

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2021

Date of Verdict : 17.02.2021

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No. 2346 of 2015

and

MP.No.1 of 2015

A.Ganesan

... Petitioner

Vs.

1. Vivekanand
2. V.Vignesh
3. V.Kasturi
T.Adimoolam (died)
4. Settu & Thirumurugan
5. A.Vanamayil
6. V.Vidhya
7. ICICI Bank Limited, Cuddalore,
represented by its
Branch Manager,
No.41, Imperial Road, G.A.B. Complex,
Opp: to Daily Thanthi Office,
Cuddalore – 2, Cuddalore Taluk,
Cuddalore District.

8. ICICI Bank Limited,
by its General Manager,
Chennai CMR,
1st Floor, 2000/1 R.H. Road,
Mylapore, Chennai.

9. The Muthavalli,
Larabsha Durga,
Larabsha Durga Premises,
Panruti, Panruti Taluk,
Cuddalore District.

[Respondents 4 to 9 are not necessary parties to this petition]

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order dated 10.04.2015 and passed in I.A.No.142 of 2013 in O.S.No.47 of 2005 on the file of the I Additional District and Sessions Judge of Cuddalore.

For Petitioner : Mr.R.Gururaj

For Respondents : Mr.T.S.Kanmani (for R1 to R3)

: No Appearance (for R6)

: Given up (for R4, R5 & R7 to R9)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order in I.A.No.142 of 2013 in O.S.No.47 of 2005 dated 10.04.2015 on the file of the learned I Additional District and Sessions Judge, Cuddalore, thereby, dismissing the petition filed by the petitioner to recall D.W.1 to mark the document dated 14.05.2000.

2. The respondents 1 to 3 herein are the plaintiffs. The petitioner is the second defendant in the suit filed by the respondents 1 to 3 herein for partition. In the cross examination of P.W.1, he admitted the signature of one Aadhimoolam, viz., the father-in-law of the plaintiffs in the un-registered family arrangement document dated 14.05.2000. It was marked as Ex.B.14. After, the evidence of plaintiffs side, the defendants filed proof affidavit. They want to mark the document as Ex.B.14. Since, the said document dated 14.05.2000 was un-registered release deed and as such, the petitioner filed a petition to recall D.W.1 to mark the said document.

3. The learned counsel for the petitioner submitted that the petitioner is not at all a party to the document and as such, he cannot be called upon to pay Stamp duty and penalty to mark the un-registered release deed. He relied upon Section 29 of the Indian Stamp Act and also relied upon various decisions, in respect of admissibility of un-stamped un-registered document as well as the secondary evidence. The Court below failed to note that the original of the said document was not summoned and as such, it can be marked as secondary evidence. In fact, the petitioner challenging, the order

passed by the trial Court refusing to re-open the evidence of D.W.1 for marking a document filed C.R.P.(PD) No.1526 of 2014. The said Civil Revision Petition was allowed the trial Court was directed to re-open the case but that without recalling D.W.1, the Court below cannot adjudicate upon the admissibility of the document dated 14.05.2000, which was already been marked as Ex.B.14. Further, the adjudication shall be with specific reference to the provisions of the Indian Stamp Act and the Registration Act. If the trial Court holds that the document is admissible, it may permit marking of the document through D.W.1 by recalling him and allow the plaintiffs to cross examine him. If the trial Court comes to the conclusion that the document is not admissible, it may follow the procedure prescribed by law for impounding. Therefore, the petitioner filed a petition to recall himself to mark the document dated 14.05.2000.

4. Per contra, the learned counsel for the first to third respondents submitted that the document sought to be marked is as un-registered release deed and it cannot be marked by recalling D.W.1. It was filed only to delay the completion of the trial and drag on the proceedings. The cross examination of D.W.1 commenced before the representation for marking of

the document is completely false. In fact, the petitioner was absent for several hearings for cross examination and as such, his evidence was closed. Only on the petition, he was recalled for cross-examination. He further submitted that even during the plaintiffs evidence, the signature alone in the said document was marked as Ex.B.14. Admittedly, it is a Xerox copy of the un-registered release deed. Therefore, the judgments cited by the petitioner are not at all applicable to the case on hand.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the first to third respondents.

6. This Court while disposing the Civil Revision Petition in CRP.No.1526 of 2010 allowed the said Civil Revision Petition by an order dated 21.01.2015 and directed as follows:-

“6. Therefore, the civil revision petition is allowed to the following extent:

(i) Without recalling D.W.1, the Court below shall adjudicate upon the admissibility of the document dated 14.05.2000, one signature of which alone has already been marked as Ex.B.14;

(ii) The adjudication shall be with specific reference to the provisions of the Indian Stamp Act and the Registration Act;

(iii) If the Trial Court holds that the document is admissible, it may be permit the marking of the document through D.W.1 by recalling him and allow the plaintiffs to cross examination him; and

(iv) If the Trial Court comes to the conclusion that the document is not admissible, it may follow the procedure prescribed by law for impounding.”

7. In the cross examination of P.W.1, she admitted the signature of one Adhimoolam viz., the Father-in-law of the plaintiffs in the un-registered family arrangement document dated 14.05.2000 and the same was marked as Ex.B.14. The un-registered family arrangement deed is Xerox copy and it was made by the father of the petitioner and his brother who is none other than the first plaintiff's husband. P.W.1 has admitted that her father-in-law's signature in the Xerox copy of the un-registered family arrangement and it was marked as Ex.B.14. It is settled law that a document which is not stamped or registered is in-admissible in evidence and also cannot be reliable for any collateral purpose.

8. In the case on hand, the signature in the xerox copy of the un-registered family arrangement was only marked during the cross examination of P.W.1 by the defendant. If the petitioner comes with original un-registered family arrangement deed, the stamp duty can be collected, whereas, in the xerox copy of the un-registered family arrangement collection of stamp duty does not arise. Therefore, the Court below rightly dismissed the petition to receive the xerox copy of the un-registered family arrangement deed. The directions issued by this Court in C.R.P.No.1526 of 2014 dated 21.01.2015 duly was followed by the trial Court and this Court finds no irregularity or infirmity in the order passed by the Court below.

9. In view of the above, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

Kv

To

The I Additional District and Sessions Judge of Cuudalore.



**order made in
CRP.PD.No. 2346 of 2015**

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17.02.2021



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