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C.R.P.No.2881 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2881 of 2021 &
CMP.No.20801 of 2021

K.Jayakumar

.. Petitioner

Versus

1.Saroja

2.Sureshkumar

3.Rameshkumar

4.Rajkumar

.. Respondents

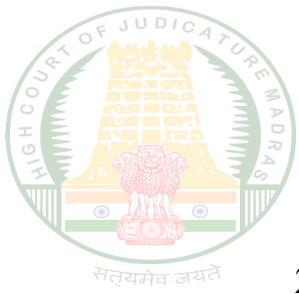
Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order dated 19.04.2021 in I.A.No.3 of 2021 in O.S.No.10 of 2017 passed by the learned Principal District Judge, Perambalur.

For Petitioner : Mr.N.Santhosh,
for Mr.M.Ravi

For Respondents : Mr.T.S.Sivakumar

ORDER

I heard Mr.Santhosh representing Mr.M.Ravi for the petitioner and Mr.T.S.Sivakumar for the respondents.



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2. This civil revision petition challenges the order of the learned Principal District Judge at Perambalur in I.A.No.3 of 2021 in O.S.No.10 of 2017 dated 19.04.2021.

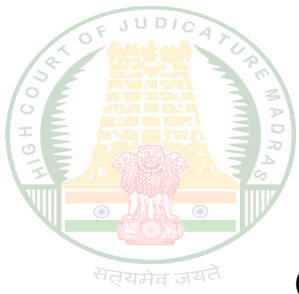
3. The plaintiff is the civil revision petitioner. For the sake of convenience, the parties would be referred to as per their ranks in the suit.

4. There is no dispute in the relationship between the parties. The petitioner is the one of the sons of one Karuppannan. Karuppannan and Venkatachalam are brothers. Both were born to one Thatha Muthuraja. Venkatachalam had three sons and one daughter, namely,

- (i) Mookan,
- (ii) Varadharaj,
- (iii) Thangarasu, and
- (iv) Chinnapillai.

5. Karuppannan likewise had four sons, namely,

- (i) Ramamoorthy
- (ii) Natarajan [(i) & (ii) through this first wife]



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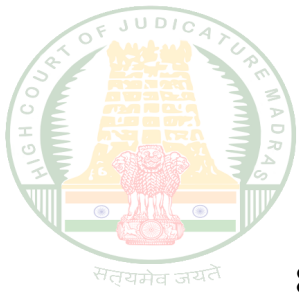
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(iii) Selvaraja and

(iv) Jayakumar (plaintiff) [(iii) & (iv) through his second wife].

6. Venkatachalam passed away on 08.08.1979. Karuppannan passed away on 09.02.2007. Mookan and Thangarasu died as bachelors. The date of death of Mookan is not specified in the plaint. Thangarasu is said to have passed away on 22.09.1997. Varadharaj had three sons viz., Suresh, Ramesh and Rajkumar, who are the defendants 2 to 4 respectively.

7. Varadharaj had taken a loan from one Ramasamy. He seems to have defaulted, constraining the said Ramasamy to present O.S.No.1494 of 1980 on the file of the learned District Munsif at Thuraiyur. On the formation of a Court in Perambalur, the said suit stood transferred to the file of the District Court at Perambalur and was renumbered as O.S.No.1340 of 1981. This suit came to be decreed. The properties of Varadharaj were attached. Varadharaj was unable to satisfy the decree. Therefore, he appealed to Karuppannan, his younger paternal uncle, and the father of the plaintiff, to discharge the decree. Karuppannan discharged the same.



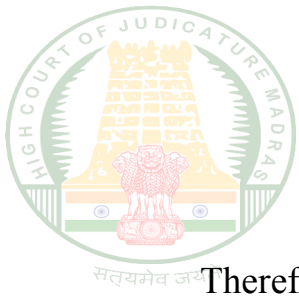
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8. Subsequently, Chinnapillai, who has taking care of her auditorily challenged brother, executed a stamped but unregistered release deed on 21.05.1990. Soon thereafter on 11.11.1991, Varadharaj/the husband of the first defendant, who is the father of the defendants 2 to 4, executed a registered release deed giving up his right in the properties in favour of his paternal uncle and his brothers, Mookan and Thangarasu. This document is said to be registered as document No.49 of 1981.

9. Between the family members, one more document has come about, namely, release deed executed by Thangarasu in favour of his uncle, Karuppannan on 04.12.1981.

10. The plaintiff alleged that after this document had been executed and come into force, Karuppannan had been cultivating the properties. He did so through his lessees, namely, Chinnapillai, and her son-in-law Selvarasu. Revenue records were also mutated in the name of Karuppannan. The plaintiff had produced the revenue records to substantiate his plea. It is pleaded that Karuppannan and his family members are settled in Malaysia.



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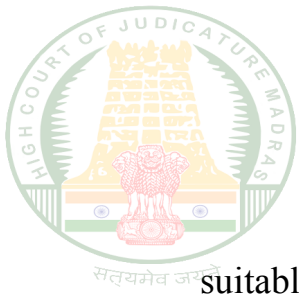
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Therefore, they were constrained to lease out the property and cultivated it through the aforesaid persons.

11. The cause of action for the suit is that the defendants 1 to 4 had mortgaged the property, for a sum of Rs.50,000/-, in favour of the fifth defendant, one Paravatham. The plaintiff came to know about the mortgage, when an encumbrance certificate was applied. The encumbrance certificate reflected the said transaction. Immediately, he issued notices to all the defendants. Only defendants 1 to 4 chose to reply. As they denied the title of the plaintiff, he was constrained to come forward with the suit for declaration of his title and for injunction.

12. A written statement has been filed by the defendants. The short and sweet plea of the defendants is that the documents are unregistered and therefore, cannot be held legally binding.

13. Issues were framed and the parties were pushed to trial. The plaintiff filed his proof affidavit and documents. At that stage, the defendants 1 to 4 took out an application calling upon the court to pass



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suitable orders on the three unregistered documents referred to above and also for an order not to accept the same in evidence. This application was numbered as I.A.No.3 of 2021.

14. On being served with notice, the plaintiff filed a detailed counter. His plea was that he has not yet marked the document and that there was sufficient time for the court to decide whether the document should be received or not. In other words, the plea seems to be that the application is premature. The further plea was that all the documents were being received only subject to the relevancy and proof, and that judicial discretion cannot be decided at the stage in which the suit was currently placed.

15. The learned Trial Judge, after receipt of written arguments on either side, took up the application for disposal. She held that as the three documents are unregistered and also since they are unstamped, they cannot be received in evidence and consequently, allowed the application. The order, at the same time, states that though the documents are unregistered, it can also be received for collateral purposes. It is this order which has been put to challenge at the instance of the plaintiff.



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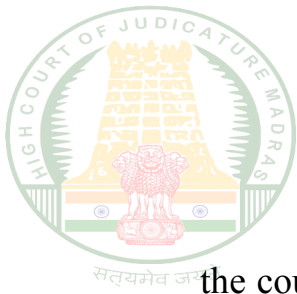
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16. I have gone through the records and heard the submissions of the counsels.

17. There is no bar under the Code of Civil Procedure or under the Evidence Act for a party to file/present unregistered document along with the plaint. The bar under Section 35 of the Stamp Act as well as Section 49 of the Registration Act arises only when the document is tendered in evidence. That stage has not yet arisen in this present case. Therefore, as rightly contended by Mr.Santhosh, the application is premature.

18. Apart from that the learned Judge has come to the conclusion that the documents are unstamped. I have gone through two documents dated 25.12.1990 and 04.12.1981. Both the documents have been handwritten on stamp papers to the value of Rs.5 and Rs.2.50 paise respectively. Therefore, the documents are not totally bereft of Stamp Duty. At best, they are not stamped for the necessary value.

19. Under Section 35 of the Indian Stamp Act, when a document is tendered in evidence and the court finds it to be undervalued, the duty, that



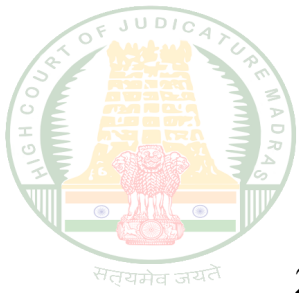
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the court is called upon to exercise, is to impound the document, collect the difference, and thereafter, proceed in accordance with law. Section 35 bars only unstamped document being received for “any purposes”. An insufficiently stamped document would not come within the teeth of Section 35. Therefore, the court ought to have waited for the plaintiff to tender the documents in evidence, and once tendered, if objected to by the defendants, impound the documents, and thereafter proceed further. Instead, it has straight away allowed the application and rejected the documents.

20. Apart from that, an unregistered document can be received in evidence, if the same is sought to be proved for collateral purpose. This exception comes under the proviso to Section 49 of the Registration Act.

21. In the light of the above discussion, I am of the view that the order passed by the learned Trial Judge necessarily requires to be interfered. Accordingly, I.A.No.3 of 2021 in O.S.No.10 of 2017 dated 19.04.2021 is interfered and set aside.



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22. The plaintiff will be entitled to mark the documents. The learned Trial Judge shall decide whether it requires stamp duty. If so, the learned Judge shall impound the documents and collect the deficit stamp duty. Once the stamp duty is paid by the plaintiff, the trial court shall receive the same, subject to relevancy and proof. Insofar as document dated 11.11.1981, namely, the release deed executed by Varadharaj, the husband of the first respondent and father of the defendants 2 to 4 is concerned, the court shall verify, if it is a registered document. If it is so registered, it shall be received in evidence.

23. With the above directions, the civil revision petition is allowed.
No costs. Consequently, the connected miscellaneous petition is closed.

23.06.2025

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

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The Principal District Judge, Perambalur.

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V.LAKSHMINARAYANAN, J.

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