



C.R.P(MD)No.2153 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2153 of 2018

and

C.M.P(MD)No.9541 of 2018

- 1.Salima Banu
- 2.Sameena Fathima
- 3.Nathira Banu
- 4.Hasiya Fathima
- 5.Mohammed Musathik
- 6.Sulthan Jallahudeen
- 7.Bilal Sulthan
- 8.Sabur Fathima
- 9.Sulthana Kader Fathima

... Petitioners
Respondents 3 to 11/Plaintiffs

Vs.

- 1.Mohammed Hasan



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... Respondents 1 & 2/Petitioners
Defendants 1, 22

2.Mohammed Aasam

3.Habeeb Mohammed Sathakathulla

4.T.A.S.Naseer

5.Mohammed Arsath

6.Nemath Nisha

7.Saburiyath Beevi

8.Fathima Jina

9.Samsu Nisha

10.Mansura Begam

11.Sheik Alaudeen

12.Saibudeen

13.Abdul Jaleel

14.Sahabudeen

15.Mallika

16.Anisa

17.Jawahar

18.Ajima

19.Jemis Rahman

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20.Sabeerabegam

21.Liyakat Ali

22.Jaburulla Khan

23.Najma Begam

24.Sabur Nisha

25.Yasmin Roja

26.Sadhik Batcha

27.Basheer Ahamed

28.Raaviammal

29.Fathima Nasreen

... Respondents 3 to 29/
Respondents 12 to 21/
Defendants 2 to 21, 23 to 29

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the revision and set aside the order, dated 04.07.2018 made in I.A.No.80 of 2018 in O.S.No.112 of 2012 on the file of the District Munsif Court, Mudukulathur.

For Petitioners : Mr.PT.S.Narendravasan

For Respondents : No appearance



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ORDER

The instant revision petition has been filed by the plaintiffs in O.S.No.112 of 2012 on the file of the District Munsif Court, Mudhukulathur, challenging an order passed in I.A.No.80 of 2018, wherein, the Trial Court has allowed an application filed by the defendants to impound an un-registered partition deed, dated 10.01.1983 filed by them.

2. The revision petitioners herein as plaintiffs have filed the above said suit for the relief of partition and separate possession and for other reliefs. The first defendant in his additional written statement has referred to an un-registered partition deed, dated 10.01.1983 as a defence to the said partition suit. Pending suit, the defendants have filed I.A.No. 80 of 2018 to impound the said document to the District Collector or the Revenue Divisional Officer for the purpose of evaluating the stamp duty and for payment of penalty as contemplated under Section 38 of the Indian Stamp Act, 1899. This application was objected to by the



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plaintiffs on the ground that, the said document is a compulsorily registrable document under Section 17 of the Registration Act, 1908. In such circumstances, the un-registered partition deed cannot be impounded for payment of stamp duty and penalty.

3. The Trial Court had allowed the application filed by the defendants with an observation that admissibility of the document can be decided only at the time of trial and has proceeded to impound the document for payment of stamp duty and penalty. Challenging the said order, the present revision petition has been filed by the plaintiffs.

4. According to the learned Counsel appearing for the plaintiffs, when the admissibility of a document is being questioned, it has to be decided before impounding the said document. Therefore, the Trial Court was not right in relegating the issue of admissibility of a document to the trial.



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5. Though the contesting respondents have been served, there is no representation either in person or through Counsel.

6. I have carefully considered the submissions on the side of the revision petitioners and perused the materials available on record.

7. A copy of un-registered partition deed, dated 10.01.1983 has been placed before this Court. A perusal of the said document indicates that, the partition has been effected only under the document and it is not relating to recording of a past event. Therefore, there cannot be any dispute that it is a compulsorily registrable document as contemplated under Section 17 of the Registration Act. When it is a compulsorily registrable document, in view of Section 49 of the Registration Act, the document cannot be received as evidence of any transaction affecting the property or conferring such power. In the present case, this un-registered partition deed has been filed as a defence to the suit for partition. Therefore, it is clear that the document is not proposed to be filed for any collateral purpose.



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8. In such circumstances, the Trial Court was not right in relegating the issue of admissibility to the trial. In view of Section 49 of the Registration Act, the Court is not empowered to receive such a document, which is un-registered. Therefore, even reception of document is prohibited under the Act, if it is an un-registered document. In such circumstances, the question of impounding the said document for the purpose of payment of stamp duty and penalty would not arise.

9. In view of the above said facts, the order of the Trial Court is set aside. The Civil Revision Petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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1. The District Munsif Court,
Mudukulathur.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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