

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 19.03.2019

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

C.R.P(PD).No.1026 of 2019

&

C.M.P.No.6771 of 2019

1.Sivakumar

2.Sevlakumar

3.Mrs.Sumithra

...Petitioners

Madhusudhan

... Respondent

Vs

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order and decretal order dated 06.07.2017 passed in I.A.No.540 of 2015 in O.S.No.4 of 2012 by the District Court No.II, Kancheepuram.

For Petitioner : Mr.S.Shanmugam

**ORDER**

The above Civil Revision Petition is filed challenging the order passed in I.A.No.540 of 2019 in O.S.No.4 of 2012 by the District Judge, Kancheepuram in eschewing the Ex.A.2. Koorchit dated 26.05.1985 on the ground that the same is not registered and therefore not admissible in evidence. The brief facts are as follows:

2.The plaintiff had filed a suit for partition and separate possession of their 1/4<sup>th</sup> share in the suit schedule property and to declare the sale deed dated 31.10.2011 as null and void. In the suit the plaintiffs have referred to the Koorchit 26.05.1985 stating that suppressing the Koorchit the suit schedule properties had been sold by the 2<sup>nd</sup> defendant to the 3<sup>rd</sup> defendant. During the chief examination, by proof affidavit the plaintiff had marked the said Koorchit. Thereafter, the application was filed by the defendants to expunge/remove the unregistered and unstamped Koorchit marked as Ex.A.2. The said application has been allowed and challenging the same the revision petitioners are

before this Court. It is an established principle of law that where a document which are compulsorily registrable under Section 7 of the Registration Act is inadmissible in evidence.

3.The bar on the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of the first proviso to Section 35 are complied with. It follows that if the requirements of the first proviso to Section 35 is satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence for collateral purpose.

4.This Court had an occasion to deal with a similar case, in the case of ***Navaneethammal and others Vs. Chockammal and others*** in ***C.R.P(PD)No.2901 of 2010*** dated ***31.10.2018***, where this Court has eschewed the document after relying upon the following Judgement:

*"The judgments **Bipin Shantilal Panchal Vs. State of Gujarat and Another** reported in **2001 3 SCC 1** lays down the procedure to be followed where*

*an objection is taken to the admissibility of any material or any item of oral evidence during the time of trial. The Honourable Supreme Court had held that if the objection was relating to the deficiency of stamp duty of the documents, then the Court should decide the objection before proceeding further."*

In the instant case also the document is being marked for the primary purpose and not the collateral purpose. The document is sought to be marked to show the partition. Therefore following the Judgement supra, I find no infirmity in the order passed by the learned District Judge, Kancheepuram in I.A.No.540 of 2015 in O.S.No.4 of 2012. The Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

सत्यमेव जयते

**19.03.2019**

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Index : Yes/No  
Speaking order/non-speaking order

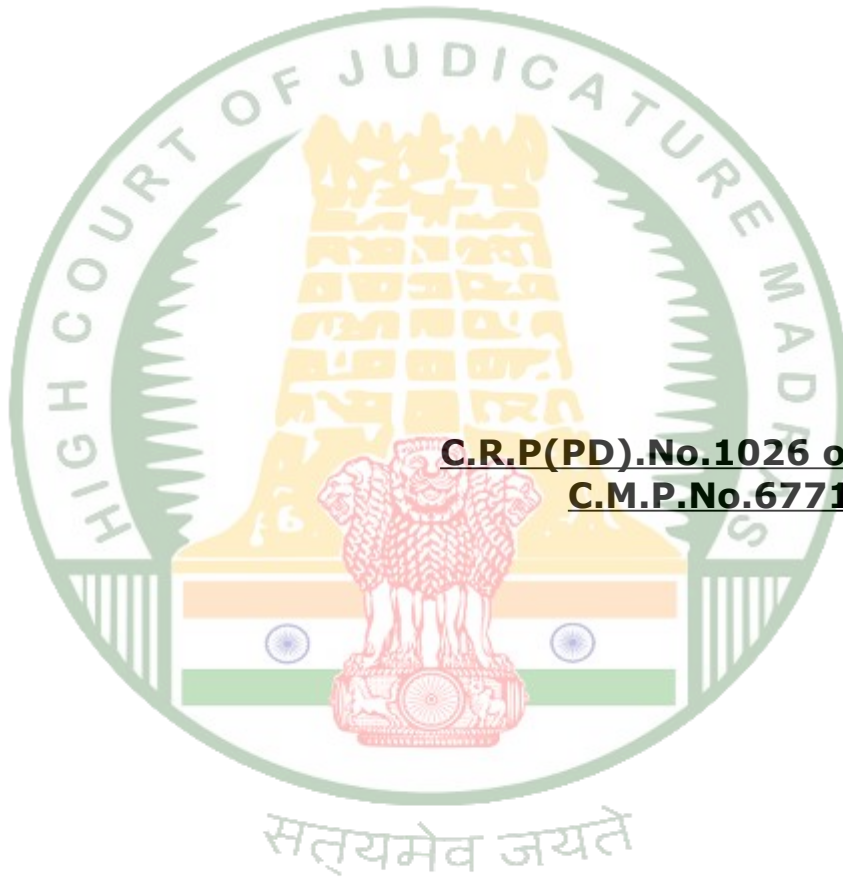
To,

1.The District Judge,  
Kancheepuram.

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**P.T.ASHA, J.,**

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