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C.R.P.(PD)No.2739 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2739 of 2022

and

C.M.P.No.14366 of 2022

1.M.Vadivel

2.M.Nagarajan

3.R.Monalisa

4.C.Muthuraj

.. Petitioners

Vs.

1.M.Muniraj

2.Saravanan

3.The Sub Registrar,
SRO Office,
Maranahalli,
Dharmapuri District

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 16.06.2022 made in I.A.No.299 of 2022 in O.S.No.198 of 2018 on the file of the Sub Court, Palacode.

For Petitioners : Mr.K.Megala



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for N.Manoharan

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For Respondents : Mr.R.Selvakumar

ORDER

This Civil Revision Petition arises against the fair and decretal order in I.A.No.299 of 2022 in O.S.No.198 of 2018 on the file of the learned Subordinate Judge at Palacode.

2. The 1st respondent herein filed a suit in O.S.No.198 of 2018 seeking the relief of declaration of title, permanent injunction and to declare the partition deed dated 27.08.2018 which was registered as document No.1651/2018 entered into between defendant Nos.1 to 4 with respect to 0.51 acres in Survey No.114/4 as null and void and for consequential reliefs.

3. It is not in dispute that the relationship between the civil revision petitioners, who are defendant Nos.1 to 4 and the 1st respondent is that of brothers and sister. They are all sons of one Madhan. They accepted that there was an oral partition in the family between Chinnapaiyan, the grandfather of the parties, Madhan, the father of the parties, and one Muthuraj with respect to Survey No.114/4. Under the said oral partition, the



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father of the plaintiff, namely, Madhan was allotted 52 cents in Survey No.114/4. The parties to the partition deed, according to them, were enjoying the property as per the terms of oral partition deed.

4. The plaintiff projected another partition dated 18.07.1986 under which 50 percent of the 'A' schedule properties to the document were shared between the plaintiff and his brother. Similarly, 50 percent of share in the 'B' schedule mentioned property was shared between the plaintiff and his brother.

5. According to the plaintiff, this arrangement entered into on 18.07.1986 was subsequently modified by way of a partition deed, dated 14.05.2001. Under this deed, the plaintiff would get absolute right insofar as Survey no.114/4 to an extent of 1.03 acres and the defendants would not have any right over the same. According to him, since he has obtained the property, any partition deed with respect to the said property dehors the document dated 14.05.2001 is null and void. To put it in other words, as the plaintiff became an absolute owner of 1.03 acres in Survey No.114/4, the defendants do not have any right to deal with the same.



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6. At the time of trial, he attempted to mark the document dated 14.05.2001 to show that the previous partition dated 18.07.1986 had been nullified and the property had been reassigned. This was objected to by the civil revision petitioners/defendant Nos.1 to 4 stating that the document sought to be marked is a document *in praesenti* and the same being an unregistered document, it cannot be received in evidence.

7. The learned trial Judge rejected this contention and had permitted the plaintiff to mark the document dated 14.05.2001 holding it to be the recording of the past transaction. The said document has been placed before me.

8. I have gone through the documents. The contents show that there has been a reassignment/limiting of the rights of the plaintiff as well as that of the defendants. Under Section 17 of the Registration Act, any document that creates, declares, assigns, limits or extinguishes any right, title or interest in a property more than the value of Rs.100/- would necessarily have to be registered. If that registration is not done, then, the document by



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itself cannot be proved before the Court since the same becomes inadmissible by virtue of Section 49 of the Indian Registration Act.

9. Therefore, I necessarily have to interfere with the order of the learned Subordinate Judge at Palacode in I.A.No.299 of 2022 dated 16.06.2022. This is because, I have come to a conclusion that there is a division of the property *in praesenti* under the document dated 14.05.2001.

10. In the light of the above discussion, the order of the learned Subordinate Judge at Palacode in I.A.No.299 of 2022 is set aside. Accordingly, the Civil Revision Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The Sub Court,
Palacode

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and

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