Manickam Vs Chinnasamy and Others

Court: Madras High Court

Date of Decision: July 28, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 105
Constitution of India, 1950 â€" Article 227
Evidence Act, 1872 â€" Section 3
Registration Act, 1908 â€" Section 17
Stamp Act, 1899 â€" Section 35

Citation: (2011) 7 MLJ 916

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: P. Valliappan, for the Appellant; P.T. Asha and Sarvabhauman Associates, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Venugopal, J.
The Revision Petitioner/Petitioner/Plaintiff has filed the instant Civil Revision Petition as against the order dated

14.10.2009 in I.A. No. 1425 of 2009 in O.S. No. 628 of 2003 passed by the Learned III Additional District Munsif, Kallakurichi.

2. The trial Court, while passing orders in I.A. No. 1425 of 2009 in O.S. No. 628 of 2003 dated 14.10.2009, has, among other things, observed

that "the Ex.B.14-Partition Agreement/Partition Deed has been marked subject to admissibility and relevancy and the nature of document would

be decided at the time of disposal of the suit and resultantly, dismissed the application without costs."

3. In the affidavit in I.A. No. 1425 of 2009 has averred that the Partition Deed is not a true one and further, in their family, No. partition like that

has taken place and that the said document has been a created one and also the same has not been registered.

4. Added further, it is the case of the Revision Petitioner/Plaintiff that the Partition Deed since it is not a registered one, is not a proper document

which is to be marked and at earlier point of time, when the said document has been attempted to be marked, the Court has rejected the same

because of the objection raised. But when one Iyasamy has been examined as a witness on behalf of the Defendant without prior permission of the

Court, the said Partition Deed has been marked as Ex.B.14 (notwithstanding the fact that Court has already refused to mark the same).

5. According to the Learned Counsel for the Revision Petitioner/Plaintiff, the ingredients of the Indian Stamp Act and the Registration Act have not

been fulfilled and since the Partition Deed is an unregistered invalid document in law, the same has not been sent to R.D.O. for the purpose of

impounding. To put it shortly, the Revision Petitioner/Plaintiff has sought for rejection of Ex.B.14-Partition Deed.

6. Before the trial Court, the 1st Respondent/1st Defendant has filed a counter averring that in the petition, the nomenclature of the document being

mentioned as Partition Deed is a wrong one and that the said document has not been written in a stamp paper and Ex.B.14 is only a partition list

and in law, the same does not require a compulsory registration. It is also mentioned in the counter that since the Respondent signature is not there

in Ex.B.14, the same has not been marked during the enquiry on the side of the Respondent. Further, in the said document, an objection has been

raised because there is No. signature of the Respondent and therefore, only through the witness Iyasamy, who signed in the document through him,

the same has been marked subject to objection raised on the side of the Revision Petitioner/Plaintiff. C.R.P. No. 31 of 2002, this Court has held

that a document which has been marked earlier cannot be cancelled and the same can be decided after the completion of the trial of the case.

7. Continuing further, in the decision of the Hon''ble Supreme Court in Bipin Shantilal Panchal v. State of Gujarat (2001) 3 SCC 1: AIR 2001 SC

1158 wherein it is held that ''Practice to first decide, any objection raised to admissibility of evidence and then proceed further with the trial.

Impedes steady and swift progress of Trial and the Courts should not make note of objection, mark objected document tentatively as exhibit and

decide objection at final stage.''

8. It is plea of the 1st Respondent/1st Defendant that in law, there is No. room to cancel the document already that has been marked and

therefore, the I.A. No. 1425 of 2009 filed by the Revision Petitioner/Plaintiff is not maintainable and the same has been filed only with a view to

delay the conduct of trial of the suit.

9. It appears that in the main Suit No. 628 of 2003, on the behalf of the Revision Petitioner/Plaintiff, witnesses P.W.1 and P.W.2 have been

examined. Witness D.W.1 has been examined in full and witness D.W.2 has been examined in part. D.W.2''s cross examination is half way

through.

10. The Learned Counsel for the Revision Petitioner/Plaintiff submits that Ex.B.14-Partition Deed is clearly hit by the provisions of Section 17 and

49 of the Registration Act, 1908 and therefore, it cannot be admitted in evidence.

11. The Learned Counsel for the Revision Petitioner/Plaintiff proceeds further that as per Ex.B.14-Partition Deed rights have been created and

unless the said document is registered, it cannot be looked into for any purpose whatsoever.

12. Proceeding further, it is the contention of the Learned Counsel for the Revision Petitioner/Plaintiff that the view of the trial Court that

admissibility and relevancy of Ex.B.14-Partition Deed could be decided at the time of disposal of the main Suit is in contravention of the ingredients

of Order 13 Rule 3 of Code of Civil Procedure.

13. Per contra, it is submission of the Learned Counsel for the Respondents/Defendants that Ex.B.14-Document is only a partition list and it is not

a partition document and since it is a partition list, the same does not require registration and also a document in writing which shows that the

properties of Hindu joint family have been partitioned already, need not be registered compulsorily as per Section 17 of the Indian Registration

Act.

14. That apart, the trial Court has pertinently observed that the admissibility and relevancy of the purported partition list/document can be decided

at the time of disposal of the suit and after recording the objection made on the side of the Revision Petitioner/Plaintiff at the time of marking

Ex.B.14-Document, the Court has allowed the said document to be marked in that way, which will not prejudice any one of the parties to the

litigation. Therefore, the reasoning of the trial Court that the admissibility and relevancy of Ex.B.14-Document can be decided at the time of

disposal of the main Suit, is a fair, valid and legal one, in the eye of law.

15. The Learned Counsel for the Revision Petitioner/Plaintiff submits that if the family arrangement is reduced to writing and if it creates, declare or

assign any right or extinguish right or interest or title in any immovable property, the same requires to be stamped as per Indian Stamp Act and as

per Indian Registration Act, 1908. To lend support to this contention, the Learned Counsel for the Revision Petitioner/Plaintiff relies on the

decision of this Court in Balakrishnan and Anr. v. Chandrasekharan, (2003) 3 MLJ 45 at page 47 in paragraph 7, it is observed as follows:

7. It is settled law that if the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or

interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act. If

the family arrangement is stamped, but not registered, it can be looked into for collateral purposes. A person cannot claim a right or title to a

property under the said document, which is being looked into only for collateral purpose. A family arrangement which is not stamped and not

registered, cannot be looked into for any purpose, in view of the specific bar in Section 35 of the Indian Stamp Act. A document must be read as

a whole. As to the nature of transaction under the document, it cannot be decided by merely seeing the nomenclature. Mere usage of past tense in

the document should not be taken indicative of a prior arrangement. The expression & quot;collateral purposes & quot; is No. doubt a very vague

one and the Court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a

collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple devise of calling it &

quot;collateral purpose& quot;, a party cannot use the unregistered document in any legal proceeding to bring about indirectly the effect which it

would have had, if it is registered. When the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what

they had arranged and where the arrangement is brought about by the document as such, that the document would require registration as it is, then

that it would be a document of title declaring for future what rights in what properties the parties possess.

16. He also cites the decision of this Court in Vincent Lourdhenathan Dominique and Anr. v. Josephine Syla Dominique, 2008 (1) CTC 308

wherein it is held as follows:

As per the guidelines given by the Division Bench, by applying the same to the facts of this case and contents of the document which is sought to

be marked, there is absolutely No. difficulty to come to the conclusion that this agreement is purported to create, declare, assign, limit and

extinguish right, title and interest over the immovable properties and therefore, the document is required to be properly stamped and duly registered

under the Indian Stamp Act and the Indian Registration Act.

17. Apart from the above, the Learned Counsel for the Revision Petitioner/Plaintiff cites the following decisions:

(a) In R.Deivanai Ammal (deceased by Labour Court) and Anr. v. G.Mennakshi Ammal and Ors. AIR 2004 Mad 529, it is held that ''Athakshi, a

document of family arrangement reduced to writing relinquishing Plaintiff''s right, interest and share in immovable properties of her father by

accepting cash and jewels. The said document which is neither stamped nor registered cannot be relied upon in view of the specific bar u/s 35 of

the Indian Stamp Act.''

(b)In P. Shanmugasamy Vs. Kausalya alias Krishnaveni, , it is held that ''Unregistered document viz., Receipt for a sum of Rs. 3,000/- cannot be

received as evidence as it is not registered.''

(c)In Kalaivani @ Devasena and Anr. v. J.Ramu and 8 others, 2010 (1) CTC 27, this Court has observed as follows:

In a partition Suit, Plaintiff sought to mark a document styled as a memo of partial partition. Objection to the marking of the said document was

raised on the ground that rights were created under the same and therefore it is inadmissible in evidence. The Trial Court accepted the objection

and rejected the document. However High Court held that though the document is unregistered and unstamped, it can be looked into for collateral

purposes, provided the deficit stamp duty along with penalty is paid upto date.

(d)In M. Chinnappan Vs. M. Ranganathan and B.M. Chennaiya Chetty, , it is held that "when an objection has been taken by the other party that

a document is insufficiently stamped, then, it is incumbent on part of Court to decide objection first and then to proceed further".

(e)In K. Veerabadran and Anr. v. K. Venugopal and 4 others, 2010 (3) CTC 761, at page 762, this Court has laid down as follows:

The issue of admissibility and the evidentiary value of the document was considered by the learned Trial Judge during the time of examination of

D.W.-1 and at the time of marking the said document as an exhibit. It is true that the document as a whole has to be considered for the purpose of

deciding the nature of the document. Mere nomenclature is not the deciding factor for determining the true nature of a document. Court has to look

into the entire text of the document and must come to a definite finding about the admissibility of an unregistered family arrangement.

18. The Learned Counsel for the Revision Petitioner/Plaintiff seeks in aid of the decision of the Hon''ble Supreme Court in Bipin Shantilal Panchal

v. State of Gujarat and another AIR 2001 SC 1158 at page 1159, wherein it is held thus:

It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in

evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial

court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and

disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the

admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record

by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to

dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when

realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-

moulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute 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

sugge sted above can be followed.)

19. It is to be borne in mind that the objections/questions as to the admissibility of a certain document ought to be determined by a Court of Law,

when they come up for consideration or determination instead of admitting the evidence in the first instance tentatively and observing the questions

till the completion of the trial of the case. Ruling as to the admissibility of a document to be received in evidence must be short one. If the ruling is

rendered by a Court of Law, then, there should not be any further hindrance of the conduct of a trial. If need be, a fuller reason may be given in the

judgment as per decision Ponnammal Ammal Vs. Modern Stores and Others, .

20. An objection that the mode of proof is irregular or initial should be taken before the document is admitted. When a document is exhibited

before the trial Court, a party against whom it is being brought on record is entitled to question it on the ground of its inadmissibility if after the

admission of a particular document it is later on found to be an irrelevant or inadmissible one, in the eye of law, it may be rejected at any stage of

the suit as per Order 13 Rule 3 of Code of Civil Procedure.

21. It is the duty of a Court of Law to exclude all irrelevant or inadmissible evidence even if No. objection has been taken by the opposite side.

22. At this stage, this Court worth recalls the decision of Hon''ble Supreme Court in Javer Chand and Ors. v. Pukhraj Surana, AIR 1961 SC

1655, wherein it is held as follows:

Where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, the

party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has

to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Once a

document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses,

Section 36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a

Court of Appeal or Revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised

by the same court or a court of superior jurisdiction. Pukhraj Surana Vs. Jawerchand and Others, , Reversed.

23. In Prabhu Dayal v. Suwa Lal and another, AIR 1994 Raj 149, it is held that "The provision Order 13 Rule 1 and 3 of CPC does not debar a

Court from reopening the question of admissibility of the document already exhibited and further that the mode of proof could not be questioned."

24. The general plea in law is that an objection must be raised before the document is admitted during the course of the trial.

However, if a document which cannot be admitted into evidence because of the impediment in law but the same is admitted into evidence without

objection, always it is open to a Court of Law to arrive at a finding that the said document is legally inadmissible one.

25. This Court aptly points out the decision in Dhruba Sahu (dead) and after him Nalumoni Sahu and Another Vs. Paramananda Sahu, at page 25,

wherein it is held that "objection is mode of proof of document shall be taken when it is exhibited by trial Court and not in appeal for the first time."

26. Further, in Kissen v. Ram 12 WR 13, it is held that "if after admission of a document which is subsequently found to be irrelevant or otherwise

inadmissibility, it may be rejected at any time under the rule."

27. Even an erroneous omission to object to an inadmissible evidence does not make it admissible, if the evidence per se is inadmissible under the

Indian Evidence Act as per decision in Miller v. Madho 23 IA 106.

28. As a matter of fact, only when a document is formally proved and admitted in evidence be marked as an exhibit Section 36 of the Indian

Stamp Act comes into operative play which enjoins that such an admission shall not be called into question at any stage as per decision

Kuppammal Vs. Mu. Ve. Pethanna Chetty, . Order 13 Rule 4 speaks of endorsements on documents admitted in evidence which ought to be

strictly complied with, as opined by this Court. However, it is to be noted that the ingredients of Order 13 Rule 4 has nothing to do with the

question whether a particular document has been admitted in evidence to admit a document in evidence, the endorsement as per Order 13 Rule 4

is quite sufficient and No. express order as per Section 61(1) of the Indian Stamp Act is not necessary as per decision Jageshar v. Collr, AIR

1966 A 392 FB. In law, the marking of a document as an exhibit on the side of one party does not dispense with its proof as per decision Sait

Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others, . Even the unproved documents cannot be regarded as proved

merely because an endorsement has been made by stamp as per decision Firoz v. Nawabkhan, AIR 1928 L 342. Moreover, a mere omission to

make the formal endorsement does not render a document duly proved and exhibited the inadmissible as per decision Gopal v. Sri Thakurji, AIR

1943 PC 83.

29. Though the Revision Petitioner/Plaintiff takes a plea in I.A. No. 1425 of 2009 that Ex.B.14 dated 29.04.1968 is a Partition Deed, a perusal of

preamble portion of the document shows that it is mentioned as Partition Agreement executed by Manickam S/o Pavadai to and in favour of

Pavadai"s wife Dhanakodiammal of Kuthakudi Village. The second paragraph of the Ex.B.14-Document indicates that partition between the

Manickam and his younger mother has taken place before 4 years approximately in the presence of witnesses and in view of the house dispute,

they have partitioned today etc. In the concluding portion of Ex.B.14-Document, it is mentioned in Tamil that for the stone house on receipt of a

sum of Rs. 150/- his younger mother has been directed to stay in the stone house which has been decided by the Panchayatdars and he has

accepted the same as per his share.

30. Curiously, in Ex.B.14-Document on the right hand side, signatures of the parties are conspicuously absent. On the left hand side of the

document, under the caption witnesses eight persons have signed. The said document has been written by one K.N.Periyan.

31. As per Section 35 of the Indian Stamp Act dealing with instruments not duly stamped inadmissible in evidence etc., a Court of Law has an

independent liability to decide the question of stamp duty, even if the parties fail to take up the point as per decision Gita Devi Shah v. Chandra

Moni Karnani, AIR 1993 Cal 280, 284.

32. Generally, when an issue as to the admissibility of a document is raised on the footing that it has not been stamped or has not been properly

stamped it has to be decided then and there when the document has been tendered in evidence. When a dispute/controversy is raised as to the

admissibility of a stamped document, the person challenging the admissibility of the said document ought to be vigilant in not allowing the said

document to be marked or admitted in evidence by the Court.

33. In Mahadeo Ghose v. Antariyani Das, 37 Cut LT 839: 1971 (2) CWR 191, it is held that "once a document has been marked as an exhibit in

the case and the trial has proceeded all along on the basis that the document was an exhibit in the case and has been used by the parties in

examination and cross-examination of their witness, Section 36 of the Stamp Act comes into operation."

34. The bar contemplated by Section 36 of the Indian Stamp Act is not applicable where an instrument has been rejected as an inadmissible in

evidence on account of a wrong order of the Court. Indeed, Section 36 of the Indian Stamp Act cannot be construed in such a fashion as to

override the ingredients of Section 105 of the Code of Civil Procedure, as per decision Mannalal v. Sitambernath, 1961 Jab LJ 851: 1961 MPLJ

169.

35. In Vasudevan Mullan v. Krishna Ramnath ILR (1953) Trav-Co 739: 1953 Ker LT 533, it is held that the jurisdiction of the Court to decide

the question of stamp duty u/s 35 is only incidental tot he reception of the document in evidence.

36. Section 3 of the Indian Evidence Act, 1872 mentions that "Document" means any matter expressed or described upon any substance by

means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording

that matter. Also, Section 29 of the Indian Penal Code speaks of the term "Document" in a similar fashion, by satisfying the explanation 1 and 2

therein.

37. In Rex v. Daye (1908) 2 King Bench 333, ti is held that a document is any writing or printing capable of being made evidence, No. matter on

what material it may be inscribed.

38. A family arrangement can be arrived at orally. The terms in the family arrangement may be recorded in writing as a memorandum of what has

been agreed between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the

parties be founded. It is usually prepared as a record of what has been agreed upon so that there be No. hazy notions about it in the near future. It

is only when the parties reduce the family arrangement in writing with an object of using that writing as proof of what they have arranged and,

where the arrangement has been brought about by the document as such, that the document would require registration as it is then that it will be a

document of title declaring for future what rights in what properties the parties possess.

39. In the decision of this Court in A.C. Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others, at page 7, it is held that where

the document is nothing but a memorandum of what had taken place and as such, it is not a document requires compulsory registration as per

Section 17 of the Registration Act.

40. In Audesh Singh v. Sirtaji kuar AIR 1937 Oudh 347 at page 349, it is held that where a document is a record of a family arrangement, it is not

liable to compulsory registration because it is based upon the recognition of a pre-existing right.

41. In Mahadei kunwar v. Padarath Chaube AIR 1937 All. 578 at page 579, 580, it is observed that there may be a family settlement in which

there is some transfer of property as well along with the settlement of dispute, which to the extent of such transfer would stand on a different

footing. By and large, a document styled as family arrangement is not immune from registration, in the considered opinion of this Court. However, it

is a question of fact where a family arrangement requires compulsory registration or not, to be determined in each case based on the contents and

interpretation of the document and the surrounding circumstances of the case, by taking into consideration whether the document in question itself

creates title or it only acknowledges antecedent title to the property. If the family arrangement involved a declaration of right, then, it requires

registration as per decision Chandreshwar Singh v. Ramchandra Singh, AIR 1973 Pat. 215 at p.223.

42. Whether a document is a partition deed or it is only a memorandum of partition/family settlement, the recitals as well as the surrounding

circumstances of the document are to be looked into. A Court of law is expected to dissect the transaction, scrutinise its legal implications and the

legal consequences which follow.

43. The essential requirements of the Indian Stamp Act, Indian Registration Act, 1908 and the Transfer of Property Act have to be complied with,

where the transaction is intended to operate as a transfer. These Acts cannot be evaded by the parties merely describing the document as a family

settlement or arrangement when, in truth and substance it is either a transfer of property or deed of partition as per decision Raghubir Datt Pandey

v. Narain Datt Pandey, AIR 1930 All. 498 (2).

44. Where the settlement is clearly of a nature which purports or operates neither to create, to assign or extinguish any title or interest, in present or

future, in immovable property, nor does it ''declare'' any such right, title or interest, it need not be registered. The nature of such a document is

described as an acknowledgement of an antecedent title, as per decision of Privy Council, Khunnilal v. Govind Krishna Narain (1911) M.W.N.

432: 1911 21 M.L.J. 645 (P.C).

45. It is to be noted that under the Indian Evidence Act marking of a document is one thing. Proving the contents of a document is a different thing.

46. As far as the present case is concerned, the trial Court in I.A. No. 1425 of 2009, in its order dated 14.10.2009, has, among other things,

observed as follows:

... Further, the said document also marked with subject to admissibility and relevancy. It would be decided at the time of disposal of the suit. For

the above said reasons this Court is of the view that the petition is devoid of merits and liable for dismissal and consequently this petition is

dismissed etc.

Even though the trial Court has opined that "the said document on perusal of it, reveals as it just acknowledge receipts, the real partition had taken

place, 4 years before it, sine just being acknowledge receipts, it does not come under purview of Section as above Section 17 of the Registration

Act and Section 35 of Stamp Act", the said observation is only a tentative one and it is not a final/conclusive one because of the simple fact, it has

marked Ex.B.14-Partition Deed/Agreement/Document subject to admissibility and relevancy and has relegated its decision at the time of disposal

of the Suit.

47. It is generally to be decided by a Court of Law then and there when an issue crops up before it as to the admissibility of a document whether it

requires compulsory registration or not under the Indian Registration Act or whether it has not been stamped or has not been properly stamped as

per Indian Stamp Act. Indeed, the admissibility or otherwise of a document is to be decided when the same is ushered in evidence during the

conduct of trial of the suit. But, in the instant case on hand, in I.A. No. 1425 of 2009, the Court has finally concluded, in its order in I.A. No. 1425

of 2009 dated 14.10.2009, that it will decide the admissibility and relevancy of Ex.B.14-Document at the time of disposal of the Suit. Such a

procedure cannot be found fault with because of the simple fact that in the main Suit, witnesses on the side of the Revision Petitioner/Plaintiff viz.,

P.W.1 and P.W.2 have been completed and also that D.W.1 has been examined and further the examination of D.W.2 in part has been under

progress. At the stage of marking the Ex.B.14, the Suit remains as a part-heard one. If at the time of final decision of the Suit, the trial Court comes

to the conclusion that Ex.B.14-Partition Agreement/Partition Deed requires stamp duty or registration duty or the said document ought not to have

been marked in final Judgment (because of the absence of signatures of the parties to the document), as the case may be, then, it may even eschew

the said document at the appropriate point of time. Therefore, when the Suit is in the part-heard stage and is nearing completion, questioning the

marking of Ex.B.14-Document (marked subject to objection), when the trial Court has clearly held that it will decide the admissibility and

relevancy of the said document at the time of disposal of the Suit, cannot be construed as a material irregularity or patent illegality, in the

considered opinion of this Court.

48. In fact, there is No. illegality in regard to the procedure adopted by the trial Court in marking Ex.B.14-Document. At best, marking of

Ex.B.14-Document by the trial Court subject to objection is a curable one, as opined by this Court. Taking a plea as to the marking of a document

based on its admissibility and relevancy when the main Suit is in part-heard stage will necessarily affect the steady progress of the trial. Such a

course being adopted is neither a desirable or palatable or an appreciable one in as much as one has to give a quietus to the controversies/disputes

of the main Suit in a comprehensive manner. Looking at from that point of view, this Court concludes that the present Civil Revision Petition fails.

49. Before parting with the case, this Court observes that although Article 227 of the Constitution of India provides a supervisory jurisdiction over

the Subordinate Courts, yet, the said power will have to be exercised by this Court sparingly exercising its judicial discretion and that too with

great care and circumspection.

50. In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. Since the Suit is of the year 2003 pending on

the file of the Learned III Additional District Munsif, Kallakurchi and is in part-heard stage where D.W.2 is to be cross-examined further, this

Court directs the trial Court to proceed with the conduct of the trial of the main Suit and to dispose of the same, by providing necessary

opportunities to both parties, by rendering its decision on finding/ruling as to the admissibility, relevancy of Ex.B.14-Partition Agreement/Partition

Deed or even the plea that the said document ought not to have been marked because of the absence of signatures of parties to the said document

in final Judgment [uninfluenced with any of the tentative observations made by it in the the order in I.A. No. 1425 of 2009 to the effect that

Ex.B.14-Document does not come within the purview of Section 17 of the Registration Act and Section 35 of the Indian Stamp Act since it being

acknowledge receipt], within a period of four months from the date of receipt of copy of this order. The parties are directed to cooperate and lend

a helping hand to the trial Court in disposing of the Suit within the time determined by this Court. Consequently, connected Miscellaneous Petition

is also dismissed.