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C.R.P.(MD)No.169 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 28/03/2024

Date of Pronounced : 19/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.169 of 2024
and
CMP (MD) No.714 of 2024

M.Manoharan : Petitioner/3rd Respondents

Vs.

1.M.Mathayanai

2.M.Athikesavan

3.S.Murugan

4.S.Athimoolam

: R1 and R2/Plaintiffs

: R3 and R4/Defendants 1 and 2

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the diary order, dated 07/11/2023 made in OS No.335 of 2022 on the file of the Subordinate Court, Melur and to pass such other further order and orders.

For Petitioner : Mr.R.G.Shankar Ganesh

For R1 and R2 : Mr.B.Prahalad Ravi

For R3 and R4 : Ex-parte

O R D E R

This civil revision petition has been filed seeking to set aside the diary order dated 07/11/2023 passed in OS No.335 of 2022 by the Subordinate Court, Melur.



2. The facts in brief:-

The property comprised in Survey No.196/9 to an extent of 1.10 Acres was assigned by the Government in favour of one Subbaiah on 25/05/1970. He became the absolute owner of the property and later, sold the same to the petitioner by a sale deed dated 12/01/2020. Subsequent to the sale deed, he is in possession and enjoyment of the same.

3. For measuring the property, he filed WP(MD)No.7639 of 2022. That was allowed on 21/04/2022. Later the respondents 1 and 2 herein filed WP(MD)No.14297 of 2022 to forebear the Tashildar from measuring the property. But that was dismissed on 25/08/2022.

4. The respondents claim that the property in Survey No.196/9 measuring about 1.63 Acres belongs to one Mathayanai. On that basis, they filed a suit in OS No.335 of 2022 before the Sub Court, Melur. In that suit, they have stated that the properties measuring about 1.64 Acres were partitioned. The document is an unregistered one. So, he filed objection. That objection ought to have been decided by the trial court on the date itself. But that document was marked subject to the objection. Since the registration and insufficient stamp duty question was raised, it might have been decided on that date itself.



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5.Questioning the record of proceedings of the trial court, this civil revision petition is preferred.

6.Heard both sides.

7.Marking a document subject to objection that too an unregistered document of alleged partition, according to the learned counsel appearing for the petitioner, is not proper. The trial court has not adverted to the admissibility of the document.

8.Entire records have been called for and perused.

9.The legal heirs of M.Mathayanai namely the wife Pariammal, daughters Ayyammal and Arammal and son Subbaiah entered into a partition chit. The properties were divided into 5 schedules. Shares were allotted to one in the presence of panchayadhars. According to petitioner, only by way of this document, the properties were partitioned. So, this is not a partition chit, but partition deed requires registration.

10.Per contra, the learned counsel appearing for the respondents would submit that the objection raised by the petitioner was heard by the trial court on merits and



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thereafter only, that order was passed. But only cryptic order was passed by the trial court. Postponing the admissibility of the documents to a future date.

11. In respect of the family arrangement, if any document is produced, how it must be dealt with, it has been elaborated discussed in the judgment reported in **A.C.Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and others [(2001)1 M.L.J. 1]**. The following guidelines have been given in para 42 as detailed hereunder:-

"42. To sum up the legal position

(I) A family arrangement can be made orally.

(II) If made orally, there being no document, no question of registration arises.

(III) If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

(IV) Whether the terms have been reduced to the form of a document is a question of fact in each case to be determined upon a consideration of the nature of phraseology of the writing and the circumstances in which and the purpose with which it was written.



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(V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.

(VI) Only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.

(VII) If the family arrangement is stamped but not registered, it can be looked into for collateral purposes.

(VIII) Whether the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person can not claim a right or title to a property under the said document, which is being looked into only for collateral purposes.

(IX) A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in [Section 35](#) of the Indian Stamp Act.

12. In the light of the above said statement of law,



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the trial ought to have decided the same when the objection was raised. But that was not properly performed.

13.So, I am of the considered view that the matter may be remitted back to the trial court with a direction to the trial court to consider the admissibility of the document in the light of the guidelines issued in the above said judgment and decide the same on its own merit.

14.With this, this civil revision petition is **allowed** and the order passed by the trial court is set aside and the matter is remitted back to the trial court. No costs. Consequently, connected Miscellaneous Petition is closed.

19/06/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Sub Judge,
Melur.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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