

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CRP [PD] .No.433/2019 & CMP.No.2916/2019

[Video Conferencing]

Vijayakumar

Petitioner /
Defendant

Versus

1.K.Thilagavathi
2.V.Sivasamy
3.V.Ezhilarasu
4.V.Kothai
5.V.Mangai
6.V.Kasinath

Respondents /
Plaintiffs

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.11.2018 in IA.No.432/2018 in IA.No.159/2018 in OS.No.260/2017 on the file of the learned II Additional District Judge, Salem.

For Petitioner : Mr.V.Sekar
For Respondents : No appearance

ORDER

- (1) There is no appearance on behalf of the respondents. But, however, I am of the view that the Civil Revision Petition should be taken up for consideration since an order of interim stay has been granted when the revision petition came up for hearing in the first instance on 16.02.2019 and the interim stay continues till date, which effectively has prevented further progress of OS.No.260 of 2017 now pending on the file of the learned II Additional District Judge at Salem.
- (2) The names of the counsels for the respondents/plaintiffs are printed in the cause list. Heard the learned counsel appearing for the petitioner.
- (3) The suit in OS.No.260 of 2017 had been filed for partition and separate possession. The suit is pending. The revision petitioner herein is the defendant in the suit. The defendant has not yet filed written statement. However, the defendant appears to have filed an

application in IA.No.159 of 2018 seeking a direction to include further properties which according to the defendant, have also to be subjected to partition. That application, I understand, is still pending. In the meanwhile, the plaintiffs filed IA.No.432 of 2018 under Order VIII Rule 14[3] of the Code of Civil Procedure which should be Order VII Rule 14 of the Code of Civil Procedure, seeking to introduce four additional documents. The 1st document is a Koor Chit dated 09.06.1974 and it has been described as an original carbon copy. The 2nd and 3rd documents are Mortgage Deeds dated 24.10.1984 and 30.10.1989. The registration copies of such Mortgage Deeds had been produced. The 4th document are Property Tax Receipts for the period from 1996 to 2018 and the originals had been produced.

- (4) The learned Judge was invited to give a finding on the receipt of the said documents. In the order, now under revision dated 29.11.2018, the learned II Additional District Judge, Salem, had observed that documents 2, 3 and 4 may be received. With respect to the 1st document, the learned Judge had observed that it was an unstamped

document and therefore, was not admissible in evidence even for collateral purposes, but stated that it could be admissible if proper stamps are paid. Unfortunately, the learned Judge had not observed whether such stamps could be paid with respect to a document which is an original carbon copy and not an original document.

- (5) This is the issue which has agitated the mind of Mr.V.Sekar, learned counsel appearing for the petitioner, who stated that mere payment of stamps, whether by way of penalty or otherwise, cannot make an original carbon copy into an original copy and thereby, making it admissible in evidence.
- (6) The direction given to pay stamps is straight away set aside since it is a direction for payment of stamps on a carbon copy of a particular document.
- (7) However, the observation of the learned Judge, that the said document is inadmissible in evidence, requires to be revisited by the learned II Additional District Judge, Salem.
- (8) All the four documents can be received. But, they will remain in the Court bundle as unmarked documents. The issue of admissibility,

proof and relevancy can be addressed only when a witness grazes the witness box and produces them and seeks the permission of the learned Judge to mark the same, so that it can be considered during the time of analysing evidence. That stage has not yet come. As a matter of fact, the revision petitioner herein / defendant, has not even filed written statement. The plaint and the documents filed along with the plaint together form the pleadings of the plaintiff. In a written statement, the defendant can raise his objections with respect to not only the averments made in the plaint, but also with respect to the documents filed along with the plaint.

- (9) The revision petitioner herein / defendant has not chosen to file his written statement. That is an issue, regarding which I hesitate to enter into any discussion since it is the prerogative of the learned II Additional District Judge, Salem, before whom such written statement is to be filed and who has to take the said written statement on file.

- (10) Therefore, in view of the limited scope of the revision petition, the order of the learned Judge is **partially set aside with respect to the**

observations of the first document, viz., the koor chit dated 09.06.1974 is concerned.

(11) Let the original carbon copy of the said document be taken on record.

This will not imply that it is declared to be an admissible one. It will not imply that it has been proved in manner known to law. It will not imply that it is a relevant document. It would also not imply that it is a genuine document. These are all aspects which can be examined only when such document is produced for marking by a witness. The document has to first cross the stage of admissibility before other issues are examined. At that stage, the learned Judge may decide about its admissibility or otherwise. The revision petitioner herein will also have necessary opportunity to raise objections not only in his written statement but also when the document is produced to be marked as an exhibit.

(12) Therefore, I would direct the learned II Additional District Judge, Salem, to take the documents on record, keep them as unmarked documents, examine them at the relevant stage, viz., during the course of trial.

(13) With the above observations, the Civil Revision Petition stands partially allowed. No costs. **The direction to pay the stamps is specifically set aside.** Consequently, the connected miscellaneous petition is closed.

29.06.2021

AP

Internet : Yes

To

The II Additional District Judge
Salem.

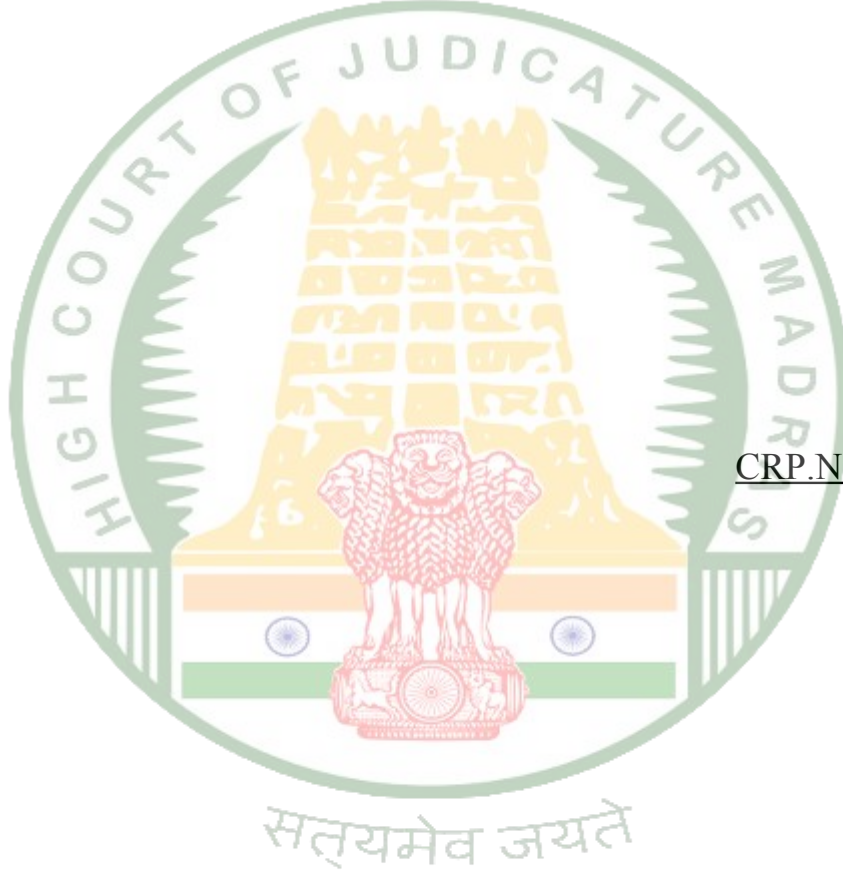


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C.V.KARTHIKEYAN, J.,

AP



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