



C.R.P(MD)No.1558 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.1558 of 2024

and

C.M.P(MD)No.9204 of 2024

Sambasivam

... Petitioner /
Petitioner /
Plaintiff

Vs.

1.Dharmasundaram

2.Sakthivel

... Respondents /
Respondents /
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order rendered in I.A.No.2 of 2023 in O.S.No.81 of 2023 on the file of District Munsif Court, Pattukottai dated 20.03.2024 by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.M.Ramu



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ORDER

Heard both sides.

2.The plaintiff and the first defendant are brothers. O.S.No.81 of 2023 was filed on the file of District Munsif Court, Pattukottai seeking declaration that the sale deed dated 19.10.2022 (Document No. 3393/2022) executed by D.1 in favour of D.2 is null and void and for permanent injunction. The case of the plaintiff is that there was a partition among the children of Ayyavupillai on 02.12.1996 and that the suit sale transaction is not in tune with the said arrangement. The trial in the suit has commenced and when the plaintiff was in the witness box as P.W.1, he wanted to mark the petition mentioned documents, namely, family arrangement dated 02.12.1996 and consent deed dated 18.09.1988. The plaintiff would produce only photo copies of the said documents. The defendants objected to the marking of the photo copies of the documents. Thereupon, IA.No.2 of 2023 was filed for marking them. Vide order dated 20.03.2024, the IA was dismissed. Questioning the same, this Civil Revision Petition has been filed.



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WEB COPY 3. In the plaint, there is a specific reference to the family arrangement made on 02.12.1996. In the written statement, this has not been denied. In the written statement, the first defendant admitted the execution of the family arrangement. The stand of the defendants is that the original documents are not with the first defendant but that it is only with the plaintiff. The Court below appears to have been swayed by the said stand.

4. As rightly pointed out by the learned counsel for the revision petitioner if the plaintiff is having the originals with him, he would have definitely produced the same for marking. There is no reason to disbelieve the plaintiff's version. Section 61 of the Indian Evidence Act, 1872 (corresponding to Section 56 of the Bharatiya Sakshya Adhiniyam, 2023) states that contents of documents may be proved either by primary or by secondary evidence. Copies made from the original would also constitute secondary evidence. Section 65 of the Indian Evidence Act, 1872 (corresponding to Section 60 of the Bharatiya Sakshya Adhiniyam, 2023) states that when the original is shown or appears to be in



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possession or power of the person against whom the document is sought to be proved, secondary evidence may be given.

5.The case on hand would definitely fall within the circumstances set out above. In this view of the matter, the impugned order is set aside. The Court below is directed to permit the petitioner to mark the petition mentioned documents. I however refrain from rendering any finding on the other aspects.

6.This Civil Revision Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

District Munsif Court, Pattukottai.

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G.R.SWAMINATHAN, J.

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