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C.R.P.No.2428 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.2428 of 2022
and C.M.P.No.12582 of 2022

1. Chidambaram
2. Seeralan
3. Kamalam
4. Suresh
5. Sundaravadivel
6. Devendran

.. Petitioners

Vs.

1. Ramasamy
2. Rajendran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the order dated 16.10.2021 made in I.A.No.2 of 2021 in O.S.No.162 of 2020 on the file of the Special Judge-II, Jayankondam (O.S.No.215 of 2019) on the file of the Subordinate Judge, Jayankondam).

For Petitioners : M/s.M.Senthil Vadivu

For Respondents : Mr.V.Raghavan for R1

: No appearance for R2



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ORDER

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The Civil Revision Petition is filed by the revision petitioners challenging the order passed by the Court below dismissing the petition filed by the revision petitioners to reject Ex.P.9 an unregistered deed of relinquishment which was already marked.

2. The first respondent herein filed a suit for declaration of title and injunction against the petitioners and other respondent. The trial in the matter was already commenced. P.W.1 was examined. When P.W.1 was on box, the first respondent marked an unregistered relinquishment deed executed by Palaniammal and others in favour of father of the first respondent and the same was marked as Ex.P.9. Thereafter, the petitioners have come out with this instant application seeking to reject the Ex.P.9 on the ground that it is unregistered deed of relinquishment.

3. The learned counsel for the petitioners vehemently contended that an unregistered relinquishment deed cannot be marked to prove relinquishment of right by Palaniammal and others in favour of father of the first respondent. He further submitted that a document which is not sufficiently stamped cannot be



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looked into for any purpose including collateral purpose as per Section 35 of the Indian Stamp Act, 1899. Therefore, the petitioners herein filed the present petition seeking to set aside the order passed by the Court below.

4. It is settled law an unregistered document cannot be received in evidence to prove collateral purpose as rightly contended by the learned counsel for the petitioner. Ex.P.9 unregistered deed of relinquishment cannot be used as evidence by the first respondent to prove the relinquishment of right by Palaniammal and other in favour of first respondent's father. However, it is always open to them to use the document to prove collateral purpose of nature and character of possession. For that limited purpose Ex.P.9, an unregistered deed of relinquishment can be admitted. As far as the contention raised by the learned counsel for the petitioners that the questioned document requires payment of Stamp duty and hence, it ought not to have been admitted in view of the bar under Section 35 of the Indian Stamp Act is concerned, when Ex.P.9, an unregistered document was sought to be marked by the first respondent through P.W.1, it was not objected to by the revision petitioners. In view of Section 36 of the Indian Stamp Act if the document is marked without any objection with regard to insufficiency of stamp duty, it is not open to the party to raise the said point later on.



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5. In view of the above, this Court does not find any infirmity or illegality in the order passed by the Court below. Consequently, the Civil Revision Petition stands dismissed. However, it is clarified that the questioned document Ex.P.9 can be used in evidence by the first respondent only for collateral purpose to prove the nature and character of possession. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2022

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Index: Yes/ No

Internet : Yes / No

To

The Special Judge II,

Jayankondam.



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S.SOUNTHAR, J.

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