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C.R.P.No.2469 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.2469 of 2022

and

C.M.P.No.12754 of 2022

Pakkirissamy

represented by Power Agent Kandhasamy

... Petitioner

Vs.

1.Vijyalakshmi

Dhanam (Died)

Sivaprakasam (Died)

Tirounavoucarassou(died)

2.Radha

3.Saroja

4.Rajeswari

5.Sumathi

6.Ramraj

Renu (died)

7.Santhi

8.Latha

9.Tirumurugan

10.Janatha

11.Valarmathi



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12.Jagathambal
13.Vijayarangam
14.Elumalai
15.Arumambigai
16.Vasanth
17.Kanaga Ambujanam
18.Revathy
19.Ranganathan
20.Parameshwari
21.R.Perumal
22.R.Dharmalingam
23.R.Lalitha
24.R.Baskar

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order dated 02.06.2022 passed in O.S.No.48 of 2009 on the file of the Additional Sub Judge at Puducherry, to mark the document dated 23.07.1973 and 24.07.1973 as exhibit B1 and B2 Family arrangement partition.

For Petitioner : M/s.P.Veeraraghavan

For Respondents : M/s.E.Ezhilcaroline

ORDER

This Civil Revision Petition is filed challenging the order dated 02.06.2022 passed by the Court below directing impounding of the document for the purpose of collection of stamp duty together with penalty.

2. The 1st respondent herein filed a suit for partition against the petitioner and other respondents. The trial in the suit had already commenced. When D.W.1 was examined, he produced two documents dated 23.07.1973 and 24.07.1973. The Court



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below impounded the documents on the ground that under the document, creation of a new right takes place and consequently, it requires registration and proper stamp duty. Since the documents are unstamped, the Court below directed impounding of the documents for the purpose of collection of stamp duty together with penalty. Aggrieved by the same the petitioner/ 4th defendant has come up by way of this revision.

3. The learned counsel for the petitioner by relying on the judgment reported in *AIR 2001 Mad 135, (A.C.Lakshmipathy vs. A.M.Chakrapani Reddiar)*, submitted that if the document records past transaction, it shall be treated as a family arrangement which need not be registered.

4. On the other hand, the learned counsel for the respondents relying of the very same judgment, submitted that if creation of interest takes place under the document, it shall be registered and properly stamped.

5. Heard the arguments of the learned counsel for the petitioner and the learned counsel for the respondent and perused the typed set of papers.



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6. A perusal of the document dated 23.07.1973 would suggest that under the said document, certain properties were divided and allotted to the parties to the suit.

When partition takes place under the document, it should be treated as a partition deed which requires proper registration and proper stamping. The document in question dated 23.07.1973 being a document executed in white paper, it cannot be admitted in evidence without payment of stamp duty together with penalty for any purpose as per Section 35 of the Indian Stamp Act. Therefore, the Court below rightly passed the order for impounding of the said document. As regards the document dated 23.07.1973, the impugned order requires no interference by this Court.

7. As far as 2nd document produced by the petitioner dated 24.07.1973 is concerned, a perusal of the document would suggest it is only an agreement between the parties thereto, to enter into a family arrangement. Under the document properties have not been divided and it contains no details about the properties dealt with by the parties. Therefore, it cannot be treated as a partition deed or family arrangement. It does not create any right under the document or record any past transaction. It only says that the parties to the document agreed to partition of the properties. Therefore, it may not require any registration and stamp duty.



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8. In view of the discussion made above, the impugned order is set aside only as regards the document dated 24.07.1973. Hence the Civil Revision Petition is partly allowed in respect of document dated 24.07.1973. The petitioner is entitled to tender it in evidence without payment of stamp duty and as far as the document dated 23.07.1973 is concerned, the order impugned in this revision is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

The Additional Sub Court,
Puducherry.



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S.SOUNTHAR, J.

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