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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.305/2019 & CMP.No.2263/2019

[Video Conferencing]

S.Mallika .. Petitioner

Vs.

Gowrammal .. Respondent

Prayer:- Civil Revision Petition filed under Section 115 CPC against the petition and order dated 26.11.2018 in IA.No.642/2017 in OS.No.30/2016 on the file of the learned District Munsif, Vaniyambadi.

For Petitioner	:	Mr.S.S.Raghavan
For Respondent	:	Mr.Uayakumar for M/s.Karan and Uday

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ORDER

(1) This Civil Revision Petition is directed against the order in IA.No.642/2017 in OS.No.30/2016 on the file of the learned District Munsif, Vaniyambadi.

(2) The revision petitioner is the 12th defendant in OS.No.30/2016. The respondent in the Civil Revision Petition is the plaintiff and she filed the suit in OS.No.30/2016 for a declaration that the judgment and decree passed in OS.No.138/2012 is null and void and for a declaration of plaintiff's title to the suit property with a consequential relief of permanent injunction.

(3) It is admitted that the revision petitioner/12th defendant has also filed an independent written statement.

(4) It is seen that an unregistered and unstamped document of partition was relied upon by the respondent/plaintiff to seek declaration. The alleged Partition Deed dated 13.12.1992 based on the unregistered and unstamped Partition Deed was pleaded by the respondent/plaintiff. However, the said document was marked as ExA1 by mistake, as contended by the revision petitioner. Hence,

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the revision petitioner/12th defendant filed IA.No.642/2017 to reject the unregistered Partition Deed dated 13.12.1992 marked as Ex.A1 as inadmissible in evidence.

(5) The Court below placed reliance upon Section 33 of the Indian Stamp Act and a few statutory provisions under the Transfer of Property Act and the Registration Act and held that mere marking of document will not amount to its admissibility and the admissibility can be decided later. It was further observed that whether the document can be relied upon for collateral purpose or not, need not be decided at that stage and that the same will be gone into at the time of final hearing of the suit. Therefore, the petition filed by the revision petitioner/12th defendant was closed. Aggrieved by the same, the revision petitioner/12th defendant has filed the present Civil Revision Petition.

(6) The learned counsel for the revision petitioner submitted that the suit filed by the respondent/plaintiff for declaration of title is based on the unregistered and unstamped Partition Deed dated 13.12.1992 and that the said document cannot be relied upon even

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for collateral purpose. The learned counsel then relied upon a decision of this Court in the case of ***S.Thirumalai V. S.Govindarajan*** reported in ***2016 [5] LW 834***, wherein this Court has held that an unregistered and unstamped Partition Deed cannot be looked into for any purpose.

(7) This Court, in the above cited decision, while considering the scope of admitting a similar document, has held in paragraphs No.19 and 20 as follows:-

> *"19.In the present case, the document Ex.B7 is not the original instrument for partition. The original instrument namely the unregistered and unstamped partition deed dated 07.04.1983 was marked as Ex.B1 in another suit in O.S.No.431 of 1976 on the file of the District Munsif Court, Thanjavur. The said suit was filed by one Kittappa against the appellant herein. The document Ex.B7 is only a certified copy namely Ex.B1 in O.s.No.431 of 1976. Even under Section 35 of the Indian Stamp Act, there can be validation only of the original when it is unstamped or insufficiently stamped. Hence, there is no scope for inclusion of a copy of a document as an*

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instrument for the purpose of the Stamp Act. The term ?instruments? in Section 36 is confined only to the original. Having regard to the provisions of Sections 35 and 36, no secondary evidence which is produced to prove the contents of the document, can be dealt with under Section 35 or Section 36. Hence, the document Ex.B7 filed in the present case by the defendant is neither admissible nor can be acted upon to prove the actual partition under Ex.B7. Having regard to the language of Section 33, 35 and 38, the Court is duty bound to impound the document once it is brought to the notice of the Court that the instrument is either unstamped or insufficiently stamped. Hence, when objection being raised, the Court is required to impound the document and decide as to the admissibility of the document even at that stage. In the present case, absolutely there is no judicial application of mind as to the requirement of Section 33 or Section 35 of the Act. There is no indication of any order passed by the Court admitting Ex.B7 in evidence. In such circumstances, the instrument Ex.B7 being original, absolutely there is no scope for relying upon Section

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36 of the Act in the present case.

20.Further, provisions to Section 35 are substantive whereas Section 36 are only procedure. There are two limbs for Section 35. The first limb is that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law authority to receive such instrument in evidence, if such instrument is not duly stamped. The second limb of Section 35 is that such unstamped instrument shall not be acted upon or authenticated by any such person who is the authority to receive any evidence. However, the instrument even if it is admitted in evidence cannot be acted upon by Court when the same is not duly stamped. Hence, considering the issue in all perspectives, I am of the view that the document Ex.B7 is inadmissible in evidence and the same cannot be acted upon or relied upon for any purpose. Since the instrument is also unregistered, the case of prior partition pleaded by defendants by metes and bounds cannot be accepted relying upon the document Ex.B7. The suggestion that the document can be looked into for

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the purpose of severance of status has no merit for obvious reasons flow from my conclusions in the previous paragraphs."

(8) Obviously, this Court is *prima facie* of the view that the document itself is relied upon only for the purpose to establish the respondent/plaintiff's title and therefore, it cannot be said that the document is produced or marked for the purpose of proving any collateral transaction. In view of the settled position that any objection regarding improper and insufficient stamp duty should be decided then and there, this Court is unable to sustain the order passed by the Court below in closing the application in IA.No.642/2017.

(9) The learned counsel for the plaintiff submitted that the application is not decided or dismissed on merits. The Lower Court has simply closed the application and stated that the objection regarding admissibility will be decided later. This Court has already held that the objection if any regarding admissibility for want of stamp duty and registration need not be postponed and it should be decided then and there. It is the duty of every Court while receiving a

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document in evidence to impound any document if it is not duly stamped. The order in IA.No.642/2017 is therefore liable to be set aside.

(10) Therefore, the Court below is directed to impound the document. In case, the respondent/plaintiff pays stamp duty and penalty, the same document can be admitted in evidence and thereafter, the document can be examined whether it can be looked into for any collateral purpose or not.

(11) With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2021

AP
Internet : Yes

To

The District Munsif
Vaniyambadi.

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S.S.SUNDAR, J.,

AP

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