



C.R.P.No.1260 of 2020
and C.M.P.No.6833 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1260 of 2020

and

C.M.P.No.6833 of 2022

1.Govindammal

2.Gowri

...Petitioners

Vs.

Kuppusamy Gounder (Died)

1.Rangasamy Gounder

2.R.Karthikeyan

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 07.02.2020 passed in I.A.No.489 of 2019 in O.S.No.49 of 2006 on the file of the District Munsif Court, Kangayam.

For Petitioner : Mr.N.Manoharan

For RR1 & 2 : Mr.J.Prithivi



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ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders dated 07.02.2020 passed in I.A.No.489 of 2019 in O.S.No.49 of 2006 on the file of the District Munsif Court, Kangayam.

2.The revision petitioners are the plaintiffs in O.S.No.49 of 2006 on the file of the District Munsif Court, Kangayam. They filed a suit for declaration of title to the suit properties and for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties and also for costs.

3.The defendants filed their written statement denying the allegations of the plaintiffs and both parties went for trial after settlement of issues. During the pendency of the suit, the plaintiffs filed I.A.No.489 of 2019 under Section 151 of CPC and Sections 35 & 38 of the Indian Stamp Act to impound the partition deed dated 15.10.2001. The respondents/defendants filed their counter and after full contest, the



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learned District Munsif, Kangayam, dismissed the said application vide his orders dated 07.02.2020 on the following grounds :

- 1) A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar contained in Section 35 of the Indian Stamp Act.
- 2) If the purpose of reliance on the said document is to establish the claim of title over the suit property, it cannot be admitted in evidence, if the same is not registered.

Aggrieved over the orders passed by the trial Court, the plaintiffs have filed the present Civil Revision Petition.

4. Heard Mr.N.Manoharan, learned counsel appearing for the revision petitioners and Mr.J.Prithivi, learned counsel appearing for the respondents.

5. Mr.N.Manoharan, learned counsel appearing for the revision petitioners contended that the partition deed dated 15.10.2001 was



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reduced to writing in evidence of the earlier oral partition that took place six months prior to date of the partition. However, the plaintiffs were ready to pay stamp duty along with penalty and filed an application under Section 151 of CPC and Sections 35 & 38 of the Indian Stamp Act. His specific contention is that the trial Court dismissed the application wrongly on the premise that the partition deed cannot be admitted in evidence, as it is not stamped and also not registered under Section 17 of the Registration Act and Section 35 of the Indian Stamp Act. He relied on the decision in *"Yellapu Uma Maheswari and Another Vs Buddha Jagadheeswararao and Others"* reported in *"(2015) 16 SCC 787"*, wherein it has been held thus :

"15.It is well settled that the nomenclature given to the document is not 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. A thorough reading of both Exhibits B-21 and B-22 makes it



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very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under [Section 49](#) of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of [section 17 \(i\) \(b\)](#) of the [Registration Act](#) and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy , AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral



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WEB COPY purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance."

He therefore contended that if the plaintiffs want to mark the document for collateral purpose he should pay the stamp duty together with penalty and get the document impounded.

6.Per contra Mr.J.Prithivi, learned counsel appearing for the respondents contended that the suit was filed by the plaintiffs for declaration and permanent injunction and the present unregistered partition deed dated 15.10.2001 was relied upon by the plaintiffs for primary purpose to prove their possession and therefore the same cannot be



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marked since it is not registered under Section 17 of the Registration Act.

It is also contended that the trial Court was right in dismissing the petition since the purpose of reliance of the documents is to establish title over the suit properties.

7.It is seen from the records that the suit in O.S.No.49 of 2006 was filed by the plaintiffs for declaration of title over the suit properties and in support of the said claim, a partition deed dated 15.10.2001 was relied upon by them. The recitals of the partition deed show that there was an oral partition between the parties six months prior to the partition deed but it was reduced to writing on 15.10.2001 going by the existing possession by the different parties. The contention of the counsel for the revision petitioner is that the sons of the first defendant were also as parties to the partition deed and the genuineness of the said document is also questioned by the defendants. However, mere marking of a document would not prove its contents and when the plaintiffs are ready to pay the stamp duty along with penalty the trial Court can impound the document.



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WEB COM The genuineness of the document can be decided upon after conclusion of trial.

8.In the circumstances, the orders passed by the trial Court in I.A.No.489 of 2019 dated 07.02.2020 is set aside and the partition deed dated 15.10.2001 can be received as evidence, subject to its admissibility and relevancy, on payment of the stamp duty along with penalty.

9.With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The District Munsif Court, Kangayam.
- 2.The Section Officer, VR Section, High Court, Madras.

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