

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.2042 of 2016
& CMP No.10643 of 2016

M.Govindarajan

... Petitioner

vs

K.Rajendiran

... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 28.04.2016 made in the suit in O.S.No.129 of 2008 on the file of the learned District Munsif, Sirkali.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.M.V.Venkateshan

ORDER

This revision petition has been filed, against the order dated 28.04.2016, seeking for a direction to the learned District Munsif, Sirkali, for early disposal of the suit in O.S.No.129 of 2008.

2. Heard the learned counsel on either side.

3. The suit in O.S.No.129 of 2008 is for a permanent injunction against the interference with the plaintiff's peaceful possession and enjoyment of the suit property.

4. The respondent/defendant had filed his written statement *inter alia* informing of his being entitled to the property under an unregistered Partition Deed.

5. The respondent/defendant presented a memo before the trial Court informing that the unregistered Partition Deed relied upon by him be adjudicated for stamp duty. The court below determined the stamp duty payable vide order dated 28.04.2016 at Rs.880/- under Article 45 of the Indian Stamp Act. Challenging the same, the plaintiff has filed the present petition.

6. Learned counsel for petitioner submits that the unregistered Partition Deed, relied upon by the defendant was one which was compulsorily registrable under Section 17 of the Registration Act and hence cannot be admitted in evidence. The learned counsel also submits that the Court below ought not to have determined the stamp duty on its own accord.

7. Learned counsel for respondent submits that the reliance placed

upon the unregistered Partition Deed was only towards establishing the fact that the plaintiff had given a wrong address and that he was a resident of Chennai and not a resident of Kancheepuram as informed in the plaint.

8. In decision of this Court reported in **1955(1) MLJ 457**, it has been observed as under:

"If an objection is taken to the admissibility of a document on the ground that it is not stamped and registered, the (Court) must first decide both the questions. If he finds that the document requires registration and therefore is inadmissible, being unregistered, the document itself will have to be rejected. The Court cannot first ask the document to be stamped and thereafter, decide whether it would require registration".

9. In a decision reported in **2001(2) CTC 47**, the Hon'ble Apex Court is held as follows:

"12. It is clear from the first sub-section extracted above that the Court has a power to admit the document in evidence, if the party producing the same would pay the Stamp Duty together with a penalty amounting to ten times the deficiency of the Stamp duty. When the Court chooses to admit the document on compliance of such condition the Court need forward only a copy of the document to the

Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid, the Court has no other option except to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duty stamped "he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof".

10. Since the issue relates to admissibility of the document relied upon by the respondent/defendant and the fine amount has been determined by the court below in contravention of the decision reported in 1955 (1) MLJ 457, the order impugned in this Civil Revision Petition is set aside and the following order is passed:-

The Court below shall decide the admissibility of the unregistered document in question as a preliminary issue and thereafter, the Court below shall follow the procedure informed in the decision of the Hon'ble Apex Court

reported in **2001(2) CTC 47** mentioned *supra*.

The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

24.08.2016

Index:yes/no
Internet:yes

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To

The learned District Munsif,
Sirkali.

C.T.SELVAM, J

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