



CRP No.3971 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 25.09.2024

Order pronounced on : 27.09.2024

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.3971 of 2017
& C.M.P.No.18527 of 2017

Muthu

..Petitioner

Vs.

1.Sampath
2.Chinnappan (Died)
3.Murthy
4.Mohan
5.Ashokan
6.C.Kathiravan

..Respondents

[R6 brought on record as LR's of
the deceased 2nd respondent vide
order dated 23.04.2024 in
C.M.P.No.17497 of 2021 in
C.R.P.No.3972 of 2017]

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India,
to set aside the fair and decreetal order dated 30.08.2017 made in I.A.No.171 of
2016 in O.S.No.69 of 2013 on the file of the Principal District Munsif,
Mayiladuthurai.



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For Petitioner : Mr.A.Muthukumar

For Respondents

For R1 : Mr.B.Jawahar

For R2 : Died

For R3 : Exparte

For RR4 to 6 : No appearance

ORDER

This civil revision petition has been filed as against the order dated 30.08.2017 made in I.A.No.171 of 2016 in O.S.No.69 of 2013 on the file of the Principal District Munsif, Mayiladuthurai.

2.The plaintiff, aggrieved by the order dated 30.08.2017 in I.A.No.171 of 2016 in O.S.No.69 of 2013 on the file of the Principal District Munsif, Mayiladuthurai, is the revision petitioner.

3.The 4th defendant filed I.A.No.171 of 2016 seeking to introduce an unstamped and unregistered Release Deed dated 17.06.2002 as evidence on his side. The said application was resisted by the revision petitioner/plaintiff on the ground that the Release Deed was unregistered and cannot be received in evidence.



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4.The Trial Court, accepting the request of the 4th defendant, holding that the admissibility of the document can be decided later and no prejudice would be caused by ordering the document to be received, proceeded to allow the application.

5.I have heard Mr.A.Muthukumar, learned counsel for the revision petitioner and Mr.B.Jawahar, learned counsel for the 1st respondent.

6.Mr.A.Muthukumar, learned counsel for the revision petitioner would refer to the unregistered document filed along with the typed set of papers and take me through its contents. He would contend that when the document was “*in praesenti*”, the document was required to be compulsorily registered and admittedly the document being unregistered and unstamped, the same cannot be received in evidence. He would rely on the decision of this Court in ***A.Devasikamani Goundar Vs. M.A.Andamuthu Goundar*** reported in **1955 (1) MLJ 457**.

7.Per contra, Mr.B.Jawahar, learned counsel for the 1st respondent would submit that even in the written statement, the defendant has taken a categorical



stand that, for consideration the revision petitioner/plaintiff had relinquished his right in the property. Therefore, in support of such plea in the written statement, it has become necessary for the contesting defendant, namely the 1st respondent herein to mark the said Release Deed. He would also contend that he was willing to pay the deficit stamp duty and the question of the unregistered document being received in evidence could always be tested after receiving the document. He would therefore pray for dismissal of the revision petition.

8.I have carefully considered the submission advanced by the learned counsel on either side.

9.Admittedly, the document sought to be produced is an unregistered and unstamped Release Deed. The Release Deed also contains the following clause:

“தற்போது நம்முடைய குடும்ப நன்மையைக் கருதியும் குடும்பத்தின் வீண் சச்சரவுகள் ஏற்படாமல் இருக்கும் பொருட்டும், முழுமனசம்மதத்துடனுன் நாங்கள் மூவரும் இதனடியில் கண்ட விபரப்படிக்குள்ள குடும்ப பூர்வீக சொத்தைப் பொருத்து இந்த பாத்திய விடுதலைப்பத்திரம் எழுதிக்கொடுத்துள்ளோம் எங்களுக்கு மேற்படி சொத்தில் உள்ள பாக வீதத்தை தங்களிடமே நாளது தேதியில் விட்டுக் கொடுப்பதாக சம்மதித்து அதற்கு பிரதி பிரயோஜனமாக எங்கள் பாக வீதத்திற்காக நாங்கள் நாளது தேதியில் தங்களிடம் இருந்து ரொக்கமாக பெற்றுக்கொண்ட தொகை ரூபாய்



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11,65,000/- இந்த ரூபாய் பதினேரு லட்சத்தி
அறுபத்தி ஐந்து ஆயிரமும் எங்களுக்கு நாளது
தேதியில் தங்களிடம் இருந்து ரொக்கமாக வரவு
வந்து பத்தாகிவிட்டபடியால், இதனடியில் கண்ட
விபரப்படிக்குள்ள சொத்தில் எங்களுக்குரிய பாகவீத
சொத்தையும் நாளது தேதியிலேயே தங்களுடைய
அனுபோகத்திலும் சுவாதீனத்திலும் விட்டுவிட்டோம்.”

It is thus clear that only under the said Release Deed, the releasor has allegedly relinquished his right, title and interest in the subject property. Therefore, under Section 17 of the Registration Act, the said Release Deed is a document which requires to be registered compulsorily. Mere payment of deficit stamp duty would not cure the defect of non registration.

10.In *A.Devasikamani Goundar's* case, it is held that when an objection is taken as to the admissibility of the document for want of stamp and registration, it is the duty of the Court to decide both the questions at once and if the Court comes to the conclusion that the document is unregistered, then it requires registration. The Court has to reject the document then and there and cannot ask the document to be stamped first and thereafter decide whether it would require registration. The said ratio would squarely applied to the facts of the present case.



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11. The learned counsel for the 1st respondent would place reliance on the decision of this Court in ***Saminathan Vs. Sukumar*** reported in **2021 (5) CTC 859**, where this Court held that an unregistered partition deed can be looked into only for the limited purpose of enquiring whether there has been severance of status among the parties to the *lis* or among the parties to the document and nothing more. Relying on the said decision, the learned counsel for the 1st respondent would submit that though the document was being sought to be marked only to prove the defence taken by the defendant in the written statement and the effect of the Release Deed in and whereby the revision petitioner is alleged to have relinquished his right is not called in question by way of producing the unregistered and unstamped document. I am afraid the said decision will not apply to the facts here. Even in the said decision, this Court has held as follows:

“15.If an unstamped or inadequately stamped Partition Deed is filed as a document and is sought to be marked as an exhibit, it has to pass the Test of Admissibility.

16.To be even considered whether it is admissible, even ostensibly for collateral purposes, it has to be first impounded and the duty and penalty as stipulated in Clause (a) of Section 35 of the Indian Stamp Act, 1899 will have to be determined and collected.



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17. An unregistered document has to suffer the fate of non-registration. An exception is, if it is introduced to evidence a “collateral transaction”. A Collateral transaction is often wrongly termed as collateral purpose. The said Collateral transaction for evidence which an unregistered Partition Deed is produced should also be compulsorily registrable. Possession of a property claimed through a document indicates transfer of a right in immovable property. Thus, an unregistered document cannot be an evidence to prove possession, since the document which grants that right of possession has not been registered.”

Thus, it is clear that when the document is sought to be looked into for collateral purposes, in such circumstances, the same has to be first impounded and duty and penalty as stipulated in Clause (a) of Section 35 of the Indian Stamp Act, 1899, will have to be determined and collected.

12. In the instant case, it cannot be said that the defendant requires the document to be looked into for collateral purposes since the specific defence taken in the written statement is that the plaintiff has released all his rights for consideration under the said registered Release Deed. Therefore, in order to prove the same, unless the document was duly stamped and registered, the defendant cannot rely upon the said document and also choose to mark it during evidence.

13. The Trial Court unfortunately permitted the document to be received



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and sent for ascertaining the stamp duty penalty payable, leaving the admissibility of the document open to be decided later. Hence, the order passed by the Trial Court is directly against the ratio laid down in ***A.Devasikamani Goundar's*** case.

14.Further, even in ***Avinash Kumar Chauhan Vs. Vijay Krishna Mishra*** reported in (2009) 2 SCC 532, the Hon'ble Supreme Court held that according to Section 35 of the Indian Stamp Act, 1899, even an unstamped Partition Deed cannot be used for collateral purpose. Therefore, the said decision is also not useful to support the case of the respondents.

15.For all the above reasons, the Civil Revision Petition is allowed and the impugned order dated 30.08.2017 in I.A.No.171 of 2016 in O.S.No.69 of 2013 on the file of the Principal District Munsif, Mayiladuthurai, is hereby set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2024

Speaking/Non-speaking order
Index : Yes/No
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P.B.BALAJI.J.



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To
The Subordinate Judge, Bhavani.

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