

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-06-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.1741 of 2014
and M.P.No.1 of 2014**

S.Sivalingam ... Petitioner / Defendant

Vs

1.A.Suryanarayan
2.Mrs.A.Girija
3.A.Venkatasubramaniam
4.Mrs.V.Bakiyalakshmi
5.Mrs.A.Prabavathy ... Respondents/Plaintiffs

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.875 of 2013 in O.S.No.368 of 2009 by the Additional District Munsif at Poonamallee dated 07.01.2014.

For Petitioner : Mr.A.Palaniappan

For Respondents : Mr.V.Raghavachari

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ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.875 of 2013 in O.S.No.368 of 2009 by the Additional District Munsif at Poonamallee dated 07.01.2014.

2. The petitioner is the defendant and the respondents are the plaintiffs in O.S.No.368 of 2009 on the file of Additional District Munsif, Poonamallee. The respondents filed suit for declaration directing the petitioner to vacate and handover vacant possession of the suit property to the respondents and directing the petitioner to pay a sum of Rs.300/- to the respondents being the arrears of rent for three years period immediately preceding the filing of the suit.

3. According to the respondents, the petitioner is a tenant in the suit property and the rent was fixed at Rs.100/- per year. The tenancy commenced from 25.02.1980 and the petitioner did not pay rent from 30.10.2001 onwards. Hence, the respondents sent a notice to the petitioner on 31.05.2009 but the petitioner sent a reply notice dated 26.06.2009 denying the landlord – tenant relationship. Further, as the petitioner denied the landlord – tenant relationship, he is not entitled to benefits under Section 9 of the Tamil Nadu City Tenants Protection Act.

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4. The petitioner filed written statement on 08.04.2010 and denied that he is a tenant under the respondents and submitted that he purchased the property by unregistered sale deed dated

13.09.1972 from one Govindan and he is paying property tax and he is in possession and enjoyment of the suit property from that day onwards. He denied having executed any lease agreement and the alleged lease agreement put forth by the respondents are not genuine documents.

5. Based on the pleadings, issues were framed and trial commenced. The 1st respondent examined himself as PW1 and marked exhibits A.1 to A.4. The petitioner also cross examined PW1 about the above exhibits.

6. The petitioner filed I.A.No.875 of 2013 under Order 13 Rule 3 CPC to reject the documents marked as Ex.A1 & A4. According to the petitioner, the said documents are unstamped and unregistered documents and therefore cannot be marked as per Section 17 (1) (d) and Section 49 (c) of the Registration Act as well as per Chapter IV (35) of the Indian Stamp Act, as the documents were not executed as per Schedule I (Section 35) of Indian Stamp Act.

7. The respondents filed counter and stated that the lease deed dated 29.10.1972 executed by M.Sundarammal which was marked as

Ex.A1 and another lease deed executed by N.Govindan dated 02.03.1963 marked as Ex.A.4 are true and genuine. The respondent opposed the said application and submitted that the petitioner did not object to marking of said document when they were tendered as evidence to be marked as exhibits and therefore it is not open to the petitioner now to object marking of the said documents as Exs.A1 & A4 and cannot seek for rejection of the said document.

8. The learned Judge, considering all the averments in the affidavit, counter affidavit and the judgments relied on by the learned counsel for the petitioner, dismissed the application holding that mere marking of documents alone cannot make those documents as valid and authenticity of the documents and its evidentiary value will be determined only after conclusion of trial and at the time of delivering the judgment in the suit.

9. Against the order of dismissal dated 07.01.2014 passed by the Additional District Munsif at Poonamallee in I.A.No.875 of 2013 in O.S.No.368 of 2009, the present Civil Revision Petition is filed.

10. The learned counsel for the petitioner submitted that a party to the suit can object to marking of a document at any stage of the suit and can seek rejection of the document already marked at any stage of the suit. Exs.A1 & A4 are unstamped and unregistered documents and are compulsorily registerable and they cannot be marked and relied on for any purpose including collateral purpose. It is not correct in holding that genuineness and relevancy can be considered only at the time of passing of final orders.

11. The learned counsel for the petitioner relied on the following judgments in support of his contention which are extracted hereunder -

(i) **AIR 2001 SCC 1158 [Bipin Shantilal Panchal v. State of Gujarat & Anr.]**

13. *(However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)*

(ii)2003 (8) SCC 752 [R.Ve.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Anr.]

20. The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission Vs. The State of Madras & Anr.* AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a

later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular

mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

(iii)2010 (8) SCC 423 [Shalimar Chemical Works Limited v. Surendra Oil & Dal Mills (Refineries) & Ors.]

15. On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial court should not have "marked" as exhibits the Xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to objection of proof and admissibility The

appellant, therefore, had a legitimate grievance in appeal about the way the trial proceeded.

(iv) 2013 (2) CTC 864 [G.Ramamoorthy v. M.S.R.Sivakumar & Anr.]

10. Therefore, having regard to the law laid down by the Honourable Supreme Court reported in (2003) 8 SCC 752, the objection regarding the admissibility can be raised at any time and merely because a document was admitted in evidence, the other party is not deprived of his right to challenge the admissibility of the document at a later point of time stating that the document ought not to have been admitted in evidence having regard to the legal provisions and the document is inadmissible in evidence.

(v) 2013 (2) CTC 832 [D.Balachandran vs. T.C.Shanmugam]

5. However, the position under the [Stamp Act](#) is entirely different. Under [section 35](#) of the Stamp Act, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, unless such instrument is duly stamped. Therefore, as per [section 35](#) of the Stamp Act, there is a total

prohibition to receive in evidence the unstamped document.

10. Further, a reading of [section 35](#) also makes it clear that an instrument, which is not duly stamped shall not be acted upon. Under [section 36](#) of the Stamp Act, admission of an instrument in evidence, shall not be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Therefore, under [section 36](#) of the Stamp Act, once a document, which has not duly stamped, has been admitted in evidence without any objection, later the admissibility of that document cannot be challenged on the ground that it has not been duly stamped. But, [section 36](#) does not lay down any prohibition that such document, which has not been duly stamped and admitted in evidence can be acted upon. Therefore, a combined reading of [sections 35](#) and [36](#) of the Stamp Act, makes it clear that even though a document was admitted in evidence, which was not duly stamped, the admission cannot be questioned later by virtue of [section 36](#) on the ground that the document was not duly stamped. But as per [section 35](#), the Court shall not act upon that document, unless such document is duly stamped. Therefore, relying upon

a document, which is not duly stamped, though admitted in evidence is prohibited under [section 35](#). Further, as per the judgment reported in 2003(8)SCC 752, an objection that the document, which is sought to be proved is itself inadmissible in evidence can be raised at any stage of the case. Therefore, the Court below committed serious error in dismissing the petition filed by the petitioner.

11. Per contra, learned counsel for the respondent submitted that the petitioner did not object to marking of the documents Exs.A1 & A4. On the other hand, he cross examined the witnesses on the above documents. It is not open to the petitioner now to object marking of the said documents and application filed for rejection of those documents is not maintainable. As per Section 36 of the Indian Stamp Act, once a document is admitted in evidence, the same cannot be called in question at any stage of the same suit or proceedings on the ground that the instrument has not been duly stamped, except as provided under Section 61 of Indian Stamp Act.

12. The learned counsel for the respondent relied on the following judgments in support of his contention.

(i) 1961 CJ (SC) 169 [Javer Chand v. Pukjraj Surana]

"Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognised by the section is the class of cases contemplated by s. 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the

admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exs. P. 1 and P. 2 and bore the endorsement 'admitted in evidence' under the signature of the Court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the Court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, s. 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

(ii) 2006 (4) MLJ 706 [Karuppannan v. Thavasiappan & anr.]

7. The trial court by order dated 28.1.2005 refused to mark the release deed dated 14.8.1994

on the ground that it was neither registered nor adequately stamped. The correctness of this order is questioned before me.

8. It is well settled in law that even an unregistered document can be admitted as an evidence as the same can be looked into for collateral purpose. At the same time the admissibility of the unregistered document is not automatic if the same is not stamped. If the revision petitioner is willing to pay the deficit stamp duty as well as the penalty on the same, the unregistered release deed dated 14.8.1994 may be admitted as evidence and the trial court thereafter to apply its mind as to the merits of admissibility of the document irrespective of the fact whether the document is registered or unregistered document is also admissible for collateral purpose.

10. The trial court is directed to mark the document in question as an exhibit if the revision petitioner/plaintiff is willing to remit the deficit portion of the stamp duty together with the penalty. The admissibility or otherwise of a document to be gone into by the trial court on merits thereafter to find out whether the document is relied on for collateral purpose or not.

(iii) 2007 (1) LW 806 [Thilagavathy v. Mohammed Rabeek]

(iv) 2007 (5) CTC 77 [Dinakaran v. Venkatesan & Ors.]

(v) 2007 (2) L.W. 535 [Subramaniam v. Gunasundari & Ors.]

In all the above orders, the following same order has been passed.

14. In the result, this CRP is allowed in part and the order of the trial court is modified. The

trial court is directed to ascertain the stamp duty and penalty payable upon the disputed document, then call upon the party who wants to rely on those documents, to pay the stamp duty and penalty, and then on payment of stamp duty and penalty, admit the document in evidence, whether it is for collateral purpose or otherwise, which could be decided at the later stage while hearing the case as guided by the Apex Court in *Bipin Shantilal Panchal v. State of Gujarat and Anr.* (2001) 3 SCC 1. Consequently, connected MP is also dismissed. No costs.

(vi) 1969 (1) UJ 86 [Rana Vidya Bhushan Singh v. Ratiram]

As stated by Mulla in his Indian Registration Act, 7th En., at p. 189 :

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under [Section 17](#) and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

(vii) 2017 (1) CTC 400 [Rukmani v. Natarajan (died) Smt.Bagyam]

11. In all the above cited cases and other judgments on this point, while dealing with documents of this nature, which is neither stamped nor registered, the point emphasised is, the Courts have to consider Sections 17 and 49 of Registration Act, 1908 and Sections 33, 35 and 36 r/w Section 61 of the Indian Stamp Act, 1899. On such consideration, what emanates is that, for any document, if registration is mandatory, but unregistered, it cannot be looked into for any purpose, except for collateral purpose. Whereas a document, which is not duly stamped, cannot be acted upon even for collateral purpose, until the same is impounded.

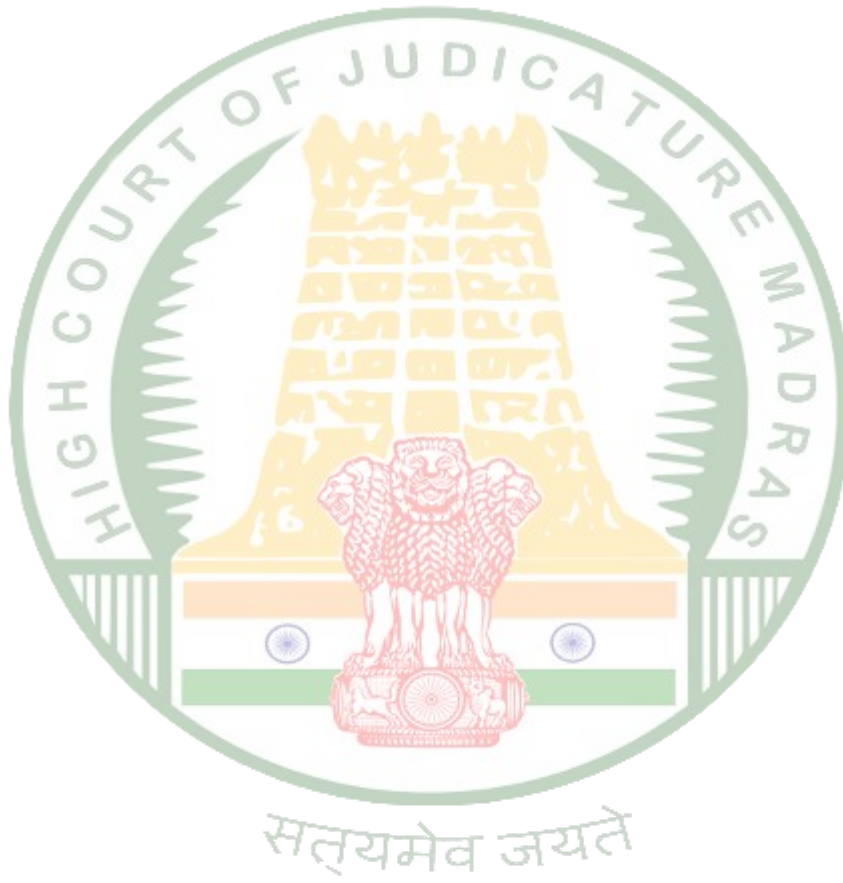
12.

13. Exs.A63 and 64 are unregistered and unstamped documents. These two exhibits are relied on by the plaintiffs only to show, how the defendants came in occupation of the suit property and does not claim any right through it. While Section 49 of Registration Act, 1908 permits unregistered documents to be admitted into evidence for collateral purpose, Section 36 of the Stamp Act, 1899 restricts questioning unstamped document, after being admitted in evidence. Exs.A63 and 64 are documents of the year 1957 and 1971 respectively. While admitting these two documents, the defendants have not objected for admitting these documents. Therefore, under Section 36 of the Indian Stamp Act, 1899, once a document, which has not been duly stamped, has been admitted in evidence, without any objection, later the admissibility of that document cannot

be challenged on the ground that it has not been duly stamped.

14. On further examination of Exs.A-63 and 64, this Court finds that they are rental notes in the nature of lease for one year. The monthly rent is fixed at the rate of Rs.1.00 per month in Ex.A63, dated 21.05.1957 and Rs.3.00/- per month in Ex.A64, dated 30.01.1971. The whole amount payable under Ex.A63 is Rs.12.00/- and under Ex.A-64 is Rs.36.00/-. Therefore, the stamp duty on these instruments payable under Entry 35 (lease) read with Entry 15 (bottomory bond) of the Schedule 1 annexed to the Indian Stamp Act, 1899, is 4 annas. While presenting these two documents before the Court, the plaintiffs ought to have paid stamp duty penalty as per Proviso (a) to Section 35 of the Indian Stamp Act, 1899, but the plaintiffs had failed to pay it. However, when the Court admitted these documents, the defendants did not question the admissibility of these two exhibits. Under such circumstances, Sections 36 and 61 of the Indian Stamp Act, 1899 comes into operation. As held by the Supreme Court in Yellapu Uma Maheswari and Another -vs- Buddha Jagadheeswara Rao and others (2015 AIR SCW 6184) cited supra, the irregularity could be cured by resorting to Section 38 of the Indian Stamp Act, 1899 and the plaintiffs need not be de-suited for their omission to pay stamp duty penalty.

13. Heard the learned counsel for both sides and perused the materials available on record.



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14. The point for consideration arisen in this Civil Revision Petition is whether the documents Exs.A.1 & A.4 can be rejected after the same being marked without any objection by the petitioner. Admittedly, both Exs.A1 & A4 are lease deeds for more than one year. As per Indian Stamp Act and Registration Act, both the documents are to be stamped and compulsorily registerable. The documents were marked through P.W.1 and the petitioner did not object to the same at the time of marking of the documents. On the other hand, the learned counsel for the petitioner has cross examined PW1 on these two exhibits. When the trial is pending, the petitioner filed I.A.No.875 of 2013 to reject the documents which were marked as Exs.A1 & A4. According to the petitioner, the documents being unstamped and unregistered cannot be marked and cannot be looked into for any purpose including for collateral purpose. In the circumstances, court has power to reject the documents at any stage of the suit, even if the same was marked without any objection. On the other hand, the learned counsel for the respondent submitted that the documents once marked without any objection cannot be objected at a later stage, as there is a prohibition under Section 36 of the Indian Stamp Act.

15. The following points emerge from the judgments relied on by the learned counsel for the parties.

(i) A document which has to be stamped and has to be compulsorily registered cannot be marked and cannot be relied on by the parties for any purpose including collateral purpose when the said document was not properly stamped and not registered.

(ii) If the party producing the same, relies on the said document for collateral purpose, it can be marked, provided the same is properly stamped.

(iii) If the document is insufficiently stamped and unregistered and the party producing the same offers to pay deficit stamp duty and penalty, the Court has to impound the said document and refer the same to the concerned Sub Registrar for determining the correct stamp duty payable on the document. On receipt of such determination, the Court has to direct the party to pay the deficit stamp duty and penalty. If the parties producing the

same pays the deficit stamp duty and penalty, the document can be marked for collateral purpose. If the party fails to pay deficit stamp duty and penalty, the Court cannot admit the said document.

16. The issue before this Court is - whether a document already marked can be rejected, pending trial before conclusion of trial and before delivering the judgment ?

17. The petitioner has filed petition under Order 13 Rule 3 CPC which reads as follows -

Order 13 Rule 3 CPC

3. Rejection of irrelevant or inadmissible documents - *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.*

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18. It is clear from the reading of the above Rule that the Court has power to reject any document already marked at any stage of the suit, if the Court is of the opinion that the document is irrelevant or

otherwise inadmissible. If the Court rejects such a document, the Court has to record the reasons for the same. In the present case, the petitioner has denied the execution of any lease deed and contended that the respondent filed only one lease deed dated 29.10.1972 alongwith the plaint and did not mention the lease deed dated 02.03.1963 which was marked as Ex.A4. Therefore, it cannot be said that the petitioner has not objected to marking of the lease deed as Ex.A4. This Court, has considered the issue in the order dated 14.03.2011 made in CRP No.4172 of 2010, considering the judgment of the Hon'ble Division Bench of this Court in **(2001) 1 MLJ 1 [A.C.Lakshmipathy and another V. A.M.Chakrapani Reddiar and others]** upholding the order of the trial court, rejecting the documents marked as Ex.A1 on the ground that unstamped and unregistered documents cannot be looked into for any purpose. The learned Judge upheld the rejection of the documents based on the judgment of the Hon'ble Division Bench of this Court reported in **(2001) 1 MLJ 1** cited supra. The said order and judgment relied on by this Court to dismiss the Civil Revision Petition and the judgment of Hon'ble Apex Court reported in 2003 (8) SCC 752 *cited supra*, are squarely applicable to the facts of the present case.

19. As per the judgment reported in 2003 (8) SCC 752 *cited supra* the Hon'ble Apex Court held that objection with regard to a document sought to be proved as inadmissible can be raised even after the document has been marked as an exhibit, even in the appeal or revision. An objection not with regard to admissibility of document but with regard to mode of proof on the ground of irrelevancy or insufficiency can be raised when the document is tendered as evidence but not after the document was marked as evidence. In the present case, objection raised by the petitioner is with regard to admissibility of the document and as per the judgment of the Hon'ble Apex Court referred to above and Order 13 Rule 3 CPC, objection can be raised at any stage of the suit and Court has power to reject the admitted document at any stage of the suit. The respondents are relying on the said documents to prove their case for eviction based on those documents and it is not marked for collateral purpose. In view of the fact that the respondents marked the documents as Exs.A1 & A4 to prove their case which are unstamped and unregistered, the said documents are inadmissible in evidence. The objection of petitioner is well founded and valid. The learned Trial Judge has not properly considered the scope of Order 13 Rule 3 CPC and erred in dismissing the application filed to reject the documents. In view of the judgment

of the Hon'ble Apex Court reported in **2003 (8) SCC 752** cited supra and order of this Court dated 14.03.2011 in CRP PD No.4172 of 2010, the judgments relied on by the learned counsel for the respondents are not applicable to the facts of the present case. In these circumstances, the fair and decreetal order dated 07.01.2014 passed by the Additional District Munsif at Poonamallee in I.A.No.875 of 2013 in O.S.No.368 of 2009 is liable to be set aside and it is accordingly set aside.

20. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned Additional District Munsif at Poonamallee is directed to reject the Exs.A.1 & A.4 marked as exhibits, as per Order XIII Rule 3 CPC.

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30.06.2017

Index : Yes/No
Speaking/Non-speaking order
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To

The Additional District Munsif,
Poonamallee.

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