IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2016

(Orders reserved on 17.12.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD).No.171 of 2013
& M.P.No.1 of 2013

N.K.Surana .. Petitioner

Vs.

1. Ramu
2. Sivakumar
3. Saraswathi .. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.09.2012 in I.A.No.1432 of 2012 in O.S.No.250 of 2009 on the file of the Principal District Munsif Court, Tindivanam.

For petitioner : Mr.R.Rajaramani

For respondents : Mr.P.Seshadri

ORDER

This Civil Revision Petition is filed against the order dated 10.09.2012 in I.A.No.1432 of 2012 in O.S.No.250 of 2009 passed by the learned Principal District Munsif, Tindivanam, in and by which, the application filed by the revision petitioner/second defendant to impound the unregistered sale deed, dated 05.09.1994 executed by Srinivasa Pillai in favour of the revision petitioner, for the purpose of paying stamp duty penalty, was dismissed.

2. Learned counsel for the revision petitioner/D2 contended that the lower Court failed to see that the above said unregistered sale deed, dated 05.09.1994 was sought to be impounded for paying stamp duty and penalty and the lower Court simply decided the case with regard to the admissibility of the document. He further contended that the Court below dismissed the application for impounding the document on the ground that the document cannot be received in evidence even for collateral purpose, unless it is duly stamped or penalty is paid under Section 35 of the Indian Stamp Act. He further submitted that the Court below failed to notice that the application for impounding the document was filed to pay the stamp duty and penalty, and the said application was erroneously dismissed by the lower Court. He therefore prayed that the Civil Revision Petition may be allowed. In support of his submissions, learned counsel for the revision petitioner/D2 relied on the following decisions:

(a) 2009 (6) CTC 609 (Madurai Bench of Madras High Court) (Ramamoorthy Vs. M.Shanmugam):

> "16. It is well settled that whether the document is admissible in evidence or not depends upon the nature and contents of the documents and also the facts and circumstances of each case. In the instant case, the First Respondent seeks to rely upon the document to show the nature of possession and in respect of boundaries.
>
> 17. Even though, under the document the property is said to have been conveyed, the document could still be looked into for the collateral purpose of ascertaining possession and also the boundaries of the property of the First Defendant. The impugned order directing the reception of the document does not suffer from any perversity, warranting interference and exercising supervisory jurisdiction under Article 227 of the Constitution of India. ...."

(b) 2010 (1) CTC 27 (Madras High Court) (Kalaivani @ Devasena Vs.

J.Ramu):

"16. In *Mayilu Ammal and others Vs. Renganathan,* 2005 (5) CTC 424, this Court relying on the ratio laid down in *Bondar Singh Vs. Nihal Singh*, 2003 (2) CTC 635 (SC) : 2003 (4) SCC 161, held that unstamped and unregistered sale deed could be permitted to be marked for collateral purpose.

....

24. A perusal of the document dated 31.3.1973 filed in the typed set of papers would make it very clear that it allotted properties and assets to J.Ramu Chettiar, Minor Vivekanandan and minor Krishnan. No where it discloses that there was a partition previously and the same was being by the Trial Court, it requires registration. This document being an unregistered one can be looked into for collateral purpose only. It is well settled that even an unregistered document is admissible in evidence for collateral purpose provided it is adequately stamped under the Stamp act. If the document is both unstamped and unregistered, as the document in question here, it is no doubt true that it cannot be looked into for collateral purpose also. But such a document should not be thrown out at the threshold itself and an opportunity must be extended to the party who wants to mark the document on his side by directing him to pay the deficit stamp duty along with the penalty upto date, then the document could be admitted in evidence for collateral purpose. If the person does not pay the Court, then the document is to be impounded and sent to the Collector for taking action under the law."

(c) 2015 (1) CTC 359 (T.Chakrapani Vs. K.Adimoolam):

"12. Learned counsel for the petitioner relied on the decisions of this Court reported in 2000 (3) LW 785 (*Mookkamayan.K. Vs. P.Pushparani and another*) and 1997 (2) CTC 595 (Ruckmangathan Vs. Ramalingam) in support of his submission that such unregistered document cannot be marked even for collateral purpose. But, this Court, in the recent decisions reported in 2014 (3) MWN (Civil) 578 (*Minor Ravi Bharathi Vs. P.Balasubramani and another)* and 2014 (6) CTC 773 = 2014 (5) LW 59 = 2014 (7) MLJ 861 (*R.Munusamy Vs. G.Krishtappillai and 2 others*), followed the decision of the Honourable Supreme Court reported in 2003 (2) CTC 635 (SC) = AIR 2003 SC 1905 = 2003 (2) MLJ 122 = 2004 (1) LW 706 (SC) (*Bondar Singh and others Vs. Nihal Singh*) (cited supra), now cited by the learned counsel for the respondent, wherein, the Honourable Supreme Court, while considering the said issue, observed as follows in paragraph 5:

"5. The main question as we have already noted is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor interest

> of the plaintiff, is an admitted document in the sense its execution is not in dispute. The only defence set up against said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. *However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land.* The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorised. .. ..."
>
> (emphasis supplied)"

3. Learned counsel for the respondents/plaintiffs contended that after appreciating the arguments of both sides and relying upon the relevant provisions of law, the trial Court dismissed the application, and therefore, he prayed that the Civil Revision Petition may be dismissed. In support of his submissions, learned counsel for the respondents/plaintiffs relied on the decision of a Division Bench of this Court reported in 2001 (1) LW 257 (Lakshmipathy.A.C. Vs. A.M.Chakrapani Reddiar and others), wherein, the Division Bench observed as follows:

> "27. Courts have interpreted the terms any purpose as for each and every purpose including collateral purposes or in other words such, document is inadmissible and such a document cannot be looked into for any purpose. A Division Bench of this Court in 1937 (2) MLJ 805 : 1938 AIR (Mad) 75) : 1937 (46) LW 692 (*Pentapatti Nageswara Rao Vs. Moka Narayanamurthi and another*), ruled thus:
>
> > "The section itself, in my opinion, provides a complete answer to the petitioner's case. If an unstamped document cannot be admitted for any purpose, it must mean, if the words are to be given their ordinary and plain meaning that it cannot be admitted under any circumstances in a civil suit. If the legislature in placing this provision of law on the statute book

> had intended to allow unstamped instruments to be admitted for collateral purposes, it would surely have said so. It did not say so, but on the other hand, it provided that a negotiable instrument which is insufficiently stamped at the time of execution cannot be properly stamped afterwards, even on payment of a penalty which is allowed in the case of other documents."

A Division Bench of this Court in the ruling reported in AIR 1968 1968 Madras 294 = 81 LW 2 (*Yasodammal Vs. Janaki Ammal*), held as under :

> "..... But in the case of an unstamped document it has been held that as the prohibition contained in S.35 of the Stamp Act is wide and absolute even though in the pleadings the contesting party may admit the execution of the unstamped document, no relief could be granted on the basis of the admission, as it would amount to acting upon the unstamped document."

Also see,

(a) AIR 1972 AP 373 (S. Reddy Vs. Johanputra)
(b) AIR 1937 All. 101 (M.T.Bibbo Vs. Gokaran Singh)
(c) 30 ILR 386 (Thaji Beebi Vs. Tirumalai Appa Pillai)
(d) 1947 MLJ 90 = 1947 (60) LW 135 (Subbu Naidu Vs. Varadarajulu Naidu)
(f) AIR 1946 PC 51 = 1946 (59) LW 196 (Ram Rattan Vs. Parama Anand).

28. Similarly, Courts have held that the parties cannot let in any oral evidence for proving mortgage and character of possession because on the basis of the unstamped and unregistered document and if such evidence is admitted, it amount to acting on the unstamped document, which is against Section 35 of the Indian Stamp Act. (ILR 35 Madras 386), (AIR 1971 SC 1070).

.. ...

38. From the above, we are inclined to hold that the document in question was executed with the intention that the document itself should constitute the sole repository as a document of title. When that is so, inasmuch as the document has not been stamped or registered, it cannot be looked into for any purpose.

39. The next question is whether in view of the fact that the appellant himself produced the document before Court along with the plaint, is it be taken that the appellant cannot object to for the admission of the document, so also to look into the contents of the document. It may be straight away said that the settled legal position is that if acting on the admission of execution, the document is admitted and looked into then it would amount to acting upon the unstamped document which will be violative of Section 35 of Indian Stamp Act. Reference can

also be made to the following rulings:-

(i) 1954 MLJ 131 (Raghava Reddi Vs. Venkata Reddi)
(ii) AIR 1955 SC 481 (Madho Das Vs. Mukand Ram)
(iii) AIR 1919 Madras 833 = 1918 (8) LW 522 (Mallappa Vs.Naga)
(iv) AIR 1946 PC 51 = 1946 (59) LW 196 (Ram Rattan Vs. Parma Nand)
(v) AIR 1933 Madras 117 = 1933 (37) LW 157 (Achutaraman Vs. Jagannadham).

... .

41. We hold that the document in question being an unstamped and unregistered, cannot be looked into for any purpose. Similarly, oral evidence cannot be let in about the contents of the said document."

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. It is seen that the revision petitioner/D2 wanted to impound the document, which is an unregistered sale deed, dated 05.09.1994 and not properly stamped. In this regard, it is useful to refer Section 35 of the Indian Stamp Act and Section 17 of the Registration Act and the same reads as follows:

"Section 35 of the Indian Stamp Act: Instruments not duly stamped inadmissible in evidence etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped :

Provided that any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ... ."

"Section 17 of the Registration Act: Documents of which registration is

> <u>compulsory:</u>
> (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866) or the Indian Registration Act, 1871 (7 of 1871) or the Indian Registration Act, 1877 (3 of 1877) or this Act came or comes into force, namely:
> (a) instruments of gift of immovable property
> (b) other non-testamentary instruments which purport or operate, to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.
> ... ..."

6. As per the above provisions of both the Acts, the sale deed in question has to be properly stamped and registered before the competent authority and if the sale deed is not duly stamped, the defect cannot be cured under Section 35 of the Indian Stamp Act and it is also not admissible in evidence, since it conveys title of the property to the transferee. Therefore, the argument of the learned counsel for the revision petitioner/D2 that the above sale deed has to be impounded for paying stamp duty and penalty and to be registered and marked, is not sustainable. The above decisions relied on by the learned counsel for the revision petitioner/D2, are not applicable to the facts of the case and the decision relied on by the learned counsel for the respondents/plaintiffs, is applicable to the facts of the present case.

7. For the reasons stated supra, there is no illegality or infirmity in the impugned order of the trial Court. The Civil Revision is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. The

Miscellaneous Petition is closed.

05-01-2016

Index: Yes/no

Internet: Yes/no

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The Principal District Munsif, Tindivanam.

G.CHOCKALINGAM, J

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Order

in

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