BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16-12-2025**

CORAM

THE HONOURABLE MR JUSTICE G.R.SWAMINATHAN

CMP(MD) NO. 16813 of 2025 IN

C.R.P.(MD)No.686 of 2016

1. Muthaiya Karaiyalar
S/o.Petchi Muthukaraiyalar
East of Bus Stand
Punnaiyapuram Main Road
Sokkampatti Village
Tenkasi Taluk
Tirunelveli District.

Petitioner(s) / Respondent

Vs

1. THIRUMALAIAMMAL
W/o.Elukkonar
No.70/6, Muthalammal Kovil Street
Punnaiyapuram Main Road
Sokkampatti Village Tenkasi Taluk
Tirunelveli District.

Respondent(s) / Petitioner

For Petitioner(s) : Mr.P.Thiyagarajan

For Respondent(s): Mr.D.Nallathambi

Prayer: To clarify the order dated 06-08-2018 made in C.R.P (MD).No.686 of 2018 and to direct the Lower Appellate Court to decide the appeal in A.S.No.93 of 2019 on the file of the Principal Subordinate Court, Tenkasi upon considering the Partition Yadast dated 27-09-1993 and other documents received in evidence and thus render justice.

ORDER

The respondent herein filed C.R.P.(MD)No.686 of 2016(PD) and it was disposed of by me on 06.08.2018. Paragraph Nos.3 to 5 of the order reads as follows:-

> “3.The learned counsel appearing for the revision petitioner pointed out that even if such a document can be received in evidence for collateral purposes, still the statutory mandate enshrined in Section 35 of the Indian Stamp Act, 1899 will have to borne in mind.
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> 4.The learned counsel for the revision petitioner brought to the notice of this Court the decision reported in (2006) 4 M.L.J 706 (Karuppannan vs. Thavasiappan and another) which had held that the document in question can be marked if the deficit stamp duty together with penalty is remitted.
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> 5.This Court is in full agreement with the aforesaid submission of the learned counsel for the revision petitioner. This Court even while sustaining the order impugned in this Civil Revision Petition makes it clear that the same is subject to Section 35 of the Indian Stamp Act, 1899. In other words, the respondent shall be called upon to remit the necessary stamp duty with which the instrument is chargeable

together with penalty. Only thereafter, it can be received in evidence."

2. It appears that the respondent did not avail such liberty before the trial Court. Instead before the first appellate Court, IA was filed for receiving additional evidence and at this stage, the observation made by this Court was pressed into service.

3. The first appellate Court allowed the IA filed by the respondent and permitted the respondent to file additional evidence on payment of stamp duty and penalty. That was objected by the petitioner by filing C.R.P.(MD)Nos.1223 and 1224 of 2022. The CRP was disposed of on 23.07.2025 and the petitioner herein was allowed to seek clarification from this Court. Hence, this petition came to be filed.

4. The learned counsel for the petitioner would point out that this Court gave an opportunity to the respondent only to mark the documents subject to Section 35 of the Indian Stamp Act, 1899 before the trial Court alone and that the respondent cannot invoke

the liberty given by this Court before the first appellate Court.

5. Though there is force in this contention, I must note that any appeal is a continuation of the original proceedings. The observations and liberty given by me can be construed as applicable before the first appellate Court also. This petition is disposed of.

16-12-2025

PMU

To

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