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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.11.2022

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.PD.No.2316 of 2015
and M.P.No.1 of 2015

V.Perumal ... Petitioner

Vs.

1.V.Govindasamy
2.G.Amirthavalli ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair order and decreetal order passed in I.A.No.1356 of 2014 in O.S.No.284 of 2009 on the file of Learned District Munsif, at Tambaram dated 07.04.2015 and permit the petitioner to pay stamp duty penalty for the Koorchit dated 11.02.2000 and admit the Koorchit for adjudication.

For Petitioner : Mr.V.Chandrakanthan

For Respondents : No appearance

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O R D E R

When the matter came up on 04.04.2022, it was reported that the revision petitioner died and therefore, the civil revision petition was dismissed as infructuous. Before signing the order, there was a doubt as to the death of the petitioner and therefore, it was directed to verify the death of the petitioner and the stage of the suit and it was found that the petitioner was alive and therefore, the matter was listed for clarification on 08.11.2022. On 08.11.2022, the learned counsel for the revision petitioner would state that the petitioner was very much alive and therefore the order dated 04.04.2022 was recalled. After considering the submissions made by the learned counsel for petitioner, the following order is passed:-

2. This Civil Revision Petition has been filed to set aside the fair order and decreetal order passed in I.A.No.1356 of 2014 in O.S.No.284 of 2009 on the file of Learned District Munsif, at Tambaram dated 07.04.2015 and permit the petitioner to pay stamp duty penalty for the

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Koorchit dated 11.02.2000 and admit the Koorchit for adjudication.

3. Brief facts of the case are as follows:-

(i)The petitioner is the plaintiff and he filed a suit is O.S.No.284 of 2009 before the Court of District Munsif, Tambaram, seeking for declaration. In the said suit, the petitioner has marked the Koor Chit, dated 11.02.2000, as an exhibit. Hence, the first respondent herein/first defendant has filed an application in I.A.No.548 of 2011 to reject the Koor Chit stating that Koor Chit is not an admissible evidence and the same cannot be marked as an exhibit in the suit. The trial Court had dismissed the said application. Aggrieved by the said order, C.R.P.(PD) No.3436 of 2011 came to be filed by the first respondent herein/1st defendant and the same was allowed vide order, dated 06.08.2014.

(ii) In the meanwhile, the petitioner filed an application in I.A.No.1356 of 2014 seeking to permit him to pay the stamp duty penalty

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for the Koor Chit, dated 11.02.2000 and admit the Koor Chit on file for proper adjudication of the case. The said application came to be dismissed vide order, dated 07.04.2015. Aggrieved by the said order, the petitioner has filed the present Civil Revision Petition.

4. Heard the learned counsel for the petitioner and perused the order, dated 06.08.201 passed in C.R.P.(PD) No.3436 of 2011.

5. It is pertinent to point out herein that in the suit in O.S.No.284 of 2009, earlier I.A.No.548 of 2011 has been filed praying to reject the koorchit from marking as an exhibit in the suit. The said I.A., has been dismissed. Against the dismissal of the said I.A., CRP.No.3436 of 2011 has been filed before this court. This court, after elaborately going through the entire records, observed as under:-

> " 13......As per the averments in Ex.P.3 Koor Chit itself, it was stated that except the property settled in favour of the first defendant, the other three brothers were divided

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the property. Since they want to obtain separate title over the property, they divided the property as three portions viz., A Schedule property was alloted to Damodaran, B Schedule property was allotted to Perumal/plaintiff and C Schedule property was allotted to Chakrapani. So it reveals that on the basis of the Koor Chit, they divided the property and took possession. So the Koor Chit must be properly stamped and it need registration. Therefore, the argument advanced by the learned counsel for the respondent that to record the past division, Ex.P.3 came into existence, does not merit acceptance.

Considering the aforestated circumstances, I am of the view, Koor Chit requires registration and it must be incorporated in a proper stamp paper. Once the document has been marked without any objection, the admissibility of the document can be decided at later stage as per the dictum of the Apex Court in Bipin Shantilal Panchal Vs. State of Gujarat and another reported in 2001 (3) SCC page 1, since the plaintiff has not sought for impounding of document for payment of stamp and penalty, Koor Chit is not an admissible evidence. Hence, the trial court has committed an error in marking the document stating that it can be marked for col-

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> lateral purpose. Furthermore, it is pertinent to note that Koor Chit was not marked as subject to objection and so it is inadmissible evidence and it has to be rejected and it is hereby rejected. Therefore, the order passed by the trial court is liable to be set aside and it is hereby set aside."

6. On the above extracted observations, this court by order dated 06.08.2014, allowed the civil revision petition [CRP.No.3436/2011] filed by the 1st defendant.

7. Admittedly there is no appeal against the said order and subsequently in the year 2014, another I.A., has been filed. The present revision petition is against the said I.A.1356 of 2014, wherein, the prayer of the plaintiff seeking permission to pay the stamp duty penalty for the Koorchit dated 11.02.2000 and admit the koorchit on file for proper adjudication of the case, has been dismissed.

8. In the above said I.A., the learned Judge held that the Honourable

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High Court rejected the Ex.P.3 the unregistered koorchit and the petitioner/plaintiff filed the petition belatedly and the Hon'ble High Court had rejected his case. Further the learned Judge observed that if the plaintiff is ready to pay the stamp duty and proceed with the trial, is to obtain alternative orders from the Hon'ble High Court. On the said findings, the learned Judge held that the petitioner is not entitled to pay the stamp duty penalty for the unregistered koochit after the High Court had rejected the Ex.P.3 as inadmissible in evidence. On such findings, the said I.A.1356 of 2014 has been dismissed.

9. Admittedly, there is no appeal against the order passed in CRP.No.3436 of 2011 allowing the revision filed by the 1st defendant whereby, it is held that koorchit is not an admissible evidence. It is true that the revision petitioner herein/plaintiff has approached the court belatedly, and sought permission before the trial court to pay the stamp duty penalty for the Koorchit dated 11.02.2000 and to admit the koorchit

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on file for proper adjudication of the case.

10. As far as subject matter of the suit is concerned, it is averred that the property settled in favour of the first defendant, the other three brothers were divided the property. Since they want to obtain separate title over the property, they divided the property as three portions viz., “A schedule property, B schedule property and C schedule property. So on the basis of Koor Chit, they divided the property and took possession. So the koor chit must be properly stamped and it needs registration. The Koorchit has been executed on 11.02.2000. I.A.No.1356 of 2014 has been filed in the year 2014.

11. The averments in the plaint pleadings is that the partition of the suit property along with settlement property is by way of partition Koor Chit on 11.02.2000 at the consent of other brothers and sister. As per the Koor Chit, B Schedule property was allotted to the plaintiff and he is in possession and enjoyment of the same. The plaintiff filed the suit for

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declaration of the sale deed dated 13.03.2009 executed by first defendant as null and void. The undoubted fact is that at the time of marking Koor Chit, the first defendant has not raised any objection. It is also admitted that Koorchit is properly attested.

12. The legal position is clear that a document like Koor chit, even though not admissible in evidence, can be looked into for collateral purposes. In T. Bhaskar Rao v. T. Gabriel and others, [AIR 1981 A.P. 175], it has been held :-

> "5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose,

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unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence."

It was further held :-

"7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

13. The koorchit is admittedly unstamped and unregistered, under which a partition is claimed to have taken place and only based on the said koorchit, the plaintiff claims right to the suit properties. When the document is unstamped, it is liable to be impounded by the court and unless stamp duty and penalty is paid thereon, it cannot be looked into for

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any purpose, even for collateral purpose. Therefore, the order of the court below is liable to be set aside.

14. In the decision reported in ***2010(3) CTC 873 [D.Sivagnanam Vs. Thirugnanaprakasham]***, it has been laid down that unstamped and unregistered documents are not admissible in evidence and cannot be looked even for collateral purpose. It is the contention of the revision petitioner/plaintiff that the plaintiff is willing to pay stamp duty and penalty i.e, payable on the koorchit. Therefore, it is appropriate for this court, in the interest of justice, to allow the revision petitioner to pay the stamp duty on the koorchit. Accordingly, the penalty and stamp duty shall be paid by the revision petitioner forthwith and the formalities for the same shall be completed within a period of one month before the Registering Authorities and after such procedure, the same shall be marked before the court. Since the suit is of the year 2009, the learned

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Judge is directed to dispose of the suit within a period of four months thereafter.

15. The Civil Revision Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

9.11.2022

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J.NISHA BANU,J.

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To
1.The District Munsif, Tambaram.

2.The Section Officer, V.R.Section, High Court, Madras.

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