

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (PD).No.3208 of 2018

and

C.M.P.No.18355 of 2018

1. J.George Manohar
2. J.Alexis Rajakumar

... Petitioners

Vs.

1. J.Regina
2. J.Gregory Mohan
3. J.Julian Santhanaraj
4. J.Grace Rani

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 09th July, 2018 made in I.A.No.16589 of 2017 in O.S.No.3961 of 2012 on the file of the VII Additional City Civil Court, Chennai thereby allow the Civil Revision Petition.

For Petitioners : M/s.Vasudha Thiagarajan

For Respondents : Notice Served (No Appearance)
(for R-1 & R-2)
Mr.K.Rajesh for
M/s.T.S.Gopalan & Co
(for R-3 & R-4)

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.16589 of 2017 in O.S.No.3961 of 2012 dated 09.07.2018 on the file of the learned VII Additional City Civil Court, Chennai, thereby dismissing the petition seeking permission to exhibit the document dated 14.12.1989 filed along with the plaint subject to the objections raised by the respondents 3 and 4 to be decided at later stage at the time of arguments.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for partition and permanent injunction in respect of the suit properties. While pending the suit, the petitioners filed a petition and stated that the suit properties originally belonged to their father and after his demise, the petitioners and the respondents have entered into an oral agreement in the year 1989 and agreed to enjoy the properties in the manner which they had arranged upon the said arrangement. It was subsequently reduced into writing on 14.12.1989. It is family arrangement, which had already taken place. Admittedly, it is an unregistered and unstamped one. Therefore, the

petitioners seek permission to exhibit the document dated 14.12.1989 subject to the objections raised by the respondents.

3. The only point for consideration in this Civil Revision Petition is as to whether the family arrangement deed dated 14.12.1989 can be mutated for the purpose of marking the same. The learned counsel for the petitioner relied upon the judgment of this Court reported in 2017 (2) MWN (Civil) 165 (*Navinraj -vs- Gnanasekar*) and this Court held that the Court cannot refuse to admit the document merely because objections have been raised by the parties. Further, after collecting Stamp Duty and Penalty, if any, the Court can note the objections including whether for a collateral purpose such document could be looked into or not and defer its conclusions thereon to the judgment stage. She also relied upon the judgment of the Hon'ble Supreme Court of India reported in 2015 (13) SCALE 615 (*Yellapu Uma Maheswari -vs- Buddha Jagadheeswararao*). The Hon'ble Supreme Court of India held that Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property, must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals

with the documents that are required to be registered under Section 17 of the Registration Act. Further, in the said case before the Hon'ble Supreme Court of India, the matter pertains to partition. In this context, the Hon'ble Supreme Court of India held therein as follows:-

“16..... Taking us through the recitals of these two documents, the learned senior counsel tried to impress upon this Court particularly through the last few lines from Exhibit B-21, that these documents are only evidencing the past transaction of partition that has taken place but through these documents no rights in immovable property have accrued to the parties as envisaged under Section 17 of the Registration Act and which makes these documents out of the purview of Section 49 of the Registration Act.”

4. The Hon'ble Supreme Court of India further held that it is well settled that the nomenclature given to the document is not a decisive factor, but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document, is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question.

5. According to the petitioner, there was a family arrangement deed dated 14.12.1989 and the suit properties were already settled between the parties to the suit. In a suit for partition, an unregistered document can be relied upon only for collateral purpose. An unstamped instrument is not admissible in evidence even for collateral purposes, until the same is impounded.

6. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.16589 of 2017 in O.S.No.3961 of 2012 dated 09.07.2018 is hereby set aside. It is made clear that after the payment of stamp duty with penalty, the said document may be marked for collateral purpose subject to proof and relevancy. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

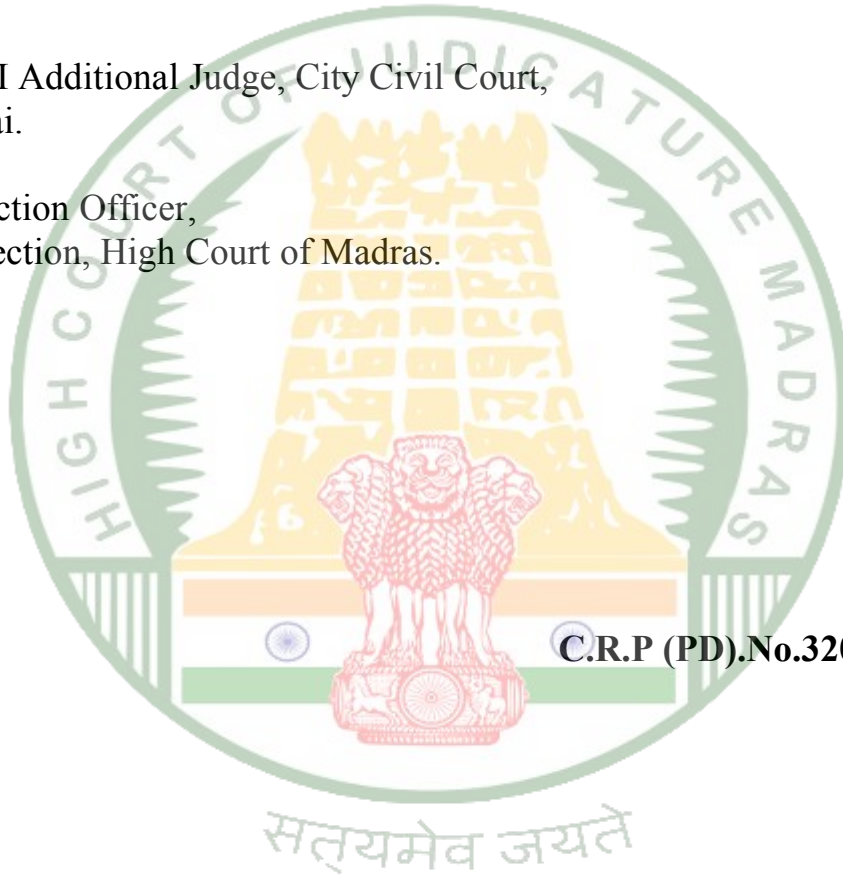
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G.K.ILANTHIRAIYAN,J.

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To

1. The VII Additional Judge, City Civil Court,
Chennai.
2. The Section Officer,
V.R. Section, High Court of Madras.



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