IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.04.2019

DELIVERED ON: 24. 04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP PD No.3866 of 2013 and
MP No.1 of 2013

1. Padma
2. Sumathi
3. Sundari ... Petitioners

Vs.

1. Sagunthala
2. Janaki (died)
3. Geetha
4. J.prabakaran
5. J.Suresh

R3 to R5 brought on record as LRs of the deceased R2 vide order dated 14.03.2019 made in CMP No.6408 of 2019 in CRP No.3866 of 2013

... Respondents

Prayer Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 20.12.2011 passed in I.A.No.1114 of 2009 in O.S.No.244 of 2006 by the District Munsif, Thiruvallur.

For Revision Petitioners : Mr.K.Balaji

For respondent No. 1 : Mr.A.Palaniappan

ORDER

This revision petition has been filed against the order of the trial court, dismissing the application, filed to send the document i.e. Koorchit dated 20.01.1971 to the Revenue Divisional Officer, Thiruvallur for impounding of stamp duty and penalty.

2. The petitioners are the defendants in the original suit in O.S.No.244 of 2006 and the plaintiffs have filed the said suit for partition of the suit properties. The defendants have filed an application in I.A.No.1586 of 2006 to receive the unregistered partition deed i.e. Koorchit dated 20.01.1971 as exhibit. That petition was allowed by the trial court on 11.12.2006 and the said Koorchit was marked as Ex.B3. The said order was challenged before this court in CRP No.179 of 2007 and the same was allowed on 23.07.2009 by citing various judgments of the Apex court as well as of this court and remitted back the matter to the trial court for fresh consideration. At

this stage, the defendants have filed an another application in I.A.No.1114 of 2009 before the trial court stating that the High Court in its order held that the document dated 20.01.1971 can be received in evidence, on payment of stamp duty and hence, the Koorchit dated 20.01.1971 may be received for sending the same to the Revenue Divisional Officer for collection of stamp duty and penalty. The trial court dismissed the application by holding that no such reliance is referred in the CRP No.179 of 2007, as stated by the petitioners. Against which, this revision petition has been filed.

3. It is to be noted that, when the instrument has not been duly stamped, as per Section 33 of the Indian Stamp Act, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion with duty, is produced, and not properly stamped, such authority has no option except to impound the same.

4. Section 33A of the Stamp Act gives the powers to authority enable them to recover deficit stamp duty, after registration of any instrument.

5. Section 35 of the Stamp Act deals with inadmissible of document which was not duly stamped. However, except the documents referred under clause (a) of Section 35 of the Stamp Act admitted in evidence and such document can be admissible in evidence on payment of the duty with which the same is chargeable or in case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees or with 10 times the amount of the proper duty.

6. Though unstamped documents required to be impounded, as per Section 33 of the Stamp Act, except four categories of the documents mentioned in Section 35(A) of the Stamp Act, the other documents can be admitted in evidence on payment of duty.

7. But the fact remains that the document sought to be marked is only Koorchit and the same is placed before this court. On perusal of Koorchit, it reveals that, it is nothing but partition in presenti, dividing all the suit properties. Since the document in presenti creates a right or extinguish right regarding the division of the properties, it is certainly required for registration under Section 17 of the Registration Act. The only exception to admit the document in evidence, in respect of immovable property is that, the same can be used for any collateral transaction, not required to be registered.

8. Whereas, the pleadings of both parties and the Koorchit clearly indicated that the defendants, in fact, have relied upon the document only to show that partition has already taken place in respect of the immovable property. Such being the position, I am of the view that the above document cannot be used for any other purpose in respect of immovable property. Therefore, referring the above document to impound and collection of the stamp duty and penalty, does not serve any purpose and the petition has been filed only to delay the civil proceedings.

9. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The Order of the trial court is confirmed.

24.04.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

To

The District Munsif, Thiruvallur.

N.SATHISH KUMAR. J.,
mst

Pre-delivery Order
CRP PD No.3866 of 2013 and
MP No.1 of 2013

24.04.2019