

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.S. RAMESH

C.R.P.(PD).No.287 of 2015

and

M.P.No.1 of 2015

Krishnan

..Petitioner

-Vs-

Subbarayan (Died)

1. Muniyandi
2. Arumugam
3. Jayalakshmi
4. Sakunthala

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the impugned order passed in I.A.No.1129 of 2014 in O.S.No.377 of 2008 dated 18.09.2014 on the file of the learned District Munsif Court, Maduranthakam.

For Petitioner : Mr.S.Udayakumar

For Respondents : No appearance - R1 to R4

ORDER

This Civil Revision Petition has been filed to set aside the impugned order passed in I.A.No.1129 of 2014 in O.S.No.377 of 2008 dated 18.09.2014 on

the file of the learned District Munsif Court, Maduranthakam.

2. Heard Mr.S.Udayakumar, learned Counsel appearing for the petitioner.

3. When the matter was listed on 20.08.2018 and 03.09.2018, there was no representation for the respondents. Today(12.12.2018), though the name of the respondent was printed in the cause list, none appeared on their behalf.

4. The challenge in the present revision petition is against the order of the trial Court, rejecting the petitioner's application for receiving the stamp duty with penalty and for marking an unregistered sale deed for collateral purpose. The reason assigned by the Court below for rejecting the application is that the document which is sought to be marked is an unregistered document. Under the Registration Act, when such a document creates a right or title, it is compulsory to register the same.

5. By relying upon the judgment of this Court reported in 2008 (2) CTC 11 and 2014 (1) TLNJ, the trial Court had observed that the unregistered documents cannot be marked even for collateral purpose. The legal position of

this issue has been well laid down through various decisions of the Hon'ble Apex Court and in one such judgment reported in 2008 (8) SC 564 the principles laid down in this regard is that, though the unregistered documents are not admissible under Section 49 of Registration Act, the same can be used as an evidence for collateral purpose in view of the proviso under Section 45 of the Registration Act.

6. The learned counsel for the petitioner submits that he intends to introduce the unregistered document for the purpose of proving his possession alone. The present suit is for declaration of the plaintiff's title and consequential permanent injunction. For the purpose of proving the possession alone, it cannot be said that this unregistered document is relied upon for the purpose of creating, declaring, assigning, limiting or extinguishing his right through the suit property. To prove the possession over the suit property it can be permitted for a collateral purpose and as such by applying the ratio laid down in various decisions of the Hon'ble Apex Court, which has been culled down in the decision reported in 2008 (8) SCC 564, it can be used as an evidence for collateral purpose.

7. The trial court had relied upon two decisions of this Court for the purpose of rejecting the petitioner's application. In the decision reported in

2008 (2) CTC 11, the document that was sought to be marked was an unstamped document and as such this Court had held that the unstamped document cannot be looked into even for collateral purpose. As such, the ratio laid down therein cannot be applicable to the present case. Likewise, in a decision reported in 2014 (1) TNLJ 234, the ratio laid down was that an unregistered document in a partition suit will create or extinguish the right and therefore, such unregistered document is inadmissible in evidence. Here again, the findings in the above citation may not be relevant to the present case, since the petitioner intends to mark this unregistered sale deed only for the purpose of establishing his claim of possession, which cannot be said to extinguish or create her right or title over the suit property. As such the order of the trial Court, rejecting the petitioners application may not be appropriate

8. In the light of the observations, the order passed in I.A.No.1129 of 2014 in O.S.No.377 of 2008 dated 18.09.2014 on the file of the learned District Munsif Court, Maduranthakam, is set aside. Consequently, the learned District Munsif is called upon to take up the application in I.A.No.1129 of 2014 in O.S.No.377 of 2008 and pass appropriate orders, enabling the petitioner to mark the unregistered sale deed, after receiving the stamp duty penalty.

9. Accordingly, the Civil Revision Petition stands allowed in the above observations. No costs. Consequently, the connected miscellaneous petition is also closed.

12.12.2018

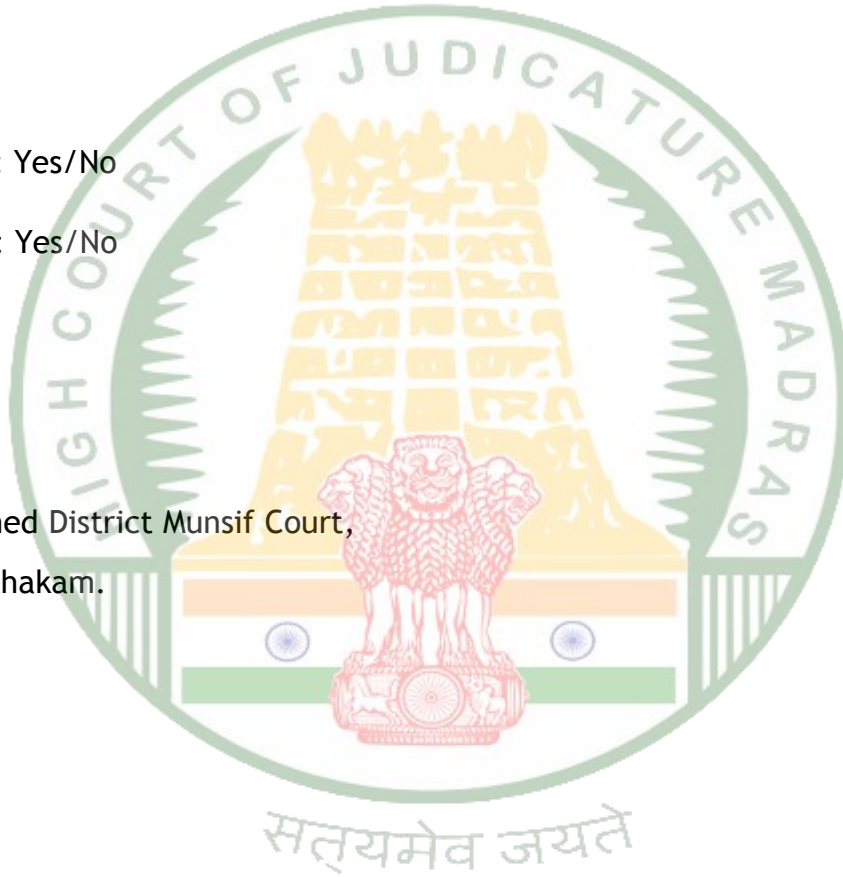
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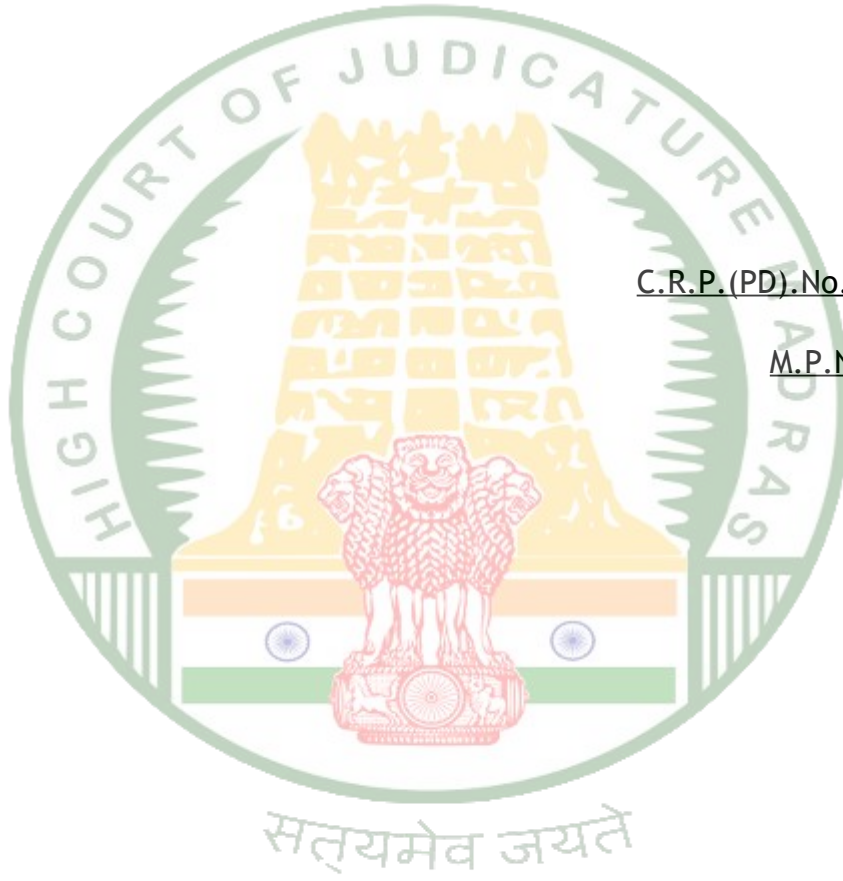
The learned District Munsif Court,
Maduranthakam.



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M.S.RAMESH,J.

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