

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.709 of 2018
and CMP.No.3685 of 2018

Abdul Aleem

.. Petitioner

Vs

K.S.Ameer Hamsa,
S/o.K.M.Sulthan Ibraheem,
Rep by Power Agent
Wahidha Banu,
W/o.K.S.Ameer Hamsa,
199, 3rd Street, Filomina Nagar,
Nanjikottai Road,
Thanjavur Taluk and District.

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of Additional District and Sessions Court (Fast Track Mahila Court), Tiruvarur dated 02.11.2017 made in IA.No.3 of 2017 in OS.No.1 of 2017.

For Petitioner

: Mr.S.Sounthar

ORDER

According to the revision petitioner, the respondent herein has filed a suit in OS.No.1 of 2017 for partition against the revision petitioner and others. In the aforesaid suit, the revision petitioner / the first defendant has filed an application under Order 7 Rule 11 of the Civil Procedure Code to reject the plaint on the ground the power deed allegedly executed by the respondent / plaintiff in favour of his power agent in a foreign country has been not adjudicated in India as required by law. Without appreciating the aforesaid contention of the revision petitioner, the court below has dismissed the said application. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the said application has been filed under Order 7 Rule 11 (d) of the Civil Procedure Code, wherein there is a specific bar under Section 32 (3) (b) of the Indian Stamp Act. Without satisfying the aforesaid requirements, the respondent has filed the suit on the basis of alleged power deed under Indian Stamp Act. Therefore, it is barred under

Section 32 (3) (b) of the Indian Stamp Act.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. On perusing the record, the said suit has been filed on the basis of power deed executed by the Principal / plaintiff. The said power has been entertained under Order 3 Rules (i) and (ii) of the Civil Procedure Code. In the light of the above provisions, the court below has entertained the suit by accepting the power deed executed by the plaintiff / Principal. Further, the provisions under the Civil Procedure Code has recognised the agents and Principals. Hence, the issue is a mixed question of law and therefore, the contention raised by the revision petitioner has to be considered at the time of trial in the suit along with the other issues. At this stage, it cannot be decided by this Court. However, it is made clear that the revision petitioner can raise all these objections at the time of trial in the suit along with the other issues framed by the court below. Hence, this Court is not inclined to interfere with the orders passed by the court below. In the interest of justice, the present Civil Revision Petition is liable to be dismissed.

5. The Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

27.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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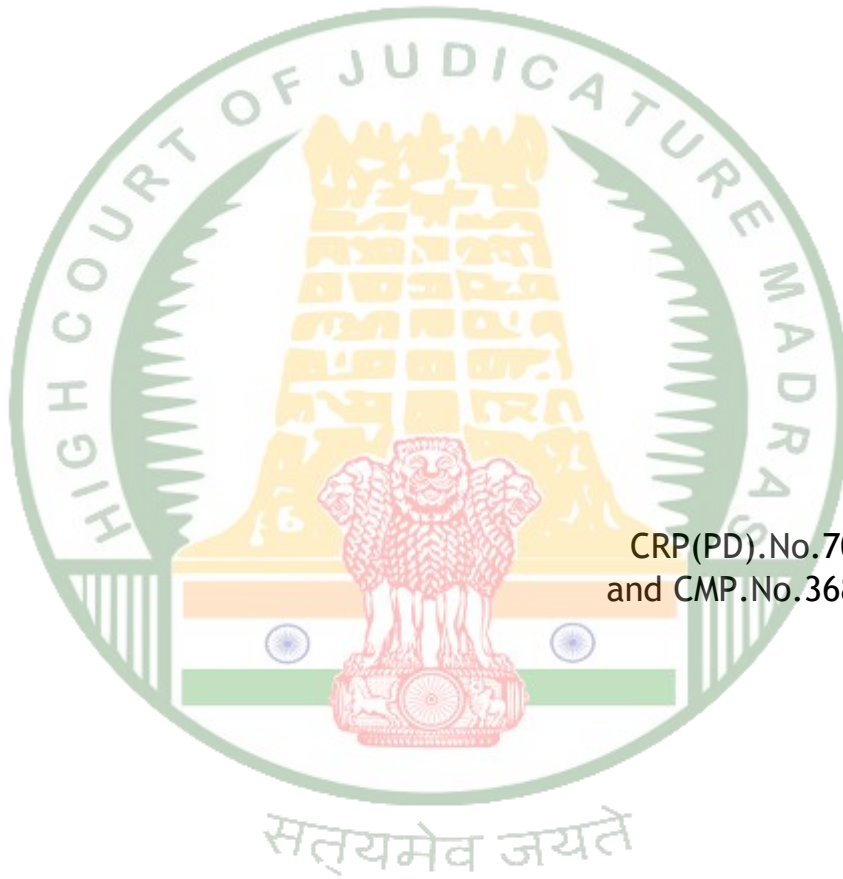
The Additional District and Sessions Court
(Fast Track Mahila Court),
Tiruvarur



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D. KRISHNAKUMAR J.,

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