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C.R.P. (PD) .No.4270 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4270 of 2022
and C.M.P.No.22415 of 2022

S.Gopi

.. Petitioner

Vs.

1.Gowrammal

2.Logeshwari

3.Bharathi

4.Manogaran

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 19.10.2022 passed by the learned Additional District Judge, Krishnagiri, in I.A.No.10 of 2022 in O.S.No.88 of 2020.

For Petitioner : Mr.G.Karthikeyan
Senior Counsel
for Ms.A.Jagadeeswari

For Respondents : Mr.R.Vasudevan
for Mr.E.Kannadasan



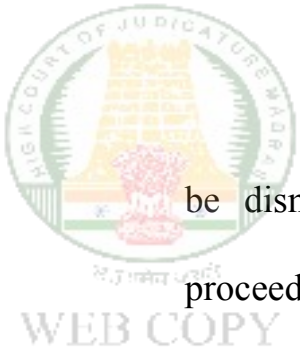
ORDER

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This Civil Revision Petition arises against the order passed by the learned Additional District Judge, Krishnagiri, in I.A.No.10 of 2022 in O.S.No.88 of 2020, dated 19.10.2022.

2.O.S.No.88 of 2020 is a suit for specific performance of a contract of sale. In the said proceedings, the defendants 1 to 3 filed an application under Order VIII Rule 9 of the Code of Civil Procedure, 1908, seeking to file an additional written statement to the suit. The reason for filing additional written statement was that the civil revision petitioner Mr.S.Gopi had got himself impleaded to the suit for specific performance and denied the title of defendants 1 to 3. Therefore, they wanted to project an unregistered deed recording the deliberations of a Panchayat held on 13.12.2002. It was on the basis of the Panchayat that defendants 1 to 3 obtained title to the property.

3.The plea of the civil revision petitioner was that in an earlier suit in O.S.No.19 of 2018, filed for declaration of title and for consequential relief, the very same document had been presented and rejected. That suit came to



be dismissed as withdrawn on 24.11.2020. During the course of that proceeding, the unregistered Panchayat document dated 13.12.2002 was introduced as Ex.A2. The learned Trial Judge in that case had rejected the said document. According to the 4th defendant, as the document had already been rejected, it is not open to the defendants 1 to 3 to introduce the said document again as their document in this suit by way of an additional written statement.

4.I heard Mr.G.Karthikeyan, Senior Counsel appearing for Mr.A.Jagadeeswari and Mr.R.Vasudevan for Mr.E.Kannadasan for the respective parties.

5.Mr.G.Karthikeyan argues that as the document had already been rejected by the Trial Court in O.S.No.19 of 2018, it is impermissible to receive the said document by way of additional written statement in the present suit. He pleads the learned Additional District Judge ought to have adopted the same logic and rejected the additional statement and the unregistered document.



6.I have gone through the records and I have carefully considered the submissions of Mr.G.Karthikeyan, Senior Counsel and Mr.R.Vasudevan.

7.The plea of defendants 1 to 3 is only to file additional written statement. Since the 4th defendant – civil revision petitioner has created a cloud over the title of the defendants 1 to 3, they sought to protect the said document.

8.At the stage of Order VIII Rule 9 petition under Code of Civil Procedure, 1908, a Court need not look into the merits of the plea. A party have to prove the pleas only at the time of trial. In fact, I have pointed out in C.R.P.No.3679 of 2023, the question of Court going into the issue of title in a suit for specific performance is alien to the proceeding.

9.The simple case of the plaintiff is that he had entered into an agreement with the defendants 1 to 3 and as the defendants are attempting to resile from the said agreement, he wants assistance of the Court to obtain a sale deed. In the said proceeding, the issue whether the defendants 1 to 3 have title to the property is absolutely irrelevant. This is because the suit for



specific performance continues to be in the realm of the contract and title to an immovable property is dealt with under the Transfer of Property Act.

10.Be that as it may, as the defendants 1 to 3 want only to explain their possession, they have taken out an application under Order VIII Rule 9 of the Code of Civil Procedure, 1908. A petition under Order VIII Rule 9 requires a liberal interpretation. This is because a party must not be shut out from placing whatever case they have before a Court. Being the defendants 1 to 3, the respondents are always entitled to take even contradictory pleas. The only condition is that, at the time of trial, they have to elect as to which of those pleas, they stand by.

11.In so far as the document is concerned, since a point has been raised by Mr.G.Karthikeyan, it is necessary, on my part, to answer the same. The objection to the document dated 13.12.2002 is that in a suit for declaration of title, the document had been rejected at the time of being introduced as evidence. I agree with the view taken by the learned Principal District Judge in that case. This is because, in a suit for declaration of title, an unregistered document by which the plaintiff claims title cannot be received as evidence.



However, in a suit for specific performance, as it is not a suit claiming title over the property and all that the defendants 1 to 3 want to plead and prove before the Court is the severance of status between family of the vendors of the 4th defendant and themselves. It is certainly admissible in evidence. This very issue whether an unregistered partition deed, can be received in evidence has been a subject matter of interpretation before the Andhra Pradesh in ***Chinnappareddigari Peda Mutyala Reddy Vs. Chinnappareddigari Venkata Reddy & others, AIR 1969 AP 242 (FB)***. The Bench had held that an unregistered document of partition cannot be received as an evidence for the purpose of providing title, but it can certainly relied upon for the purpose of providing the severance of status. The view taken by the said Bench of the Andhra Pradesh High Court found acceptance at the hands of the Supreme Court in ***Yellapu Uma Maheswari & another Vs. Buddha Jagadheeswararao & others, (2015) 16 SCC 787***.

12.The purpose for which the documents are being projected in the two suits being different, the fact that the document had been rejected by the learned Principal District Judge does not bar the Additional District Judge from receiving the document in this suit.



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13.In the light of the above discussion, I do not find any merits in the revision. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

11.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Additional District Judge, Krishnagiri.



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V.LAKSHMINARAYANAN, J.

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11.11.2024

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