



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2017

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) No.1798 of 2016

and

CMP (MD) No.8671 of 2016

1) N. Karunanithi
2) Chinnammal
3) A. Pichan
4) Minor Sarasu
(Minor 4th petitioner represented by her
Father 3rd petitioner) ... Petitioners

vs.

1) K. Thothan
2) K. Chinna Kaathan
3) A. Vadivel ... Respondents

Petition filed under Article 227 of the Constitution of India, against the order dated 18.04.2016 passed in I.A.No.555/2013 in O.S.No.557/2008 by the Principal District Munsif Court, Dindigul.

For Petitioners : Mr.S.Anand Chandrasekar
For Respondents : Mr.R.Nandakumar

ORDER

This revision petition is directed against the dismissal of application filed under Order 13 Rule 3 CPC to reject Ex.B7 which was admitted in evidence by the Trial Court.

2.The contention of the revision petitioner is that the said Ex.B7 is a photocopy of the alleged partition among the family members which is unstamped and unregistered. So, it cannot be admissible in evidence for the following reasons:-

i) Being a secondary evidence, it cannot be admitted in evidence without the leave of the Court.

ii) Being an unstamped document, it ought to have been impounded before proceeding further.



iii) Being an unregistered document, it cannot be looked into for any purpose.

3. However, the learned counsel for the respondents submits that it is a document reflecting a family arrangement which requires no registration or stamp. In so far as the original of the said document is concerned, it is not in possession of the defendants. Notice to produce the original was served to the plaintiffs, but the plaintiffs failed to produce the original. Hence, the secondary evidence namely, photocopy of the family arrangement was marked as Ex.B7.

4. This Court on scrutiny of Ex.B7 captioned as 'partition agreement', finds that apart from sharing the immovable properties among the members, there is also certain recitals which refer to about the standing trees and exchange of money among the parties to the document and they have considered the said document as a receipt for the payment.

5. The Trial Court has also observed that the said document not only a photocopy of the original, but it is not reduced into writing on a stamp paper and not duly registered and therefore, hit by Sections 17 and 49 of the Indian Registration Act. Having observed so, the Trial Court ought to have preliminarily gone into the admissibility of the said document and if it has found fit to admit the same, necessary procedure contemplated under the Indian Stamp Act, ought to have been followed. Instead, the Trial Court has reserved its finding about the admissibility and relevancy of the said document which has to be decided while disposing the suit. While observing so, the Trial Court has referred to the judgment of the Hon'ble Supreme Court in **Bipin Shantilal Panchal vs. State of Gujarat and another**, reported in **2001 (3) SCC 1**.

6. This Court finds no error on the part of the Trial Court in referring that judgment, but while doing so, the Trial Court has failed to quote the observation of the Supreme Court which states that the guidelines given in the said judgment do not apply to the objections relating to deficiency of stamp duty.

7. It is a specific mandate of the Hon'ble Apex Court in the said judgment that in case of objection relating to deficiency of stamp duty, the Court before proceeding further, has to decide upon the said objection. Therefore, any objection regarding stamp duty is exempted from the guidelines given in **Bipin Shantilal Panchal's** case (supra).

8. Here is a case, where there is an objection regarding stamp duty. Therefore, the Trial Court is directed to consider the objection on the stamp duty at the first instance and then proceed further.



With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court,
Dindigul.

+1cc to Mr.R.Nandakumar, Advocate Sr.No.17966

NBJ

VB/JC/SAR3/12.04.2017/3P/3C

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