



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.07.2021

PRONOUNCED ON : 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(MD)No.1359 of 2014

(Through Video Conferencing)

WEB COPY

1. N.Athimoolam

2.N.Arumugam

... Petitioners

Vs

1.A.Rajendran

2.V.Athimoolam

3.A.Raja

... Respondents

Prayer:- This Civil Revision Petition has been filed, against the fair and decreetal order, dated 29.04.2014, made in IA.No.434 of 2012 in OS.No.170 of 2012, by the District Munsif, Periyakulam.

For Petitioner : Mr.N.Dilip Kumar

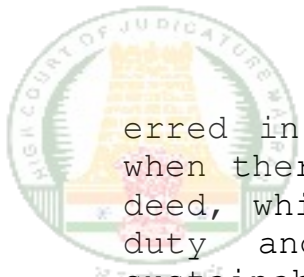
For Respondent : Mr.S.Sivathilagar

ORDER

1.This Civil Revision Petition has been filed, against the fair and decreetal order, dated 29.04.2014, made in IA.No.434 of 2012 in OS.No.170 of 2012, by the District Munsif, Periyakulam.

2.The facts of the case, in a nutshell, are that the Defendants 1 and 2 are the Petitioners and the Plaintiff and the Defendants 3 and 4 are the Respondents. The Plaintiff had filed the above application, seeking to send the document, dated 13.03.1990, which an unregistered partition deed, to the Sub Collector concerned to fix the stamp duty for the said document and also fix the fine amount and direct him to pay the necessary stamp duty and the fine amount to get it registered the said document. Since in and the impugned order, the court below had directed the Petitioner to pay the proper Court fee and fine, in the Court itself, this Civil Revision Petition has been filed.

3.The learned counsel for the Petitioners has submitted that an unstamped and unregistered document cannot be received in evidence even for collateral purpose and that the court below



erred in applying Sections 38 and 40 of the Indian Stamp Act, when there was no pleading to that effect and that the partition deed, which is of the year 1990, cannot be cured by paying stamp duty and penalty and hence, the impugned order is not sustainable. The learned counsel would rely on the decisions reported in **AIR 2016 Mad 91 (N.K.Surana Vs. Ramy and others)**, **2019 3 LW (Narayana Naicker Vs. Kannusamy Naicker and others)**, **2020 1 CTC 47 (Thangamuthu Vs. A.Jeyaraj)** and **2020 4 LW 792 (Amertham Vs. Thannace and others)**.

- 4.The learned counsel for the Respondents has submitted that in and by the partition deed dated 13.03.1990, the suit property was allotted to the Plaintiff under C-Schedule and that since it was not registered and in order to tender the same in evidence, it is now to be registered, by paying necessary deficit in stamp duty along with penalty and hence, the court below was right in directing the Plaintiff to impound the document, by paying the necessary stamp duty and penalty. The learned counsel would rely on the decisions reported in **2014 2 CTC 157 (R.Kalyani Vs. T.Tose Muthundakumar)**, **2013 1 LW 87 (Easwari Vs. Duraisamy)** and **2017 3 CTC 320 (Ethiraj Chettiar and others Vs. Samundeeswari and others)**.
- 5.This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
- 6.The partition deed is dated 13.03.1990. It is settled law that a partition deed, which creates and limits the rights of the parties to the document, is to be compulsorily registered and therefore, stamped. There is an averment by the Plaintiff herein to the effect that he is ready and willing to pay the necessary deficit in stamp duty and penalty.
- 7.Though the Plaintiff is willing to pay the deficit in stamp duty along with penalty and when there is also an averment by the Plaintiff to that effect, the court below cannot assess the stamp duty for such an old document of the year 1990. In such view of the matter, the impugned order suffers from infirmity, which is to be necessarily interfered with by this Court.
- 8.In fine, the court below is directed to send the document in question to the concerned authority to assess the stamp duty and penalty for the same and to collect the same, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the said authority shall complete the said exercise within a period of two weeks thereafter.



9. With the above directions, this Civil Revision Petition is disposed of. No costs.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (T&P)

/ /2021

Sub Assistant Registrar (CS)

Srcm

To

The District Munsif, Periyakulam.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-27691[F] dated 31/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-27709[F] dated 31/08/2021)

Order in

CRP (MD) No. 1359 of 2014

31.08.2021

DJ(CO)

SB(16.09.2021) 3P 4C