



C.R.P.(PD)(MD).Nos.861 and 862 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)Nos.861 and 862 of 2018

and

C.M.P(MD) No.3752 of 2018 in C.R.P(MD) No.861 of 2018

C.R.P(PD)(MD) No.861 of 2018:

Sonaimuthu

... Petitioner/Petitioner/Plaintiff

-vs-

1. Alagar
2. Baluchamy
3. Thondiraj
4. Pushpavalli
5. Manikandan
6. Kavitha
7. Veeramani
8. Shobana
9. Minor Vaishali

... Respondents/Respondents/
Defendants

(Minor 9th Respondent represented through
his Court Guardian Advocate A.N.Senthilkumar)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.807 of 2017 in O.S.No. 97 of 2008, on the file of the District Munsif Court, Paramakudi, dated 19.01.2018.



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For Petitioner : Mr.S.Ramesh

For Respondents : Mr.D.Senthil – for R3
: Mr.R.Murali – for R4 to R8
: No appearance – For R1 and R9
: Died- R2

C.R.P(PD)(MD) No.862 of 2018:

Sonaimuthu

... Petitioner/Petitioner/Plaintiff

-vs-

1. Alagar
2. Baluchamy
3. Thondiraj
4. Pushpavalli
5. Manikandan
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7. Veeramani
8. Shobana
9. Minor Vaishali

... Respondents/Respondents/
Defendants

(Minor 9th Respondent represented through
his Court Guardian Advocate A.N.Senthilkumar)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.808 of 2017 in O.S.No. 97 of 2008, on the file of the District Munsif Court, Paramakudi, dated 19.01.2018.

For Petitioner : Mr.S.Ramesh

For Respondents : No appearance – For R1, R3 to R9



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COMMON ORDER

The present Civil Revision Petitions have been filed by the plaintiff challenging the two orders passed by the trial Court in I.A.Nos.807 of 2017 and 808 of 2017, wherein, the trial Court had rejected the request of the petitioner for marking an unregistered document and for recalling P.W.1 to mark the said unregistered document.

2. The revision petitioner had filed a suit in O.S.No.97 of 2008 on the file of the District Munsif Court, Paramakudi, for the relief of declaration of title and permanent injunction. Paragraph No.4 of the plaint indicates that the plaintiff relied upon an unregistered partition deed, dated 11.12.1990 said to have been entered into between the plaintiff, plaintiff's father and the defendants 1 to 4. Pending suit, the plaintiff had filed I.A.No.664 of 2009 to ascertain the stamp duty penalty with regard to the unregistered partition deed dated 11.12.1990. The said application was dismissed by the trial Court on 21.01.2010.



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3. Challenging the order passed by the trial Court, the revision petitioner had filed C.R.P.No.937 of 2010, and this Court by an order dated 19.08.2010 had set aside the order and remanded the matter back to the trial Court to consider whether such a document requires registration and, in case, the trial Court arrives at a finding that it requires registration, to decide about the stamp duty penalty. However, no attempt was made by either of the parties to adjudicate I.A.No.664 of 2009 which was remitted back to the trial Court.

4. The plaintiff without agitating I.A.No.664 of 2009, had filed I.A.No. 807 of 2017 to mark the unregistered document dated 11.12.1990 and I.A.No. 808 of 2017 to recall P.W.1 and to mark the said document. When these two applications came up for hearing, the defendants had raised an objection that it is a compulsorily registrable document and therefore, such an unregistered document cannot be received in evidence. The trial Court, after going through the document in its entirety has arrived at a finding that the document being a compulsorily registrable document it is not admissible in evidence and dismissed both the applications. Challenging the same, these two Revision Petitions have been filed.



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5. According to the learned counsel appearing for the petitioner, after this Court had remanded the matter back to the trial Court in C.R.P.No.937 of 2010, the plaintiff has paid the stamp duty penalty on 18.05.2016. Once the stamp duty penalty has already been paid, the said document though not registered, the same has to be looked into for the collateral purposes. Without considering the said fact, the trial Court has dismissed the application. Hence, he prayed that the document has to be marked by the trial Court at least for collateral purposes.

6. Per contra, the learned counsel appearing for the respondents/defendants had contended that the said document is an unregistered document and the petitioner claims title under the said document and therefore, the document cannot be received in evidence even for collateral purposes.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials on record.

8. A perusal of the unregistered partition deed dated 11.12.1990 reveals



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that the partition has been effected under the said document and it is not a recording of the partition that has already taken place between the parties. Therefore, there cannot be any dispute that such a document requires registration. Now we have to consider whether on payment of stamp duty penalty the document could be marked for the collateral purposes for severance in status. A perusal of the plaint averments especially in Paragraph No.4 clearly reveal that the plaintiff relies upon this unregistered document and claims title over the suit schedule property. Therefore, the question whether the parties have Severance in status or not is not the dispute in the present suit. The suit is for declaration of title and for permanent injunction based upon this unregistered document. Therefore, relying upon this unregistered document dated 11.12.1990 cannot be said to be for collateral purposes. Hence, even assuming that the stamp duty penalty has been paid, the document which is sought to be relied upon in the suit for declaration of title is to trace the title of the plaintiff, and it cannot be considered to be for collateral purposes. The document is inadmissible in evidence. Therefore, the trial Court has rightly rejected the application to mark the document. Consequently, P.W-1 cannot be recalled and to mark an inadmissible document.



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9. In view of the above said deliberations, this Court is of the opinion that there are no merits in both the petitions. Accordingly, these Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

02.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The District Munsif Court,
Paramakudi.



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R.VIJAYAKUMAR,J.

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