

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

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

CRP.PD.No.2828 of 2015 and
MP.No.1 of 2015

Muruganandam

..Petitioner

Vs.

1.Muniyandi(died)

2.Anbarasan

3.Ramesh

4.Prakash

5.Nithya

(RR2 to 5 brought on record as LR's
of the deceased sole respondent viz, Muniyandi
vide court order dated 10.02.2021 made in
CMP.No.7915 & 7916 of 2019 in
CRP.No.2828 of 2015)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decretal order dated
21.04.2015 passed in IA.No.1397 of 2014 in OS.No.78 of 2012 on the
file of the District Munsif Court, Madurantakam.

For Petitioner : Mr.K.Govi Ganesan

For Respondents

R1 : died (steps taken)

For R2 to 5 : Mr.Y.Bhuvanesh Kumar

ORDER

This civil revision petition is filed against the fair and decretal order dated 21.04.2015 passed in IA.No.1397 of 2014 in OS.No.78 of 2012 on the file of the District Munsif Court, Madurantakam thereby dismissing the petition to receive the document dated 01.01.2000.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for specific performance on the strength of the document dated 01.01.2000. At the time of filing plaint, the petitioner annexed xerox copy of the document dated 01.01.2000. Thereafter the petitioner found original document and filed petition to receive the same. Admittedly, the said document is unstamped and unregistered one. As per Section 35 of the Indian Stamp Act, it cannot be marked as evidence even for collateral purpose. The learned counsel for the petitioner relied upon the judgment in the case of **Chellammal Vs. Meenakshi** reported in **(2002) 3 CTC 739**, wherein it is held as follows:

13. In the present case, an argument is raised that the instrument is not actually an agreement of sale as envisaged in the Schedule to the Stamp Act (subject to amendment

made by the State of Andhra Pradesh) but is only a deed of compromise entered into by two disputing persons. We refrain from expressing any opinion on the said pleas as it is open to the parties to raise their contentions regarding the nature of the document before the trial Court. In the present case, the trial Court should have asked the appellant, if it finds that the instrument is insufficiently stamped, as to whether he would remit the deficient portion of the stamp duty together with a penalty amounting to ten times the deficiency. If the appellant agrees to remit the said amount the Court has to proceed with the trial after admitting the document in evidence. In the meanwhile, the Court has to forward a copy of the document to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty as provided in [Section 40\(1\)\(b\)](#) of the Act. Only if the appellant is unwilling to remit the amount, the Court is to forward the original of the document itself to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty. The penalty of ten times indicated therein is the upper limit and the Collector shall take into account all factors concerned in deciding as to what should be the proper amount of penalty to be imposed.

14. In as much as none of the above proceedings had been adopted by any of the authorities including High Court, we set aside the impugned orders. We direct the Munsif to consider first whether the document is insufficiently stamped

and if he funds that question in the affirmative, he has to adopt the next step indicated above."

3. It is well settled in law that when a document is tendered in evidence by either party and objection is raised against the same on the ground that the document is not duly stamped under Section 35 of the Indian Evidence Act or for want of registration as contemplated under Section 17 read with 49 of Registration Act, 1908, it is obligatory on the part of the Court to apply its mind to the objections raised and to decide the objection in accordance with law. In other words, no document could be admitted on its face value irrespective of the fact whether it is duly stamped or otherwise; nor it could be rejected as inadmissible for the same reason or otherwise for want of registration automatically. Therefore, the above judgment cited by the learned counsel for the petitioner is not helpful to the case on hand.

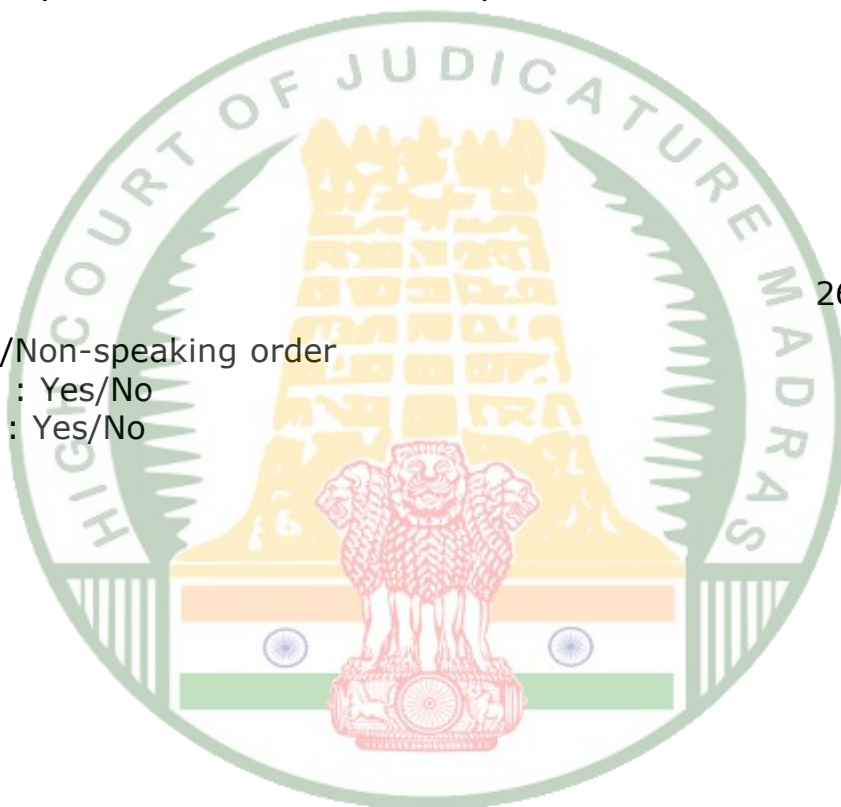
4. In the case on hand, the document which is sought to be marked created in unstamped paper and also unregistered one. Further the document entered between the parties in respect of the possession of the suit schedule property. Therefore, it cannot be marked even for collateral purpose. Therefore, the court below rightly dismissed the

petition and this Court finds no irregularity or infirmity in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

26.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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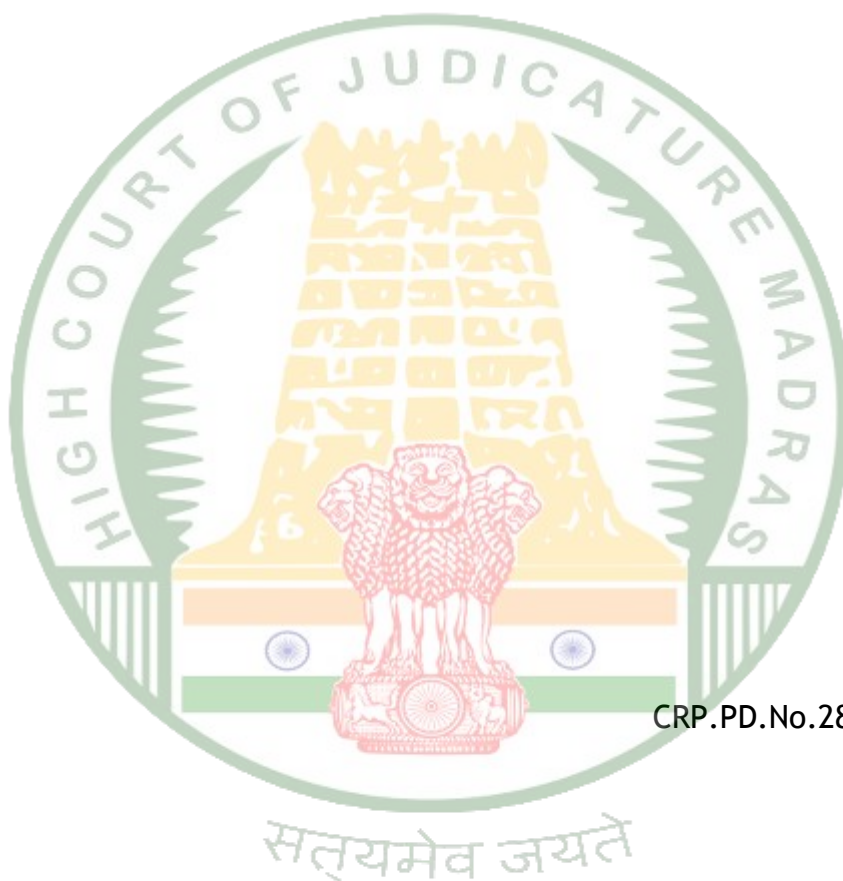
To

The District Munsif Court,
Madurantakam.

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G.K.ILANTHIRAIYAN,J.

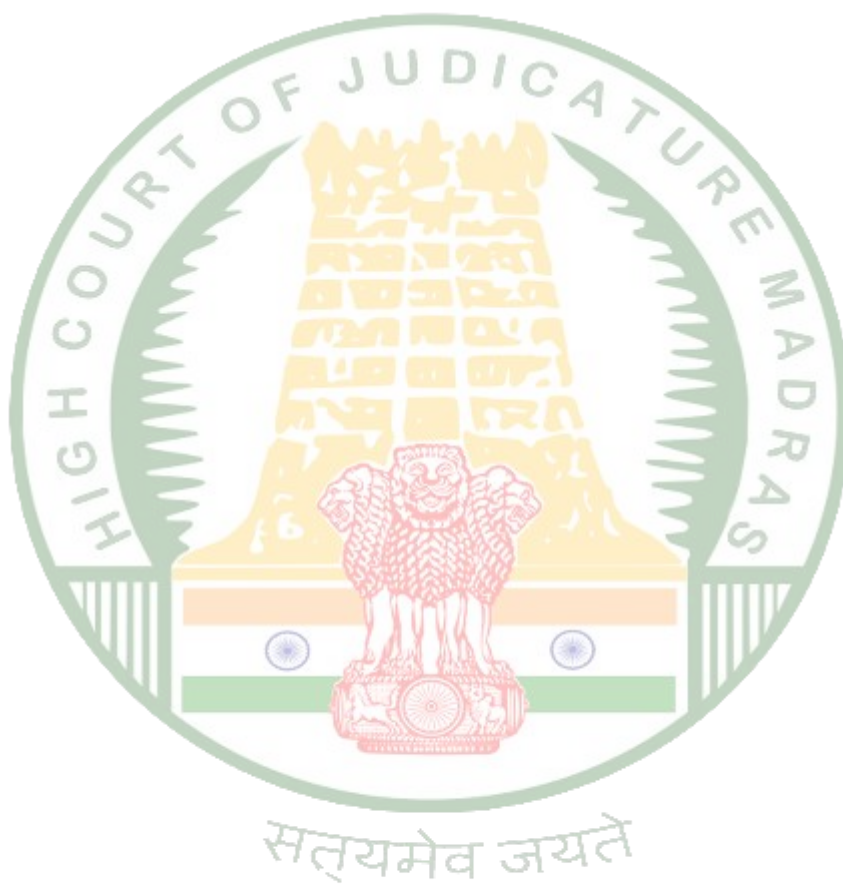
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