

Saraswathi Vs. Pothi Raj

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Court : Chennai Madurai

Decided On : Mar-30-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : C.R.P.(MD).No. 2740 of 2010(PD) & M.P.(MD).No. 1 of 2010

Appellant : Saraswathi

Respondent : Pothi Raj

Judgement :

(Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 21.07.2010, made in I.A.No.350 of 2010 in O.S.No.106 of 2008, on the file of the District Munsif Court, Virudhunagar.)

This Civil Revision Petition has been filed against the fair and decretal order, dated 21.07.2010, made in I.A.No.350 of 2010 in O.S.No.106 of 2008, on the file of the District Munsif Court, Virudhunagar.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed the Suit in O.S.No.106 of 2008 for declaration and permanent injunction. The respondent filed written statement and contesting the suit and trial was commenced. The petitioner was examined as PW1 and marked documents. She was cross-examined. The respondent filed I.A.No.350 of 2010 for impounding Ex.A3, which is an agreement of partition and to delete the evidence of the petitioner, with regard to the said document and her marriage. According to the

respondent, the said document Ex.A3 is a partition deed and therefore it must be stamped and registered as per the Indian Stamp Act. The petitioner objected to mark the said document and it was marked subject to his objection. In view of the fact that the said document is not stamped and registered, which can not be relied on, even for collateral purpose. The said document is forged one.

3. The petitioner filed counter affidavit and contended that Ex.A3 is not a partition deed, but it is only a record of earlier partition effected among her husband Devaraj, the respondent and others. Based on the said documents, subsequent transaction has been taken place and the petitioner's husband settled the property on her by way of settlement deed dated 20.11.2006. The respondent, being a Signatory to the agreement of partition, can not contend that the same is a partition deed and it cannot be relied on by the petitioner. The learned Judge considering all the documents and considering the judgment relied on by the parties, held that Ex.A3 cannot be admitted in evidence and impounded the same. The learned Judge rejected the relief sought for by the respondent to delete the evidence of the petitioner as PW1 with regard to Ex.A3. Against the said order of rejection dated 21.07.2010, present Civil Revision Petition has been filed.

4. The learned counsel for the petitioner contended that the learned Judge ought to have seen that Ex.A3 is not a partition deed, but it is only an agreement of partition evidencing partition already effected. He also contended that a document regarding the partition, already effected is not liable to be stamped and registered. The respondent, being a party to Ex.A3 in the year 1987, is not entitled to challenge the same especially in view of the fact that the same was acted upon by all the parties, including the respondent and subsequent transaction taken place. The learned Judge erred in holding that Ex.A3 is a public document.

5. Per contra, the learned counsel for the respondent submitted that even though, Ex.A3 is stated as an agreement of partition, it is only a partition deed. Therefore, it has to be stamped and registered. Further, the said document is forged one and is not binding on the respondent.

6. Heard the learned counsel on either side and perused the materials available on record.

7. From the records, it is seen that during the examination in chief of the petitioner, the agreement of partition, Ex.A3 was sought to be marked by the petitioner. The respondent objected to the same. The said document was marked subject to the objection. After marking the document by the Court, the respondent filed I.A.No.350 of 2010, for impounding Ex.A3 and to delete the evidence of the petitioner in this regard. The reason for such relief sought for by the petitioner, is that the said document is a partition deed. On the other hand, the learned counsel for the petitioner contended that it is not a partition deed, but it is only a record of partition already effected. The learned Judge considered the rival contention that the said document is a partition deed and impounded the said document. The learned Judge erred in passing such an order. After marking the document, subject to objection, the learned Judge can decide the admissibility of document, only after conclusion of trial, considering the pleadings, evidence, arguments of the learned counsel for both parties and will deliver the judgment, with regard to the admissibility of the document. The learned Judge committed an irregularity in impounding the document after marking the same, subject to objection, but before conclusion of trial and before delivery of judgment. Therefore, the said order of the learned Judge is liable to be set aside and accordingly, hereby it is set aside. Further, the Suit is of the year 2008 and trial has already been commenced. Hence, the learned District Munsif, Virudhunagar, is directed to dispose the suit in O.S.No.106 of 2008 as expeditiously as possible, in any event, not later than 31st day of August, 2016.

8. With the above direction, this Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

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