

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.4834 of 2013
and M.P.No. 1 of 2013

1. Gopal

2. Deivanathan

... Petitioners

Vs.

1. Ramasamy Mudaliar

2. Jothilakshmi

3. Santhalakshmi

... Respondents

(Name of R3 is amended as Santhalakshmi in view of the order made in C.M.P.No.23425 of 2018 in C.R.P.(PD) No.4834 of 2013 dated 04.01.2019 (AQJ)).

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.11.2012 made in I.A.No.549 of 2012 in O.S.No.444 of 2006 on the file of the District Munsif, Kancheepuram.

For Petitioners : Mr.M.S.Subramanian

For Respondents : No appearance

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ORDER

The instant Civil Revision Petition has been filed as against the order passed by the District Munsif, Kancheepuram, dated 06.11.2012 made in I.A.No.549 of 2012 in O.S.No.444 of 2006 filed to condone the delay to receive the documents and marking of exhibits.

2. The trial Court has allowed the application and the respondents/petitioners herein have objected for marking the document as it has to be compulsorily registered. The trial Court however, held that the document is only a memorandum of partition reduced into writing which does not need any stamp duty or registration and marked the same as Ex.B1, against which, the present revision is filed.

3. The suit has been filed by the plaintiff for partition and separate possession. It is the contention of the defendants that the suit properties were divided tentatively on 11.06.2001. During the pendency of trial, an application has been filed to mark the document viz., partition deed as exhibit and the same has been marked on 11.06.2001.

4. The learned counsel appearing for the revision petitioners submitted that the document marked as Ex.B1 is inadmissible in evidence. It is a partition deed creating right in *praesenti* and such a document has to be compulsory registered under Section 17 of the Indian Registration Act. Hence, this document cannot be received in evidence. Therefore, he submitted that the trial Court has ignored the objections and received the above document and marked as Ex.B1. He further submitted that such an order of the trial Court is not in accordance with law.

5. Despite the names of the respondents having been printed, none appear for them. The certified copy of Ex.B1 has also been produced before this Court and on a perusal of the same, it clearly indicates that the properties have been divided on 11.06.2001 itself. The document dividing the property, created intent on the same day, requires compulsory registration and there is no doubt in it. Such a document is clearly hit by Section 17 of the Indian Registration Act. Therefore, the observation of the trial Court that the document is only a memorandum of partition deed is without any basis.

6. In this regard, in the case of *A.Raja Bhoopathi (Died) 1.R.Ransirani and others Vs. A.Vivekanandan* reported in 2017 (3) CTC 163, this Court relying upon the judgment of the Hon'ble Supreme Court, has held that unstamped partition deed cannot be used for any purpose. In this context, the observations of the Hon'ble Supreme Court in *Avinash Kumar Vs. Vijay Krishna Mishra* reported in 2008 (6) CTC 516, would be relevant and the same reads as follows:-

“8. In this regard, a reference may be made to the judgment of the Supreme Court in Avinash Kumar V. Vijay Krishna Mishra, 2009 (2) SCC 532. Referring to the concerned provisions of the Indian Stamp Act, their Lordships of the Supreme Court held in categorical terms that though a document, which is inadmissible for non-registration under Section 49 of the Registration Act, when it is sought to be used for the purposes mentioned in the proviso to the said Section, the Proviso will not include the applicability of Section 33 & 35 of the Indian Stamp Act, 1899. Their Lordships of the Supreme Court were of the view that the bar under Section 49 is on a different footing, which will not overlap or nullify the provisions of the Indian Stamp Act, regarding impounding of documents. Referring to the earlier judgment of the Privy Council in Ram Ratan V. Parma Nand, AIR 1946 Privy Council 51, the Supreme Court held that the words

“for any purpose” found in Section 35 of the Indian Stamp Act, 1899 should be given their natural meaning and effect and would include a collateral purpose and that an unstamped document (Partition Deed) in that case could not even the factum of Partition as distinct from its terms. The following were the observation made by the Privy Council in that case:-

“That the words 'for any purpose' in Section 35 of the Stamp Act, should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms”.

7. Ex.B1 is the memorandum of partition deed i.e. dividing the property and such a document requires compulsory registration. Marking of such unregistered document is inadmissible in evidence. In view of the observations made by the Hon'ble Supreme Court, the order of the trial Court dated 06.11.2012 made in I.A.No.549 of 2012 in O.S.No.444 of 2006 marking the partition deed as Ex.B1 is set aside and the trial Court is directed to dispose of the suit within a period of four (4) months from the date of receipt of a copy of this order.

N. SATHISH KUMAR, J.

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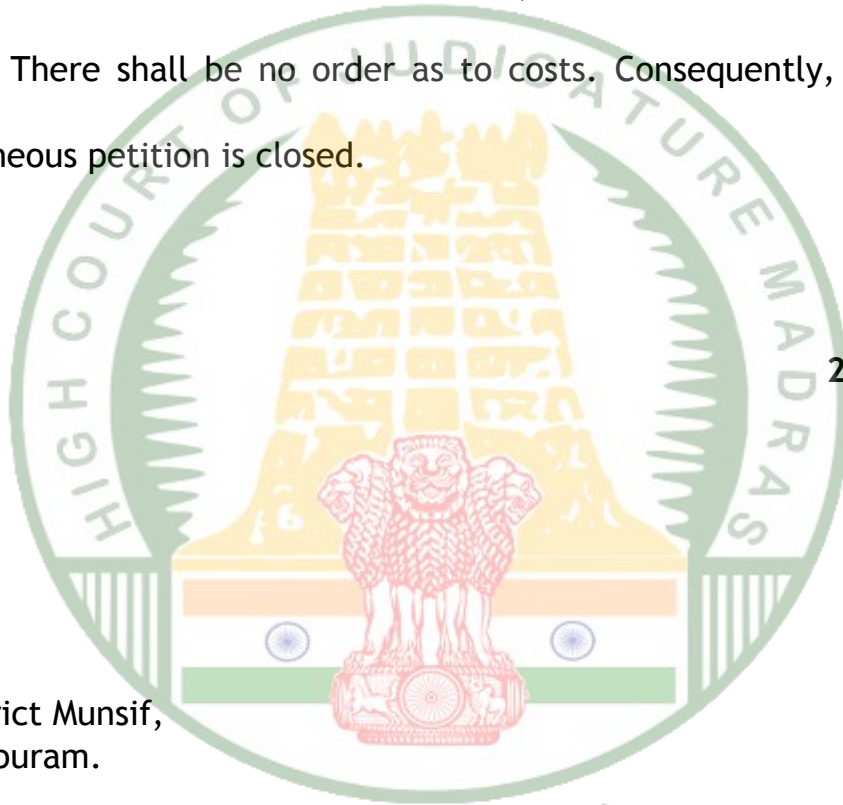
8. With the above directions, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.02.2019

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To

The District Munsif,
Kancheepuram.



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