

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION No.2928 OF 2015

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ORDER:

This Civil Revision Petition is filed questioning the order, dated 17.04.2015, passed by the II Additional Junior Civil Judge, Chittoor, allowing I.A.No.690 of 2014 in O.S.No.264 of 2008 filed by defendants 1 to 3.

It is evident from the record that the petitioner, who is the plaintiff in the said suit, filed Ex.A1 as one of the documents in support of her case by describing the said document as a partition list. The said document was marked during the evidence of PW.1, subject to objection as to the mode of proof and admissibility. Subsequently, the defendants filed I.A.No.690 of 2014 seeking rejection of Ex.A1 on the ground that it is inadmissible. The said claim of the defendants was accepted by the trial Court under the impugned order.

I have heard learned counsel for the petitioner. Though notice was served on the respondents, nobody appeared on their behalf. I have examined the record including the translation of Ex.A1 and the reasoning under the impugned order.

A reading of Ex.A1, dated 10.01.1945, shows that the elders of the family divided the properties and the same was recorded in the document - Ex.A1, which appears to be a partition list. But, however, the trial Court, having marked the same subject to objection, has proceeded to reject the same under the impugned order on the ground that the boundaries mentioned in the document clearly show that it is a deed of partition. I am unable to sustain the said order on the *prima facie* reading of Ex.A1 and more so, on the ground that having marked a document does not open for the trial Court to reject the same. However, the said document having been marked subject to proof and admissibility,

I am of the view that the trial Court can consider the nature of the document and its effect at the time of final disposal of the suit. Rejection of a marked document, pending trial, therefore, cannot be sustained.

Hence, the impugned order is set aside. The trial Court shall proceed with the suit in accordance with law and decide the suit on its own merits.

The Civil Revision petition is accordingly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

VILAS V.AFZULPURKAR, J

09.10.2015

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