



C.R.P.(PD).No.1051 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1051 of 2021

and

C.M.P.No.8380 of 2021

G.S.Tamil Selvan

... Petitioner

VS

1.S.Rajeshkanna

2.Malarkodi

3.Gandhimathi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal Order dated 26th November 2020 in I.A.No.3 of 2019 in O.S.No.107 of 2013 on the file of the Additional District Court, Namakkal.

For Petitioner : Ms.Chitra Maragatham
for M/s.T.R.Rajaraman



C.R.P.(PD).No.1051 of 2021

For R1 : Ms.J.Prithivi
for M/s.S.Kaithamalai Kumaran

For R2 and R3 : No Appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the 1st respondent seeking recognition of his father as his duly constituted Power of Attorney.

2. The 1st respondent herein filed a suit for partition. Since the 1st respondent is settled at United States of America, he appointed his father K.Jaganathan, as his Power of Attorney. The instant application has been filed to recognise the Power of Attorney of the 1st respondent. In support of the petition, the 1st respondent also filed Power of Attorney executed by him at United States dated 10.09.2019.



3. The petition was resisted by the petitioner on the ground that Power of Attorney was unregistered one and therefore, it cannot be taken into consideration. It was also pointed out by the petitioner in the counter affidavit that Power of Attorney was not executed in a stamp paper and the same was not adjudicated upon by the Registering Authority with regard to the stamp duty.

4. The Trial Court allowed the application mainly on the ground that Power of Attorney need not be registered. However, non-payment of proper stamp duty and failure to get it adjudicated by the Registering Authority in India was not at all considered by Trial Court.

5. It is settled law if Power of Attorney executed in Foreign Country does not bear proper stamp duty, the same shall be adjudicated on it's receipt in India within the time stipulated. In the case on hand, a perusal of the Power of Attorney produced by the 1st respondent would suggest the same was executed in a white paper, without payment of any Indian Non-Judicial Stamp. Therefore, the same cannot be taken into consideration by the Court.



C.R.P.(PD).No.1051 of 2021

The time for adjudication is also already over. In such circumstances, based on the Power of Attorney, which is not properly stamped and adjudicated, the Trial Court ought not to have allowed the application.

6. Accordingly, the order impugned in this revision petition is set aside and the Civil Revision Petition stands allowed. However, it is open to the 1st respondent to file fresh application with a same prayer by producing properly stamped and adjudicated Power of Attorney. No costs. Consequently, the connected civil miscellaneous petition is closed.

06.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



C.R.P.(PD).No.1051 of 2021

To

WEB COPY
The Additional District Court,
Namakkal.



WEB COPY



C.R.P.(PD).No.1051 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.1051 of 2021

06.03.2024