



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.686 of 2016 (PD)
and
CMP(MD)No.3222 of 2016

Thirumalaiammal

...Petitioner/Respondent/Plaintiff
Vs.

Muthaiya Karaiyalar

... Respondent/Petitioner/Defendant

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India as against the fair and decreetal order dated 19.02.2016 passed in I.A.No.1408 of 2015 in O.S.No.539 of 2012 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioner : Mr.D.Nallathambi

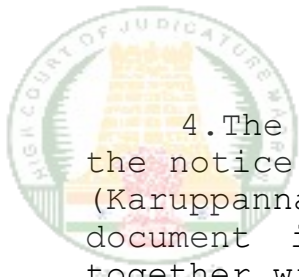
For Respondent : Mr.T.S.Mohamed Mohideen

ORDER

The revision petitioner is the plaintiff. She filed OS No.539 of 2012 before the Principal District Munsif, Tenkasi seeking the relief of declaration and permanent injunction. The respondent herein is the defendant in the said suit. The respondent filed IA No.1408 of 2018 under Order 8 Rule 1 A(3) of Civil Procedure Code. The respondent wanted 8 documents to be received in evidence and sought the leave of the court below. Because, he did not produce the same at the time of filing the written statement. The objection of the revision petitioner was with regard to the first document, namely, an Yadast dated 27.09.1993. The contention of the revision petitioner was that the said document was neither registered nor stamped. But, the court below by the impugned order dated 19.02.2016 allowed the said I.A on the ground that even an unstamped document can be received in evidence for collateral purposes. The said order is under challenge in this Civil Revision Petition.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the revision petitioner pointed out that even if such a document can be received in evidence for collateral purposes, still the statutory mandate enshrined in Section 35 of the Indian Stamp Act, 1899 will have to come in mind.



4.The learned counsel for the revision petitioner brought to the notice of this Court the decision reported in (2006) 4 M.L.J 706 (Karuppannan vs. Thavasiappan and another) which had held that the document in question can be marked if the deficit stamp duty together with penalty is remitted.

WEB COPY

5.This Court is in full agreement with the aforesaid submission of the learned counsel for the revision petitioner. This Court even while sustaining the order impugned in this Civil Revision Petition makes it clear that the same is subject to Section 35 of the Indian Stamp Act, 1899. In other words, the respondent shall be called upon to remit the necessary stamp duty with which the instrument is chargeable together with penalty. Only thereafter, it can be received in evidence.

6.With this direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal District Munsif Judge,
Tenkasi.

+1CC TO MR.D.NALLA THAMBI, ADVOCATE IN SR.NO.77528.

+1CC TO MR.T.S.MOHAMMED MOHIDEEN, ADVOCATE IN SR.NO.77355.

SKM

DS RSK SAR-3 09.10.2018 2P/4C

CRP (MD)No.686 of 2016 (PD)

and

CMP (MD)No.3222 of 2016

06.08.2018