

(1964) 07 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No. 1063 of 1960

B. Natesa Chettiar

APPELLANT

Vs

The Collector of North Arcot

RESPONDENT

Date of Decision : 13-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 33, 40

Citation : (1966) ILR (Mad) 81

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : K. Kumaraswami, for the Appellant; S. Mohan, for V. Ramaswami, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—This is a petition under Article 226 of the Constitution praying that the order of the Collector of North Arcot imposing a duty

of Rs. 405 and a penalty of ten times that amount in respect of a document impounded and forwarded to him, may be quashed.

2. In a suit filed by a son of the Petitioner there was an application for the appointment of a Commissioner to take an inventory of all the

documents, articles, cash, etc., in the possession of the Petitioner. The suit was for a partition. The Commissioner took an inventory and took

possession of all the documents, and among those documents was one which appeared to be a partition deed. This was impounded by the

Subordinate Judge and forwarded to the Collector, and, it is in respect of this document that duty and penalty were imposed. The Petitioner stated

that this is not a deed of partition but only a koorchit, that is to say, an agreement to divide. It was claimed that this arrangement was not given

effect to and was regarded by the parties as nothing more than a piece of waste paper. It is alleged further that the Commissioner acted high-

handedly in taking possession of this document and producing it in Court.

3. The action of the Collector in imposing a duty and penalty on a document which should not have been impounded by the Subordinate Judge is

attacked as illegal, and, it is on that basis that the writ is prayed for.

4. In the counter affidavit filed on behalf of the Collector it is stated that the document came before the Subordinate Judge in the course of the

performance of his judicial duty and that in impounding the document it could not be said that he acted beyond his jurisdiction. It is claimed that

once the document was impounded and forwarded to the Collector, he had no alternative except to act in the manner provided by law. It is

claimed, therefore, that there is no case for the issue of a writ.

5. When the matter came before me at an earlier occasion I suggested to the learned Counsel for the Petitioner that if his contention was that the

Court was not competent to impound the document, in the circumstances of the case, he could have agitated the matter by way of a civil revision

petition and time was accordingly given to the learned Counsel to see if that could be done. For some reason or other it is stated that that was not

possible and the matter has now to be heard on merits.

6. Section 33 of the Stamp Act confers authority on every person having by law authority to receive evidence to impound any instrument when any

such instrument, which in his opinion, is chargeable to duty comes before him in the performance of his functions. I am at a loss to see precisely in

what manner it could be argued that in the instant case the instrument in question did not come before the Subordinate Judge. It was a suit for

partition and on the application of one of the parties to the suit the Court had ample discretion to appoint a commission for securing possession of

all material necessary to adjudicate upon the issues before the Court. The Commissioner, in the course of his inspection, came upon more than one

partition document and produced them before Court. If these documents had the necessary connection with the suit which the Court had to try, it

was undoubtedly in the performance of the functions of the Court that the documents came before Court.

7. Learned Counsel for the Petitioner referred to In Re: Dr. P.M. Kamath, In that

case it has been held that a mere handing of a document, even if it is as a result of a summons from Court, cannot be said to be production and that there must be volition on the part of the person bringing it into Court to use it for some purpose. What exactly is the meaning of the expression comes before Court in the performance of its functions is explained in *King Emperor v. Balu Kuppayyan* ILR (1901) Mad. 525. There is nothing in either of these decisions which supports the contention of the learned Counsel, that, in the circumstances of the present case, the document in question cannot be said to have properly come before the Court in the performance of the functions of the Court. In the latter decision, even in a case where documents have been seized under a search warrant, it has been held that the word comes is sufficiently wide to include such production. It should follow, therefore, that in the instant case Section 33 certainly applies.

8. If this section should apply and the Court, after impounding, forwarded the document to the Collector, there is no dispute that the Collector correctly exercised his powers u/s 40 of the Act.

9. Learned Counsel urges that this document was not intended to be acted upon and that it was not a document of partition. It is claimed that it was only an agreement. I have examined the document. It purports to be one to which the father, the adult son and the minor sons were all parties.

It has been signed by all of them and on behalf of the minor sons by their mother acting as the guardian. It clearly states that the parties were living together and owing to certain difficulties were effecting the partition in the presence of the panchayatdars in the manner indicated below. The

document contains several schedules and further states that each of these schedules will be taken by the respective parties and be enjoyed

separately thereafter. This is clearly a document by which the partition was effected and there is nothing in it which shows that it is of a limited

character such as the *koorchit*. The contention that the document was not intended to be acted upon must also fail for what an instrument is has

been defined in the Stamp Act and this document does come within the four corners of this definition. It follows that there is neither an error of law

nor an error of jurisdiction. The petition fails and is dismissed. In the circumstances of the case, however, there will be no order as to costs.