

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.2614 of 2015
and
M.P.No.1 of 2015

Natarajan

... Petitioner

Vs.

1.Deivanai

2.Jaya

3.The District Collector,
Kancheepuram District,
Madurantakam Taluk.

4.The Block Development Officer,
Madurantakam Panjayat Union,
Madurantakam.

5.The Village President,
Pilappur Village,
Madurantakam Taluk.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.08.2014 made in I.A.No.908 of 2014 in O.S.No.62 of 2011 on the file of the District Munsif Court, Madurantakam and allow the Revision.

For Petitioner : Mr.M.S.Subramanian

For Respondents : No appearance for R1 and R2
Mr.A.Dev Narendran,
Government Advocate (CS)
for R3 to R5

ORDER

This Civil Revision Petition has been filed by the Petitioner/Plaintiff against the dismissal of his Application in I.A.No.908 of 2014 in O.S.No.62 of 2011 on the file of the District Munsif, Madurantakam dated 19.08.2014.

2.The petitioner herein had filed a suit in O.S.No.62 of 2011 on the file of the District Munsif, Madurantakam for permanent injunction to restrain the defendants 3 to 5 therein from allotting the suit property either to the defendants 1 and 2 therein or to any other third party. During trial, the petitioner herein had filed an application in I.A.No.908 of 2014 under Order VII Rule 14 of CPC seeking permission of the Court to mark the plaint document No.1 as exhibit on his side. The learned District Munsif, Madurantakam by the order dated 19.08.2014 had dismissed the said application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3.Though, notice was served on the respondents 1 and 2/ defendants 1 and 2 and their names also printed in the cause list, they did not appear either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and the learned Government Advocate (CS) for Respondents 3 to 5, and perusing the materials filed along with this Civil Revision Petition, order is being passed.

4.Mr.M.S.Subramanian, the learned counsel for the petitioner/plaintiff has submitted that the petitioner had filed a suit in O.S.No.62 of 2011 on the file of the District Munsif, Madurantakam for the relief of permanent injunction to restrain the defendants 3 to 5 from allotting the suit property either to the defendants 1 and 2 therein or to any other 3rd party. He further submitted that, as per the partition which took place between the petitioner and his brothers, the suit property was allotted to the petitioner and to evident the same, subsequently a partition list was executed on 26.02.1982 and the petitioner/plaintiff had filed the said original partition list along with the plaint. He further submitted

that during trial, the petitioner herein had filed an application in I.A.No.908 of 2014 seeking permission of the Court to mark the said document as exhibit on his side, but, the learned District Munsif had dismissed the said application by holding that the said document is “insufficiently stamped and unregistered”. He further submitted that as per the Proviso (a) to Section 35 of the Indian Stamp Act, 1899, the Court can admit the said document in evidence after collecting penalty but, the learned District Munsif had erroneously rejected the requests of the petitioner. He further submitted that the petitioner is relying upon the said document to prove his possession and hence the said document need not be registered and it can be used for collateral purpose i.e to prove the possession and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif in I.A.No.908 of 2014 and allow the same.

5.Mr.A.Dev Narendran, the learned Government Advocate, who is appearing for the respondents 3 to 5 has submitted that since the real dispute is only between the petitioner and the respondents 1 and 2, he requests this Court to pass an appropriate order.

6. According to the petitioner, in an oral partition which took place in the year 1982 between himself and his brothers, the suit property was allotted to him and subsequently, to evident the same, on 26.02.1982, a partition list was prepared and in order to prove the partition, the petitioner wants to rely upon the said partition list dated 26.02.1982. The learned District Musnif had dismissed the application filed by the petitioner seeking permission of the Court to mark the said document on the ground that the said document is not admissible in evidence, as it was unstamped and unregistered.

7. At this juncture, it would be relevant to refer to Proviso (a) to Section 35 of the Indian Stamp Act, 1899, which reads thus:-

35. Instruments not duly stamped inadmissible in evidence, etc., No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that :-

(a) any such instrument shall be admitted in evidence on payment of the duty

with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;”

8.A bare reading of the aforesaid proviso shows that the Court can admit a document in evidence even if such document is unstamped or insufficiently stamped after collecting penalty except the documents which are mentioned in the said Proviso. But, in this case, without following the said procedure, the learned District Munsif had dismissed the application filed by the petitioner to receive the partition list in evidence.

9.In so far as registration is concerned, the Trial Court can decide the said issue in the final judgment in the suit by following the guidelines issued by a three Judge Bench of the Hon'ble Supreme Court in Bipin Shantilal Panchal Vs. State of Gujarat, AIR 2001 SC 1158 : (2001) 3 SCC 1.

10.In the result, the order passed by the Court below is set aside and the Civil Revision Petition is allowed. The Trial Court is directed to collect penalty by following the procedure prescribed under Proviso (a) to Section 35 of the Indian Stamp Act and mark the said document as exhibit, tentatively and decide the question as to admissibility of the said document in evidence in the final judgment in the main Suit. No costs. Consequently, connected Miscellaneous Petition is closed.

23.11.2020

Index :Yes/No
Internet : Yes/No
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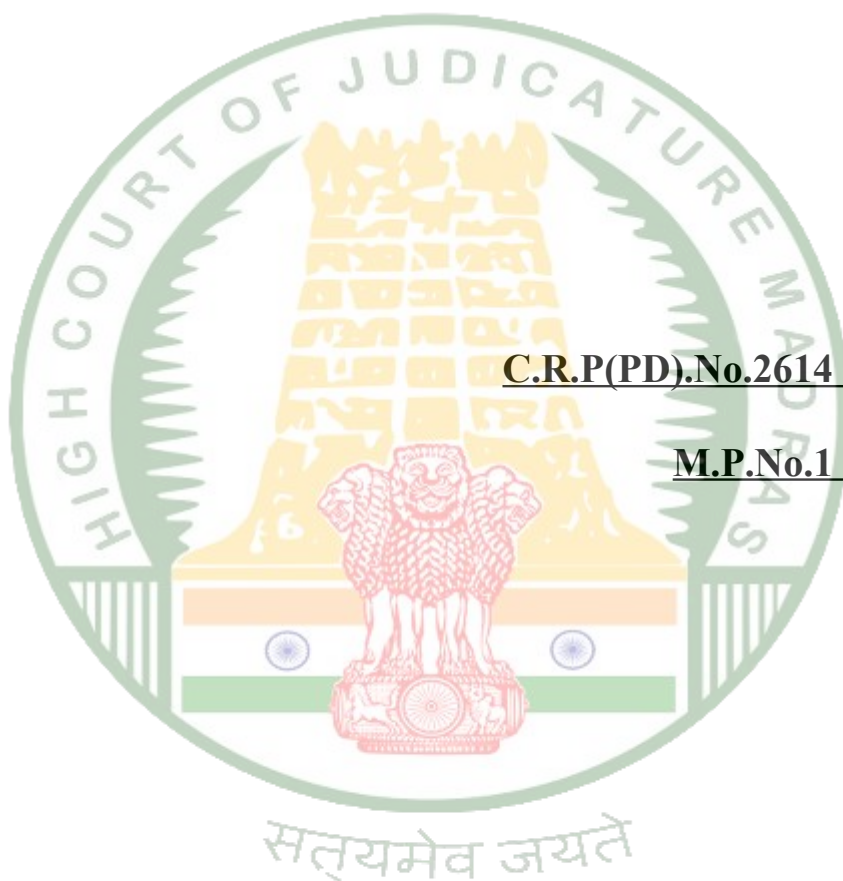
The District Munsif Court,
Madurantakam.

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