

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.3739 of 2015
and M.P.No.1 of 2015

1.D.Mani
2.M.Dinesh

...Petitioners

Vs

1.Narayanasamy Kounder
2.The Superintending Engineer
TNEB
Kallakurichi.
3.The Executive Engineer (O& M)
TNEB
Tirukoilur.
4.The Junior Engineer (O& M)
TNEB
Kandachipuram Village
Tirukoilur Taluk.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in I.A.No.696 of 2014 in O.S.No.207 of 2012 dated 23.09.2014 on the file of the Principal District Munsif, Tirukoilur.

For Petitioners	: Mr.N.Suresh
For Respondents	: Mr.P.Vasanth for R1 Mr.V.Viswanathan, SC for R2 to R4

ORDER

This Civil Revision Petition is directed as against the fair and decretal order in I.A.No.696 of 2014 in O.S.No.207 of 2012 dated 23.09.2014 on the file of the Principal District Munsif, Tirukoilur, thereby dismissed the petition filed by the petitioners herein, to send the unregistered partition deed dated 26.04.1994 to the Revenue Divisional Officer, Villupuram to collect the stamp duty.

2.The learned counsel for the petitioners would submit that the 1st petitioner and the 1st respondent are brothers. The suit property was originally belonged to their family and by the unregistered partition deed dated 26.04.1994, half share of the suit property was allotted in favour of the 1st petitioner. Another half share was allotted to one of his brother-Jayasankar, by the very same partition deed. Thereafter by the registered sale deed dated 30.10.2000 remaining half share of the suit property belongs to Jayasankar was purchased by the 1st petitioner herein. In continuation of the registered sale deed dated 30.10.2000, the 1st petitioner received patta in his name, in respect of the suit property. Before partition of the suit property, the electricity service connection was applied in the year 1989, in

the name of the 1st respondent herein, who is being the elder son of the family. When the electricity service connection for the suit property was about to granted in favour of the 1st respondent, the suit property was allotted to the 1st petitioner herein and he filed the suit for mandatory injunction, directing the respondents 2 to 4 herein to give agricultural electricity service connection in favour of the 1st petitioner herein, as the application stands in the name of the 1st respondent herein. In the said suit, partition deed was marked as Ex.A.1. Therefore, the petitioner filed a petition to send the unregistered partition deed for payment of stamp duty, under Section 33 of the Indian Stamp Act. The trial Court without considering the above said fact simply dismissed the application only for the reason that the application was filed belatedly. The learned counsel for the petitioners also relied upon the Judgment in the case of ***Sita Ram Bhama Vs. Ramvatar Bhama*** reported in ***(2018) 15 Supreme Court Cases 130***.

3.Per contra the learned counsel for the 1st respondent contended that the petition in I.A.No.696 of 2014 in O.S.No.207 of 2012 has been filed only to abuse the unregistered partition deed executed among the family members. No partition deed was executed between the family

members, while filing the suit in O.S.No.207 of 2012, the petitioners herein introduced the said sale deed. Though the 1st respondent objected the document while marking the same before the trial Court, the trial Court marked the unregistered partition deed as Ex.A.1. Once it is marked, it cannot be impounded by the revenue officials. He also relied upon the Section 36 of the Indian Stamp Act. Accordingly once the document is admitted in evidence, it cannot be questioned. Therefore, the trial Court rightly dismissed the petition and sought for dismissal of the Civil Revision Petition.

4. Heard the learned counsel for the petitioners; learned counsel for the 1st respondent and the learned Standing Counsel for the respondents 2 to 4.

5. The petitioners herein filed the suit for mandatory injunction directing the respondents 2 to 4 herein to give agricultural electricity service connection for the suit mentioned property, in the name of the 1st petitioner herein. Originally the suit property was belonged to their family members and by the partition deed dated 26.04.1994, half share of the suit property was allotted in favour of the 1st petitioner herein. Remaining half share of

the property was allotted to one of the brother of the 1st petitioner- Jayasankar. After the partition by the registered sale deed dated 30.10.2000, half of the remaining share in the suit schedule property also purchased by the 1st petitioner herein. Therefore the partition deed dated 26.04.1994 was already acted upon and only on the strength of the partition deed, sale deed dated 30.10.2000 was executed in favour of the 1st petitioner herein. Before partition, in the year 1989, agricultural electricity service connection was applied for the suit schedule property in the name of the 1st respondent herein, who is being the elder brother of the family. After partition deed and also after the sale deed dated 30.10.2000, the entire suit property was belonged to the 1st petitioner herein. Therefore, the 1st petitioner herein has filed the suit for the above relief. In fact the partition deed dated 26.04.1994 was marked as Ex.A.1. Thereafter the petitioner filed the application under Section 33 of the Indian Stamp Act, to collect the stamp duty by the Revenue Officials. In this regard, the learned counsel for the petitioners relied upon the Judgment reported in **(2018) 15 Supreme Court Cases 130** in the case of **Sita Ram Bhama Vs. Ramvatar Bhama**. Relevant portion of the Judgment is extracted hereunder:

"15.Following the law laid down by this Court in the above case, we are of the opinion that the document dated 09.09.1994 may be admissible in evidence for collateral purpose provided the appellant gets the document impounded and to pay the stamp duty together with penalty as has been directed in the above case."

In the above cited Judgment, the Hon'ble Supreme Court has held that the document can be admissible for collateral purpose provided the party gets the document impounded and to pay the stamp duty together with penalty.

6.Accordingly, now the petitioners wanted to impound the Ex.A1 to the Revenue Official for payment of stamp duty along with penalty. Therefore, the fair and decretal order in I.A.No.696 of 2014 in O.S.No.207 of 2012 dated 23.09.2014 on the file of the Principal District Munsif, Tirukoilur, is perverse and contrary to law. Therefore, it is liable to be set aside.

7.Accordingly, the order of the trial Court in I.A.No.696 of 2014 in O.S.No.207 of 2012 dated 23.09.2014 on the file of the Principal District Munsif, Tirukoilur, is set aside and the Civil Revision Petition is allowed.

8.Further considering the suit is of the year 2012, the trial Court is

directed to send the document to the Revenue Officials within a period of two weeks from the date of receipt of a copy of this order and after receipt of the document, complete the trial within a period of six months. No order as to costs. Consequently connected miscellaneous petition is closed.

05.01.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Principal District Munsif, Tirukoilur.

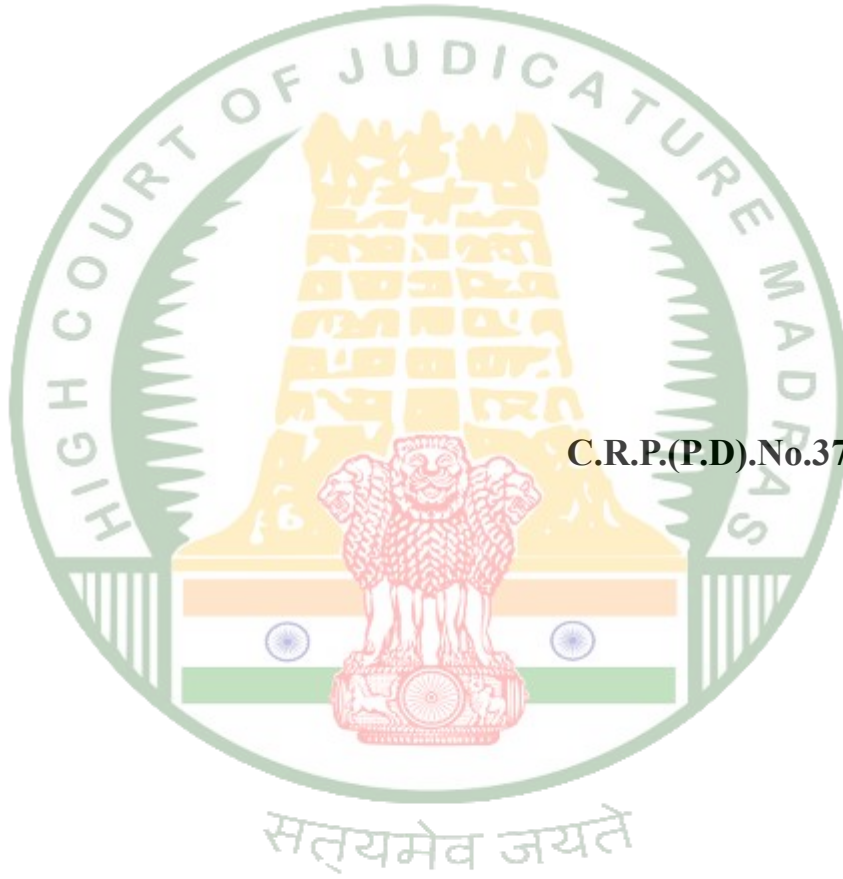


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