



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P (PD) (MD) No.1808 of 2016

A.Arumugam

.. Petitioner/1st respondent/
1st Defendant

vs.

1. Mari

.. 1st respondent/Petitioner/
Plaintiff

2. A.Ganapathy

3. A.Vignesh

.. Respondents 2 & 3/
Respondents 2 & 3/
Defendants 2 & 3

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.07.2016 in I.A.No.133 of 2016 in O.S.No.37 of 2006 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent No.1 : Mr.T.Ramanathan

For Respondent Nos.2 & 3 : Given up

ORDER

The first respondent herein filed O.S.No.37 of 2006 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham for directing the defendants to execute a conveyance deed transferring the suit schedule properties in his favour, as per the conditional sale deed dated 13.10.2002. When the plaintiff wanted to mark the said document dated 13.10.2002, the defendants raised objections. Therefore I.A.No.133 of 2016 came to be filed for marking the said document. The Court below allowed the said IA by observing that the true character of the document can be ascertained only in the main suit. This order, dated 22.07.2016 allowing I.A.No.133 of 2016 is questioned in this civil revision petition at the instance of the first defendant.

2. Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The learned counsel for the first respondent wanted this Court to sustain the impugned order. He pointed out that the issue raised by the revision petitioner herein can be very well taken in



the main suit itself. In any event, the document in question may be received in evidence for collateral purpose. He drew the attention of this Court to the proviso to Section 49 of the Registration Act. He placed reliance on the decisions reported in **2010 (3) CTC 761** and **2017 92) MWI Civil 165**. The proposition laid down in the said decisions is that the formal admissibility of document and evidentiary value of document should be considered by the trial court at the time of deciding the main suit and not at the time of marking document.

4. This Court is unable to agree with the contentions raised by the learned counsel for the respondent. As rightly pointed out by the learned counsel for the revision petitioner, the plaintiff and the first defendant are brothers. The plaintiff claims that he has a pre-existing share in the suit property to the extent of half share. According to him, by virtue of the document in question, he had acquired $\frac{1}{4}$ th share more. In para 12 of the plaint, the plaintiff had categorically averred that by virtue of the conditional sale, he got this $\frac{1}{4}$ th share. Thus, the plaintiff had come out with a categorical case that the immovable property had been conveyed in his favour by virtue of the document dated 13.10.2002. Therefore, such a document clearly requires registration.

5. The Hon'ble Supreme Court in the decision reported in **2014 (1) LW 78** held that the issue as to the admissibility of document would depend upon the recitals of the documents. I went through the contents of the document dated 13.10.2002, relied upon by the plaintiff and there cannot be any doubt that the said document purports to transfer the rights in the immovable property, namely, the suit schedule in favour of the plaintiff to the extent of $\frac{1}{4}$ th share. Hence, in terms of Section 17 of the Registration Act, such document requires registration. In the present case, the document in question is not only not registered but also insufficiently stamped. If the issue is only with regard to the payment of deficit stamp duty then invoking Section 35 of the Stamp Act, the document can be received in evidence subject to payment of the stamp duty together with penalty. But in this case, the problem is not insufficient stamp duty alone. The problem is non-registration of document. This cannot be cured. Therefore, this Court is of the view that in the guise of collateral purpose, such a document cannot be allowed to be marked. The first defendant has not stated what is the collateral purpose. Therefore looked at from any angle, the order impugned in this civil revision petition is not sustainable and it stands set aside. This Civil Revision Petition is allowed accordingly. No Costs.

Sd/-

Assistant Registrar (CO)



1. The District Munsif-cum-Judicial Magistrate,
Natham.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.H.LAKSHMI SHANKAR, ADVOCATE IN SR No. 79025
+ 1 CC TO Mr.T.RAMANATHAN, ADVOCATE IN SR No. 78683

PJL

TE/RSK/SAR-3 : 19/09/2018 : 3P/6C

C.R.P. (PD) (MD) No.1808 of 2016
14.08.2018