

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

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

C.R.P.(PD)No.2353 of 2018
and C.M.P.No.14581 of 2018

J.Sivanantham

... Petitioner

Vs.

M.Gnanambal

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27.11.2017 passed in I.A.No.108 of 2017 in O.S.No.93 of 2014 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr.A.Palaniappan

For Respondent : Mr.K.S.Jeyaganeshan

ORDER

This Civil Revision Petition is directed as against order dated 27.11.2017 passed by the learned Subordinate Judge, Poonamallee in I.A.No.108 of 2017 in O.S.No.93 of 2014, thereby allowing the petition to reject the unregistered mortgage deed dated 05.01.2012, which was marked as Ex.A.3 as inadmissible.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit in O.S.No.93 of 2014 for recovery of money. The petitioner filed his proof affidavit and marked unregistered mortgage deed dated 05.01.2012 as Ex.A.3. Admittedly it is not duly stamped and registered one as contemplated under Section 49 of the Registration act. Therefore, the respondent filed petition in I.A.No.108 of 2017 to reject the unregistered mortgage deed, which was marked as Ex.A.3 as inadmissible in evidence. The trial Court allowed the said petition as against which the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the Ex.A.3 was already marked without any objection. It cannot be rejected at later point of time and it is against the statutory provisions under Section 36 of the Indian Stamp Act. Therefore, he prayed to allow this Civil Revision Petition.

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4. Admittedly, the suit is filed for recovery of money and the suit is not on mortgage. Further Ex.A.3 already marked during the trial through

P.W.1, without any objection raised by the respondent. As submitted by the learned counsel appearing for the petitioner, under Section 36 of the Indian Stamp Act, 1899, where an instrument has been admitted in evidence, such admission shall not except as provided in Section 61, be called in question at any stage on the ground that the instrument has not been duly stamped. That apart, Ex.A.3 has been marked for collateral purpose for the receipt of money. Therefore, the order passed by the Court below is perverse and liable to be set aside.

5. Accordingly, the order dated 27.11.2017 passed by the learned Subordinate Judge, Poonamallee in I.A.No.108 of 2017 in O.S.No.93 of 2014, is hereby set aside. It is made clear that the mortgage deed dated 05.01.2012, which was marked as Ex.A.3 can be considered only for collateral purpose. This Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to cost.

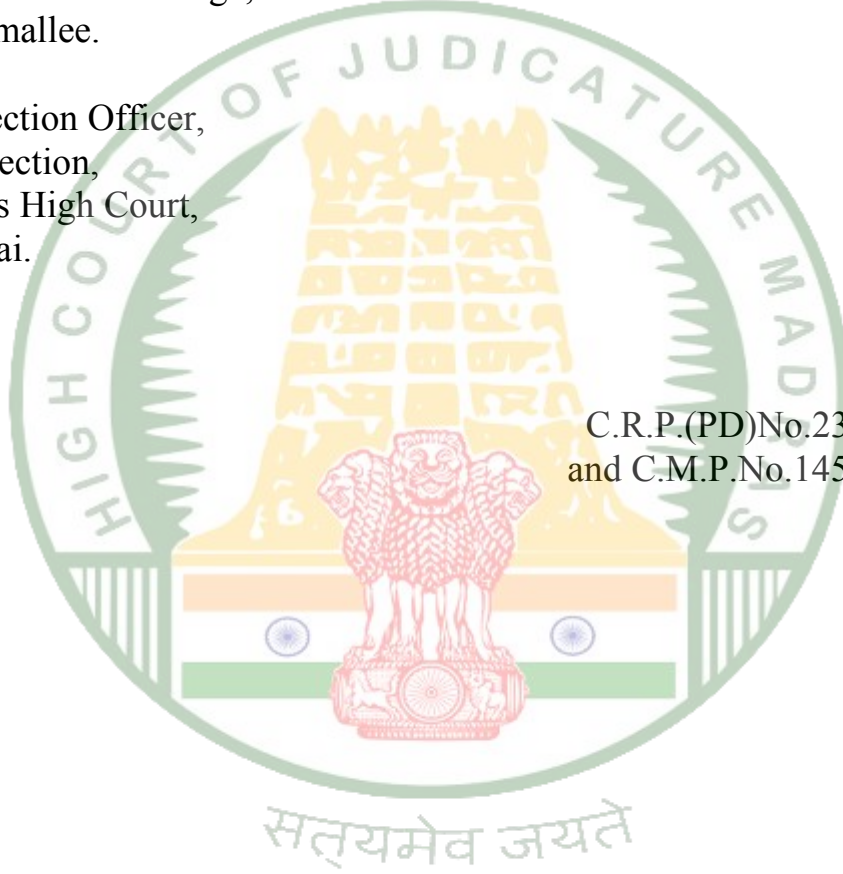
Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

G.K.ILANTHIRAIYAN, J.

rts

To

1. The Subordinate Judge,
Poonamallee.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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