8. The Trial court, while dismissing the above petition, has observed as follows.

6.2. The learned counsel for the respondents relied upon the decision of the Hon'ble High Court of Madras in E.Meganathan & anor. Vs. M.Samraj reported in 2016(2) LW 329, wherein, the HOn'ble High Court has held that the title of the document is not deciding factor and the contents of the documents has to be looked into to find out the nature of the transaction. The learned counsel also relied upon the decision of the Hon'ble High Court of Madras in K.Kasinathan Vs.N.Umasankar reported in 2020(1) MWN (civil) 786, wherein the Hon'ble High Court held that an unregistered sale deed affecting transfer of immovable property of whatever value is not admissible in evidence as proof of any transaction affecting any immovable property comprised therein.

6.3. The decisions cited supra are squarely applicable to the facts of the case on hand. It is settled position of law that the nomenclature of document is not decisive to find out the nature of transaction and it is only the recitals of the document that has to be looked into to find out the nature of the document. Therefore, the recitals of the document, though named a "Sammatha Pathiram" makes it clear that the nature of transaction is sale for value of Rs.300/- and thus, the document requires registration and payment of proper stamp duty.

7. It is relevant to refer to the decision of the Hon'ble High Court of Madras in Thangamuthu and others Vs. A.Jeyaraj, reported in 2020(1) CTC 47, wherein, the Hon'ble High Court has held as,

12. It is clear from the judgments that have been cited on



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the side of the petitioners that a document, which is compulsorily registrable under the Registration Act, cannot be admitted in evidence, unless, it is registered. If a document is inherently bad for non-registration, it cannot be cured by paying deficit stamp duty and penalty. It is even a settled position of law that such documents cannot be looked into even for collateral purposes".

8. Applying the above dictum to the case on hand, this court finds that the document titled as " sammatha pathiram" dated 30.01.1978 cannot be received for want of registration and sufficient stamp duty. Also, the same cannot be looked into even for collateral purpose.

The above observation and the reason for dismissing the petition in I.A.No.8/2023 in O.S.No.252/2013 is legally sustainable and it does not warrant any interference by this Court. Hence, the civil revision petition is liable to be dismissed, as it has no merits.

9. Accordingly, this civil revision petition is dismissed. No costs.

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Index : Yes/No
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To

The Additional District Munsif, Puducherry.



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