

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.3176 of 2018

and

C.M.P.No.18156 of 2018

M.Arunagiri

... Petitioner

Vs.

1. M.Thangavel
2. Palanisamy
3. P.Raghupathi
4. Bhagavathiammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 27.07.2018 made in I.A.No.290 of 2017 in O.S.No.160 of 2014 on the file of the learned III Additional District & Sessions Judge, Erode @ Gobichettipalayam by allowing this Civil Revision Petition.

For Petitioner : M/s.R.Shase

For Respondents : Mr.A.Veerassamy for
Mr.M.Narayanaswamy (for R-1)
: Notice Served (No Appearance)
(for R-2 to R-4)

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.290 of 2017 in O.S.No.160 of 2014 dated 27.07.2018 on the file of the learned II Additional District & Sessions Judge, Erode @ Gobichettipalayam, thereby dismissing the petition to order for Stamp Duty with Penalty on the partition deed dated 14.04.2003.

2. The petitioner is the second defendant and the first respondent is the plaintiff. The first respondent filed the suit for partition and declaration to declare that the settlement deed dated 26.05.2010 is null and void. While pending the suit, the petitioner filed a petition alleging that his father, the first defendant, the third defendant and the plaintiff entered into a partition, in respect of family properties by executing a partition deed dated 14.04.2003, in which the petitioner's father was allotted 'B' schedule property. Now, the respondents are denying the execution of the said partition deed. Therefore, the petitioner wanted to mark the partition deed dated 14.04.2003. Admittedly, it is an unregistered and unstamped document. Therefore, the respondents raised objections that the unregistered

and unstamped partition deed dated 14.04.2003 cannot be marked for any purpose. Further, he raised objections that the execution of the partition deed dated 14.04.2003 itself is denied and Section 17 of the Registration Act is a bar to mark the alleged unregistered and unstamped partition deed dated 14.04.2003. The Court below dismissed the petition seeking direction to impound the document dated 14.04.2003 for payment of stamp duty with penalty. Aggrieved by the same, the present Civil Revision Petition is filed by the petitioner.

3. The only point for consideration in this Civil Revision Petition is as to whether the unregistered and unstamped partition deed dated 14.04.2003 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 partition deed dated 14.04.2003 and the suit properties were already partitioned 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.290 of 2017 in O.S.No.160 of 2014 dated 27.07.2018 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.

15.07.2021

Speaking/Non-speaking order

Index : Yes/No

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To

1. The III Additional District & Sessions Judge,
Erode @ Gobichettipalayam
2. The Section Officer,
V.R. Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.



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