

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4152 of 2014
M.P.No.1 of 2014

1.Selvaraj
2.Thiyagarajan

.. Petitioners

Vs.

Anbhazhagan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal order dated 05.03.2014, made in I.A.No.63 of 2014 in O.S.No.245 of 2005 on the file of the District Munsif, Jayankondam.

For Petitioners : M/s.Senthilvadvu
for M/s.L.Maithili Associates

For Respondent : Mr.T.L.Thirumalaisamy

ORDER

This Civil Revision Petition is filed against the decretal order dated 05.03.2014, made in I.A.No.63 of 2014 in O.S.No.245 of 2005 on the file of the District Munsif, Jayankondam.

2.The petitioners are defendants and respondent is the plaintiff in O.S.No.245 of 2005. The respondent filed suit for declaration and injunction. The petitioners filed written statement with counter claim of permanent injunction restraining the respondent from interfering with their peaceful possession till the disposal of O.S.No.372 of 2005 filed by the petitioners on the file of District Munsif Court, Jayankondam, for partition. Trial commenced. The respondent let in evidence and closed his side. The petitioners examined DW1 and when the suit was posted for further evidence, they filed I.A.No.63 of 2014 to mark entire partition deed dated 28.06.2005 through DW1. According to the petitioners, the petitioners and respondent partitioned the properties before the Panchayat and the same was reduced into writing in Rs.50/- stamp papers. The petitioners and respondent signed the said partition deed and respondent refused to register the same. The signature of the witnesses in the partition deed is already marked. In order to establish that there was no partition till 2005, to disprove the contention of the respondent and to prove the case of the petitioners, it is necessary to mark the entire partition deed dated 28.06.2005.

3.The respondent filed counter affidavit and denied all the averments made by the petitioners in support of the above application. According to the respondent, the document now sought to be marked is insufficiently stamped, unregistered and cannot be marked and cannot be relied on for any purpose. The petitioners have filed O.S.No.372 of 2005 on the file of District Munsif Court, Jayankondam for partition. In the said suit, the petitioners filed I.A.No.222 of 2013 for the very same relief, for permission to mark the entire partition deed dated 28.06.2005. After contest, the said application was dismissed on 18.03.2013. The petitioners have not challenged the said order and the said order has become final. In the circumstances, the petitioners are not entitled to seek very same relief in the present suit and prayed for dismissal of the application.

4.The learned Judge, considering the order dated 18.03.2013, dismissing I.A.No.222 of 2013, filed by the petitioners for the very same relief in O.S.No.372 of 2005 whereby petitioner sought to mark insufficiently stamped and unregistered document, dismissed the application.

5. Against the said order dated 05.03.2014, made in I.A.No.63 of 2014 in O.S.No.245 of 2005, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

7. From the materials available on record, it is seen that the document now sought to be marked is a partition deed. It is not a record of earlier oral partition or family arrangement. In view of the fact that the document sought to be marked is a partition deed, it must be stamped and compulsorily registered. In the present case, the document is insufficiently stamped and unregistered. It is well settled that insufficiently stamped and unregistered document cannot be admitted even for collateral purposes. In the present case, the petitioners are seeking to mark document to prove partition and it is not for the collateral purpose. In addition to these facts, the petitioners have filed O.S.No.372 of 2005 for partition against the respondent. In the said suit, they filed I.A.No.222 of 2013 for the very same relief. The said I.A was dismissed and the same has become final, as the petitioners have not challenged the

same. In view of the above facts, this Civil Revision Petition is devoid of merits and is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
gsa

To

The District Munsif,
Jayankondam

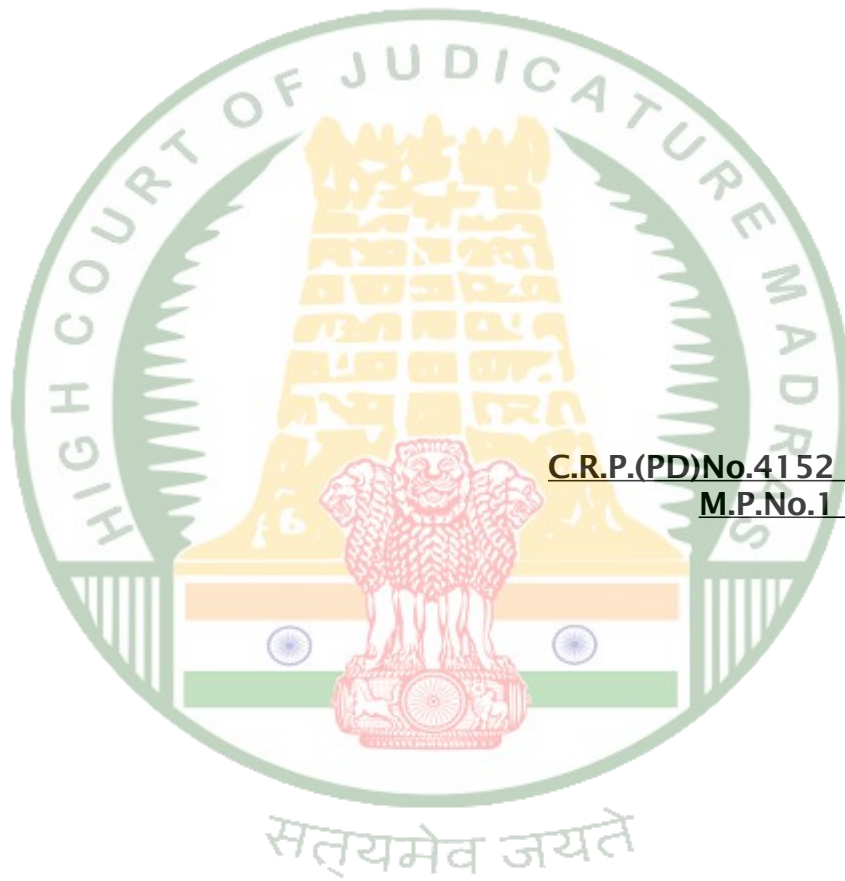
20.11.2017



WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD)No.4152 of 2014
M.P.No.1 of 2014

WEB COPY

20.11.2017