



C.R.P. No. 3441 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 04.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE BATTU DEVANAND**

C.R.P. No. 3441 of 2022

and

C.M.P. No. 18283 of 2022

Damodharan

... Petitioner

Vs.

1.Kumari

2.A.V. Valliammal

3.C.S. Radha

4.P.E. Vijayalakshmi

5.P.E. Nandhinidevi

... Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 27.09.2022 passed in I.A.No.2 of 2022 in O.S.No.496 of 2019 by the I Additional District Judge, Tiruvallur.

For Petitioner : Mr. L. Dhamodharan

For Respondents : No Appearance



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## **ORDER**

This Civil Revision Petition has been filed against the order dated 27.09.2022 in I.A. No. 2 of 2022 in O.S. No. 496 of 2019 on the file of the I Additional District Judge, Tiruvallur.

2. Heard the learned counsel for the petitioner. In spite of service of notice, there is no appearance for the respondents.

3. Perused the materials available on record carefully.

4. Learned counsel for the petitioner submits that the petitioner is the first defendant in the suit in O.S. No. 496 of 2019. The O.S. No. 496 of 2019 was filed by the first respondent herein. The respondents 2 to 5 are defendants 2 to 5 in the suit. Learned counsel for the petitioner further submits that the petitioner / first defendant has filed an application under Order VIII Rule 1A seeking for leave to receive the pattas stood in the name of Govindasamy, Shanmugam, Kullappa Mudali and Gurunatha Mudali and sale deeds dated 11.02.2000 and 26.11.2014 and a Koor Chit dated



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19.02.2003. In I.A.No.2 of 2022, the said application was partly allowed by the Court below by order dated 27.09.2022, permitting the petitioner to mark documents 1 to 5 and 7 mentioned in the petition except the Koor Chit dated 19.02.2003. Aggrieved by the said order, the present civil revision petition has been filed.

5. Learned counsel for the petitioner further submits that the trial Court has committed an error apparent on the face of the record by allowing the application in-part and failed to take note the validity of the document and marking of the document can be decided at the time of marking of document and not at the time of reception of the documents and accordingly, he submits that rejecting the reception of documents will cause prejudice to the petitioner.

6. Having considered the submissions of the learned counsel for the petitioner and on perusal of the order passed by the trial Court in I.A. No. 2 of 2022, it appears that the Court below is of the opinion that the Koor Chit is an unregistered document and it is not duly stamped. Therefore, the Koor



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Chit is inadmissible in evidence. The Court below also observed that where a partition deed which is reduced into writing creates any rights in the immovable property in presenting, it requires registration as per Section 17 of the Registration Act.

7. Accordingly, the Court below held that the petitioner is entitled to mark all the documents except the Koor Chit dated 19.02.2003 subject to proof of its contents.

8. The Division Bench of Madras High Court in ***A.C. Lakshmipathy and Others v. A.M. Chakrapani Reddiar and Others*** reported in ***AIR 2001 Mad 135***, held as extracted herein under: -

*“42. To sum up the legal position*

*xxx xxx xxx*

*(V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.”*



9. In ***Korukonda Chalapathi Rao & Another v. Korukonda***

***Annapurna Sampath Kumar*** reported in ***2021 0 Supreme(SC) 535***, the

Hon'ble Apex Court, while considering the identical issue, states as follows:

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*14. There is a long line of judgments of this court dealing with the question as to whether a family arrangement is compulsorily registrable. We need only refer to the case of Kale v. Dy. Director of Consolidation, AIR 1976 SC 807. This Court has summed up the essentials of the family settlement in the following proposition:*

*“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:*

*“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*

*(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;*

*(3) The family arrangement may be even oral in which case no registration is necessary;*



*(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;*

*(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no*



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*difficulty in giving assent to the same;*

*(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”*

10. From the above settled provision of law, it is clear that registration would be necessary only if the terms of the family arrangement are reduced into writing. The memorandum itself does not create or extinguish any rights in immovable properties and therefore, does not fall within the mischief of Section 17(2) of the Registration Act and they are not registrable for compulsory registration as observed by the Apex Court in the above mentioned judgment.

11. In view of the proposition of law laid down as stated above, the finding of the Court below that the Koor Chit is the unregistered document and it is not duly stamped and as such, it is inadmissible in evidence is not correct.



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12. Accordingly, the order dated 27.09.2022 in I.A.No.2 of 2022 in

O.S.No.496 of 2019 is set aside.

13. In the result, the Civil Revision Petition is allowed.

14. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**04.07.2024**

Index : Yes / No

Neutral Citation : Yes / No

AT

To

The I Additional District Judge, Tiruvallur.



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**BATTU DEVANAND, J.**

AT

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