BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)Nos.154 and 736 of 2025
and
C.M.P(MD) No.1028 of 2025

C.R.P(MD) No.154 of 2025:

P.Muthulakshmi ... Petitioner/ Plaintiff

Vs.

1. P.Raju ... 1st Respondent/ Defendant

2. The District Collector, Theni. ... 2nd Respondent

(Notice to R1 is dispensed with and R2 is suo motu impleaded as per the order of this Court dated 27.01.2025 made in C.R.P(MD) No.154 of 2025)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the proceedings of the learned Principal District Judge, Theni, dated 16.12.2024 in C.O.S.No.1 of 2024.

For Petitioner : Mr.R.Suriyanarayanan

For R1 : Mr.P.Ganapathi Subramanian

For R2 : Mr.S.P.Maharajan
Special Government Pleader

C.R.P(MD) No.736 of 2025:

P.Raju ... Appellant/Defendant/
Defendant

Vs.

P.Muthulakshmi ... Respondent/Plaintiff/
Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, challenging the proceedings of the learned Principal District Judge, Theni, dated 16.12.2024 in C.O.S.No.1 of 2024.

For Petitioner : Mr.P.Gnanapathi Subramanian

For Respondent : Mr.R.Suriya Narayanan

COMMON ORDER

The plaintiff in C.O.S.No.1 of 2024, on the file of the Principal District Court, Theni, is the revision petitioner herein in C.R.P(MD) No.154 of 2025 and the respondent in C.R.P(MD) No.736 of 2025.

2. The said suit was filed for the relief of declaration that the partnership of PRV properties was dissolved in pursuance of the notice dated 03.03.2017 sent by the plaintiff to the defendant with effect from the date of receipt of the notice on 04.03.2017. It is further prayed that the defendant should render true and proper accounts in respect of the said partnership deed. It is also prayed to pass a preliminary decree for partition in respect of the allotment of half share of the plaint schedule properties after deleting the properties sold by the defendant. The plaintiff has further prayed to pass a decree for permanent injunction restraining the defendant from in any way alienating and encumbering the plaint schedule properties by suppressing the dissolution of the partnership deed or by claiming the plaint schedule properties as his absolute properties. After trial, the learned Principal District Judge, Theni, has passed the following judgment:

In the result,

> (i) The suit in O.S.No.21 of 2017 (C.O.S. 01 of 2024) is dismissed with cost to the defendant.
>
> (ii) With respect to the documents marked Ex.A-13 agreement for development of the property between Geo Mineral Resources and PRV Properties. The document Ex.A-14 construction

agreement by contractor one Karuppaiah, Ex.A-15 the receipt dated 10.05.2013 for having received Rs.36,00,000/- signed by on Narnithkrishnan, Ex.A16 the development agreement and for construction of overhead tank by contractor. T.Ashokkumar. These documents though were marked on the side of the plaintiff, the document requires stamp duty, which was not collected while marking the document. The same, were marked subject to objections. Therefore, the stamp duty penalty for the said documents shall be collected by the office before issuing copy of the decree.

(iii) Similarly, Ex.B-8 is the arbitral award passed by the retired District Judge in Claim Petition 145 of 2019, Ex.B18 is the developmental agreement and work agreement between one Mohandass and the defendant Raju for Rs. 1,50,00,000/- Ex.B-19 is the construction agreement between Karuppaiah and the defendant for construction, Ex.B-20 is the construction agreement, Ex.B-22 is the receipt issued by one Karuppaiah, Ex.B-23 is the development and construction agreement for overhead tank, Ex.B-24 is the road development agreement. These documents are not duly stamped, which requires stamp duty penalty.

(iv) Therefore, the decree ought to be issued only on payment of stamp duty penalty by the defendant. The stamp duty penalty to be paid within a period of one week by the respective parties. Failing which, the documents shall be impugned. Only on such payments of stamp duty penalty the decree shall be prepared and issued.

3. After dismissing the suit, the trial Judge has proceeded to pass an order on 16.12.2024 directing that a sum of Rs.2,08,56,000/- has to be paid by the plaintiff as well as the defendant by equally sharing the said amount. The trial Court has directed to pay stamp duty penalty for Ex.A-13, Ex.A-14, Ex.A-15, Ex.A-16 (1) and Ex.A-16(2). This order is under challenge in the present Civil Revision Petition.

4. According to the learned counsel appearing for the revision petitioner, Ex.A-13 is a document that was executed by the owners of the property in favour of one third party namely, R.Mohandass for the purpose of developing /preparing the land for creating a layout in the property. This document is covered only under Article 5(j) of the Indian Stamp Act, for which, the stamp duty of Rs.20/- is leviable. For non payment of Stamp duty,

penalty at the rate of 10 times can be levied and therefore, only a sum of Rs.200/- could be levied at the time of impounding Ex.A-13. However, the learned District Judge has proceeded to impose a penalty of Rs.1,98,00,000/- (Rupees One Crore Ninety Eight Lakhs only) based upon the value mentioned in the said document.

5. The learned counsel appearing for the revision petitioner had further contended that as far as Ex.A-14 document is concerned, it is a construction agreement executed by the owner of the property in favour of a building contractor and it is not a development agreement. This agreement became compulsorily registrable only after an amendment was introduced in Section 17 (f) of Stamp Duty Act, with effect from 01.12.2012. This document having been executed on 01.11.2012 is not a compulsorily registrable document and therefore, the question of payment of stamp duty or payment of penalty for non payment of stamp duty would not arise.

6. The learned counsel appearing for the petitioner further contended that as far as Ex.A-15 document is concerned, it is a receipt issued for the receipt of a sum of Rs.33,46,000/- (Rupees Thirty Three Lakhs and Forty Six

Thousand only). This receipt is governed by Article 53 of the Schedule (1) of Indian Stamp Act. As per the said Article one rupee has to be paid as a Stamp duty for any money or other properties the amount of value of which exceeds Rs.5000/- (Rupees Five Thousand only). In such circumstances, even after imposing penalty, only a sum of Rs.10/- has to be paid by the parties.

7. The learned counsel appearing for the petitioner further contended that as far as Ex.A-16 (1) document is concerned, it is an agreement entered into by the owner of the property with a contractor for the construction of drainage on either side of the road and for construction of water tank. He further contended that the road and the drainage channels have already been handed over to the local body. According to him, the said agreement also falls under Article 5 (J) of the Indian Stamp Act, which requires a stamp duty of Rs.20/-. On payment of penalty at the rate of 10 times only a sum of Rs.200/- has to be paid.

8. The learned counsel appearing for the petitioner had further contended that as far as Ex.A-16 (2) document is concerned, it is an agreement entered into between the owner of the property and a contractor for

converting the mud road into tar road. The said Tar road, after laying of tar road has been entrusted to the local body. According to him, this agreement would also fall within Article 5 (j) of Schedule (1) of the Indian Stamp Act, attracting a sum of Rs.20/- as the stamp duty. After levying of penalty only a sum of Rs.200/- has to be paid by the parties.

9. According to the learned counsel appearing for the revision petitioner, the trial Court has not taken into consideration the relevant Articles under the Indian Stamp Act or concept of those agreements and has arrived at an erroneous finding based upon the monetary value expressed in those documents. Hence, he prayed for setting aside the order passed by the learned Principal District Judge.

10. Per contra, the learned Special Government Pleader appearing for the second respondent herein had contended that the trial Court has properly arrived at a finding with regard to stamp duty based upon the monetary value expressed in those documents relying upon the relevant Articles. Even if the Articles referred to by the learned District Judge are erroneous, on the said ground the order of the learned District Judge cannot be set aside, merely

because a wrong Article has been referred to. He further prayed for confirming the order passed by the learned District Judge with regard to payment of penalty and stamp duty.

11. Heard both sides and perused the material on records.

12. A perusal of the order impugned in the Civil Revision Petition reveals that the learned District Judge after passing the judgment had directed both the parties to pay the deficit stamp duty as a pre condition for drafting the decree. A separate order has been passed on 16.12.2024. It is impugned in the civil revision petition, in which, the deficit stamp duty has been calculated.

13. A perusal of the order impugned in the Civil Revision Petition reveals that as far as Ex.A-13/Ex.B-18 is concerned, the learned trial Judge has proceeded to calculate the value of the document on the basis of the amount expressed in the said document. A perusal of the said document reveals that it is a development agreement for the purpose of clearing the land to prepare it for creating the layout. Such a document does not fall under

Article 5 (h) (2) of the Schedule (1) of the Indian Stamp Act. Article 5 (h) (1) of the Indian Stamp Act, which deals with a construction agreement between a vendor and vendee with a condition that the constructed house or building shall be held either individually or jointly between the vendor and the vendee. However, Ex.A-13 document is an agreement entered into between the owner of the property with a contractor for clearing the bushes and preparing the land for creating a layout. There is no reference with regard to any construction of house or building in the said agreement. Therefore, the learned trial Judge was not right in relying upon Article 5 (h) (2) of the Indian Stamp Act and therefore, the contentions of the learned counsel appearing for the revision petitioner that the agreement is governed only by Article (5) (j) of the Indian Stamp Act is legally sustainable.

14. As far as Ex.A-14/Ex.B-19 construction agreement is concerned, such a type of agreement is compulsorily registrable only on introduction of an amendment to Section 17(1) (f) of the Indian Registration Act, with effect from 01.12.2012. This document having been executed on 01.11.2012, is not a compulsorily registrable document when it was executed. Therefore, the question of payment of stamp duty or payment of penalty for non payment of

stamp duty would not arise.

15. As far as Ex.A-15 document is concerned, the learned trial Judge has rightly relied upon Article 53 of the Schedule (1) of the Indian Stamp Act and has arrived at a finding that the parties have to pay a sum of Rs.11/- as stamp duty penalty. This Court does not find any error with regard to finding of the trial Judge in so far as Ex.A-15 document is concerned.

16. As far as Ex.A16(1)/Ex.B-23 document is concerned, the said document has been entered into between the owner of the property and a contractor for the construction of drainage channels on either side of the road and for construction of water tanks. The learned trial Judge has relied upon Article 5 (h) (2) of Schedule (1) of the Stamp Act, to value the said documents. There is no reference with regard to construction of a building or a house in the said agreement. Therefore, Article 5 (h) (2) of the Indian Stamp Act, cannot be invoked. In such circumstances, the contentions of the learned counsel appearing for the revision petitioner that Article 5 (j) alone is applicable is sustainable.

17. As far as document in Ex.A-16 (2)/Ex.B-24 is concerned, it is a document that was entered into between the owner of the property and the contractor for conversion of mud roads into tar roads. The trial Court had relied upon Article 5 (h) (2) of the Indian Stamp Act. Since there is no reference about construction of any house or a building, but only laying of the Tar road, the said Article is not applicable to these documents also. However, as rightly contended by the learned counsel appearing for the revision petitioner, Article that is applicable to Ex.A-16 (2)/ B-24 is Article 5 (j) of the Indian Stamp Act, wherein the parties have to pay a sum of Rs.20/- towards the agreement and Rs.200/- towards stamp duty penalty which is 10 times the stamp duty.

18. In view of the above said deliberations, it is clear that the findings of the trial Court with regard to the documents referred to the impugned order (except Ex.A-15) are not sustainable in the eye of law and therefore, the same is liable to be set aside and this Court is inclined to pass the following orders:

a. The order impugned in the Civil Revision Petition as far as Ex.A-15 document is concerned is hereby confirmed;

b. As far as Ex.A-13/B-18 documents is concerned, the stamp duty penalty of Rs.200/- shall be paid;

c. As far as Ex.A.14/B-19 document is concerned, the stamp duty penalty of Rs.200/- shall be paid;

d. As far as A-16(1)/ B-23 document is concerned, the stamp duty penalty of Rs.200/- shall be paid;

e. As far as A-16 (2)/B-24 document is concerned, the stamp duty penalty of Rs.200/- shall be paid; and

f. All the stamp duty penalties shall be paid by the plaintiff in the suit.

19. With the above said observations, these Civil Revision Petitions are partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

06.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Judge,
   Theni.

2. The District Collector,
   Theni.

3. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

R.VIJAYAKUMAR,J.

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