

(2004) 10 MAD CK 0121

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 2431 of 2003 and C.M.P. No. 18398 of 2003

M. Chinnappan

APPELLANT

Vs

M. Ranganathan and B.M. Chennaiya Chetty

RESPONDENT

Date of Decision : 18-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 2005 Mad 105 : (2004) 5 CTC 326 : (2004) 4 MLJ 510 : (2005) 1 RCR(Rent) 207

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; V. Nicholas, for 1st Respondent, for the Respondent

Judgement

P. Sathasivam, J.—Civil Revision Petition is directed against order of the learned Subordinate Judge, Krishnagiri dated 17-4-2003, made in I.A.No. 791/2000 in O.S No. 111/95 in and by which the learned Judge has found that the question as to genuineness or not of the Muchalika dated 24-10-1976 is to be decided in the suit after concluding the trial. After making such an observation, the learned Judge closed the said petition.

2. It is seen in the said I.A.791/2000 the petitioner therein, 2nd defendant has prayed for permission to mark family arrangement Muchalika dated 24-10-1976 executed between the parties to the suit as document on the side of the defendant. The said application was resisted by the respondents/plaintiffs by filing counter statement. It is relevant to note the objection raised in the counter. In para 8 it is stated that the document in question is insufficiently stamped; hence the same could not be considered for marking the same as a document. The learned Subordinate Judge, after keeping the said Interlocutory Application pending and after giving several adjournments, finally passed an order on 17-04-2003 and closed the said petition stating that the genuineness of the

document, namely, Muchalika dated 24-10-1976 will be decided in the suit after trial. In this regard, reliance is placed on a judgement of the Supreme Court in BIPIN SHANTILAL PANCHAL V. STATE OF GUJARAT, reported in (2001) 3 S C C 1. The following direction issued in para 14 is relevant:

"14. When so recast, the practice which can be a better substituted is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."

In the case on hand, I have already referred to the objection raised by the respondents, namely, that the said document is insufficiently stamped. If that is so, as observed by the Supreme Court, if the objection relates to deficiency of stamp duty of a document, it is incumbent on the part of the Court to decide the objection first and to proceed further. Such recourse has not been followed by the learned Subordinate judge while passing the order on 17-04-2003. Accordingly, the said order is set aside and the matter is remitted to the learned Subordinate Judge with a direction to consider the document, namely, Muchalika dated 24-10-1976, whether it was properly stamped and then to proceed further, after giving a specific finding as observed in para 14 of the judgement of the Supreme Court, referred to above. The Court below is directed to complete the above process within a period of eight weeks from the date of receipt of a copy of this order. Civil Revision Petition is allowed to this extent. No costs. Connected C.M.P. is closed.