

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.11.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

**CRP (PD)No.1414 of 2016
and
CMP.No.7831 of 2016**

1.Indira
2.Revathi
3.Swaraswathi

... Petitioners/Defendants

vs

G.S.Bhuvaneswari

..Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree of the learned Subordinate Judge, Thiruvallur, dated 13.10.2015 made in I.A.No.51 of 2015 in O.S.No.80 of 2013.

For Petitioners

... Mr.K.R.B. Dhaaranee
for M/s.K.V.Babu

For Respondent

... Mr.K.Venkatasubba Raju

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants against the order passed by the learned Sub-Judge, Thiruvallur, in I.A.No.51 of 2015 in O.S.No.80 of 2013 dated 13.10.2015.

2. The petitioners herein had filed an application in I.A.No.51 of 2015 in O.S.No.80 of 2013 on the file of the Sub-Judge, Thiruvallur, under Order 8 Rule 3 of CPC requesting the court to receive certain documents and mark the same as exhibits on their side. The learned Sub-Judge by the order dated 13.10.2015 had partly allowed the said application and dismissed the said application in respect of the document No:2 namely unregistered release deed said to have been executed by the first respondent / plaintiff in favour of the petitioners/defendants dated 25.01.1997. Feeling aggrieved, the petitioners/defendants have filed the present Civil Revision Petition.

3. Heard Ms.K.R.B. Dhaaranee for Mr.K.V.Babu, learned counsel for the petitioners and Mr.K.Venkatasubba Raju, learned counsel for the respondent.

4. The learned counsel for the petitioners has submitted that the respondent/plaintiff had filed the suit in O.S.No.80 of 2015 on the file of the Sub-Judge, Thiruvallur, for the relief of partition. She further submitted that the petitioners herein had filed a written statement stating that the respondent had already executed an unregistered release deed in favour of the petitioners dated 25.01.1997 and hence, she is not entitled to ask any relief for partition in the suit property and hence, the petitioners had filed an application in I.A.No.51 of 2015 seeking permission of the trial court to receive the said document along with other documents and mark them as exhibits on their side. She further submitted that the trial court had allowed the said application in respect of other documents, however, it had dismissed the said application in respect of the said release deed on the ground that it was not properly stamped and also not registered. She further submitted that the said document is a vital document. Unless the said

document is received by the trial court and marked as exhibit, the petitioners cannot prove their case. She further submitted that even if the said document is not properly stamped and registered, it can be received as evidence to prove the possession (for collateral purpose), but the trial court without considering the said facts, had erroneously dismissed the said application in respect of the said document and therefore, she prayed to allow this Civil Revision Petition and set aside the order passed by the trial court in respect of the dismissal of the said application. With regard to the document No.2, and she prayed to allow the said application.

5. Per contra, the learned counsel for the respondent/plaintiff has submitted that since the said document has not been properly stamped and registered, it cannot be received and marked as exhibit and taking into consideration the said facts, the trial court had rightly dismissed the said application and in the said order, this court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

6. At this juncture, it would be relevant to refer to the decision in

Bipin Shanthilal Panchal Vs. State of Gujarat and Another, 2001 (1) SCC

I wherein three Judges Bench of the Hon'ble Supreme Court has held as follows:

“It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and

swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court

can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.”

7. From the aforesaid decision, it is clear that during the evidence taking stage, whenever an objection is raised regarding the admissibility of any document, the court can make a note of such objection and mark the objected document tentatively as exhibit subject to such objections to be decided at the last stage in the final judgment. However, if any objection is raised with regard to deficiency of stamp duty, the Court has to decide the same then and there. Hence, this Court is of the view that the trial court can be directed to receive the said document subject to payment of stamp duty with penalty as provided under Section 35 of the Indian Stamp Act. If the

petitioners paid the stamp duty with penalty, the trial court is directed to mark the said document as Exhibit tentatively subject to the objection raised by the opposite party with regard to the admissibility, relevancy and genuineness. Those questions have to be decided at the time of final disposal of the suit.

8. In the result, this Civil Revision Petition is allowed with the aforesaid directions. Consequently, connected miscellaneous petition is closed. No costs.

23.11.2020

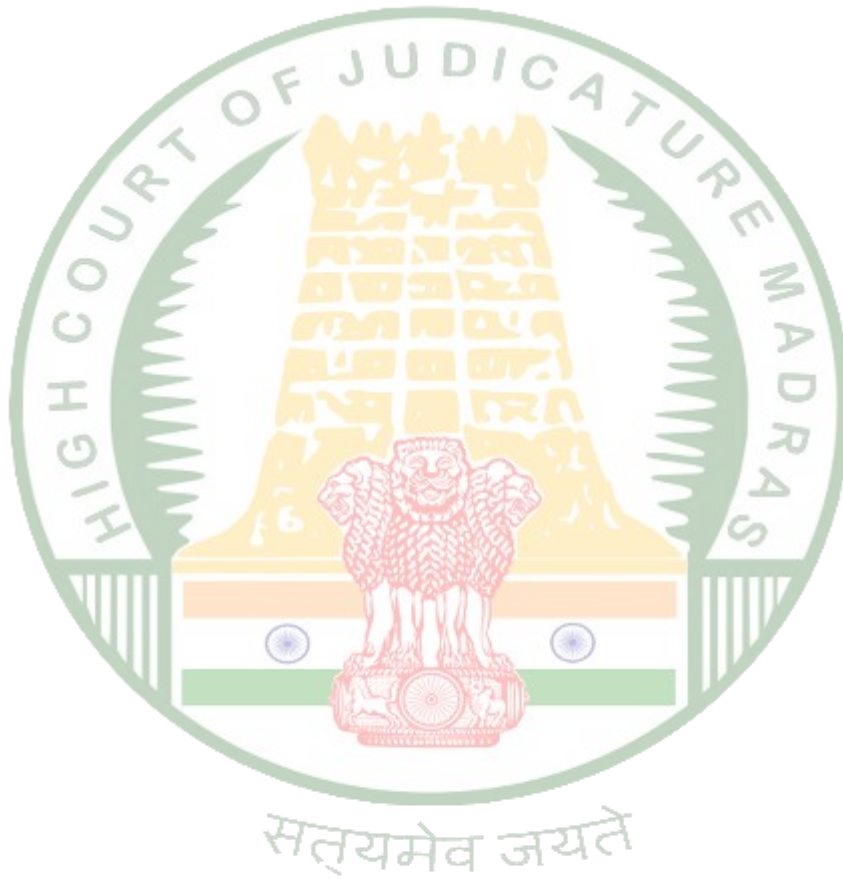
Index: Yes/No
Speaking/Non-speaking Order
gv

Note: Issue order copy on or before 08.12.2020

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To

The Subordinate Judge,
Thiruvallur.



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P. RAJAMANICKAM,J.

gv



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