IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

C.R.P.(PD) Nos.866 of 2016
and
C.M.P.No.4800 of 2016

Pakkiri .. Petitioner

Vs.

1) Saraswathi
2) Raja
3) Kannan .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order of the learned Principal District Munsif, Cuddalore dated 29.10.2015 made in O.S.No.159 of 2015.

For Petitioner : Mr.R.Gururaj

ORDER

This matter stands listed today for admission. The submissions made by Mr.R.Gururaj, learned counsel for the petitioner are heard. Certified copy of the impugned order and copies of the other documents produced in the form of typed set of papers are also perused.

2. The plaintiff in O.S.No.159 of 2015 pending on the file of the Court of Principal District Munsif, Cuddalore is the petitioner herein. The defendants

are the respondents herein. The petitioner in the revision/plaintiff in the above said suit filed the suit for specific performance of an agreement for sale alleged to have been incorporated in an unregistered sale deed dated 02.06.2015. The said unregistered sale deed was produced along with the plaint as the document, based on which the suit came to be filed. The learned trial Judge found the said document to be not only unregistered, but also insufficiently stamped. Hence the learned trial Judge, after hearing the submissions made on behalf of the plaintiff, passed an order on 29.10.2015, impounded the said document for the collection of the stamp duty to make good the deficiency and ten times of the same as penalty.

3. The learned counsel for the petitioner herein/plaintiff in the original suit seems to have contended before the court below that since the document was sought to be used only as an evidence to prove the agreement, specific enforcement of which has been sought for in the suit, the document would not attract stamp duty or penalty. It was also his contention before the court below that it was the normal practice of the parties to prepare a document meant for registration on nominal stamp papers and pay the balance stamp duty at the time of presentation for its registration; that the suit document was one such document and that since the prayer sought for in the suit was to specifically enforce the contract (agreement for sale), it would result in the production of the document before the Registering Authority for registration and at that point of time, deficit stamp duty would be paid. Rejecting the said contention, the learned trial Judge passed an order as invited by the counsel for the plaintiff and the same is sought to be impugned in the present revision.

4. Before this court also, Mr.R.Gururaj, learned counsel for the revision petitioner would submit that the unregistered sale deed, though not admissible for establishing any title derived under the same as per Section 49 of the Registration Act, the proviso permits the revision petitioner/plaintiff to use the document as a piece of evidence to prove an agreement in a suit for specific performance; that hence, if at all the document attracts any stamp duty to be received in evidence, the stamp duty payable shall be one payable on an agreement for sale; that since the document has been prepared in stamp papers to the tune of Rs.170/-, which is more than the stamp duty payable on an agreement for sale, there is no deficiency in payment of stamp duty and that hence it will not attract any stamp duty penalty.

5. The above said contention of the learned counsel for the petitioner is far from being tenable. Though the proviso to Section 49 of the Registration Act permits the plaintiff in a suit for specific performance to use an unregistered document as evidence of agreement for sale, the same does not mean that the unregistered sale deed will assume the character of an agreement for sale to attract lesser stamp duty. What the proviso to Section 49 of the Registration Act permits is use of an unregistered sale deed as evidence of an agreement, which is sought to be specifically enforced and it does not deal with the payment or collection of stamp duty. In order to ascertain the stamp duty payable, one has to look at the provisions of the Indian Stamp Act, 1899. Section 35 of the Indian Stamp Act, 1899 makes an instrument not duly stamped inadmissible in evidence. It says that no instrument chargeable with duty shall be admitted in evidence **for any purpose** by any person having by law or consent of the 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. The proviso (a) enables the court or the Authority to admit the same in evidence if it is not an instrument chargeable with a duty not exceeding 20 Paise alone or a mortgage of crop chargeable under Section 3 of the StampAct with a duty of 50 paise or a Bill of Exchange or promissory note, on payment of the stamp duty with which the same is chargeable or in case of insufficiently stamped instrument, the payment of the amount required to make up such duty, together with a penalty. A sale deed does not come under the categories of the documents which are excluded from the purview of proviso (a). Hence it can be admitted in evidence on payment of the amount required to make up the deficit stamp duty and penalty, which will be 10 times of such amount.

6. For the sake of convenience, Section 35 of the Indian Stamp Act, 1899 is reproduced here under:

> ***35. 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-*
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> *(a) any such instrument shall 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;*
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> *(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;*
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> *(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and anyone of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*

> *(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);*
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> *(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.*

7. Section 33 of the Indian Stamp Act, 1899 makes it incumbent on every person having by law or consent of parties authority to receive evidence to impound the document brought before the court or such authority if it appears that such instrument is not duly stamped. Section 33 reads as follows:

> ***33. Examination and impounding of instruments.-****(l) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before wbom any instrument, chargeable, in his opinion, with duty, is produced or comes iri the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
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> *(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a st~mp of the value and description required by the law in force in lndia when such instrument was executed or first executed: Provided that-*
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> *(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);*
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> *(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.*
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> *(3) For the purposes of this section, in cases of doubt,-*
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> *(a) the State Government may determine what offices shall be deemed to be public offices; and*
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> *(b) the State Government may determine who shall be deemed to be persons in charge of public offices.*

A conjoint reading of Sections 33 and 35 will make it clear that the court before which a document, not duly stamped, is brought shall impound the document for collection of the stamp duty and stamp duty penalty and admit the same in evidence provided the required stamp duty is paid with penalty as indicated supra.

8. In this regard, a reference may be made to the judgment of the Supreme Court in ***Avinash Kumar vs. Vijay Krishna Mishra reported in (2009) 2 SCC 532.*** Referring to the concerned provisions of the Indian Stamp Act, their Lordships of the Supreme Court held in categorical terms that though a document which is inadmissible for non-registration under Section 49 of the Registration Act, when it is sought to be used for the purposes mentioned in the proviso to the said section, the proviso will not include the applicability of Sections 33 and 35 of the Indian Stamp Act, 1899. Their Lordships of the Supreme Court were of the view that the bar under Section 49 is on a different footing which will not overlap or nullify the provisions of the Indian Stamp Act regarding impounding of documents. Referring to the earlier judgment of the Privy Council in ***Ram Ratan vs. Parma Nand reported in AIR 1946 Privy Council 51***, the Supreme Court held that the words "**for any purpose**" found in Section 35 of the Indian Stamp Act, 1899 should be given their natural meaning and effect and would include a collateral purpose and that an unstamped document (partition deed) in that case could not be used even to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms. The following were the observation made by the Privy Council in that case:

> *"That the words 'for any purpose' in Section 35 of the Stamp Act, should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purposes of determining even the factum of partition as*

distinct from its terms."

9. The Hon'ble Supreme Court also quoting the passages from the judgment of ***Sanjeeva Reddi vs. Johanputra Reddi*** reported in ***AIR 1972 AP 373*** with approval, held that a document tendered, should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not duly stamped and that a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and/or penalty are paid as per Section 35 of the Act. The passage thus quoted from the judgment of the Andhra Pradesh High Court in ***Sanjeeva Reddy vs. Johanputra Reddi*** is as follows:

> *"9. While considering the scope of Section 35 of the Indian Stamp Act we cannot bring in the effect of non-registration of a document under Section 49 of the Indian Registration Act. Section 17 of the Indian Registration Act deals with documents, the registration of which is compulsory and Section 49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 or by any provision of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purposes. It would amount to receiving such a document in evidence for a purpose which Section 35 prohibits. There is nothing in the case of B. Rangaiah v. B. Rangaswamy, (1970) 2 Andh WR 181 which supports the contention of the petitioner. That was a case as pointed out by Kuppuswami, J., where there were two instruments though contained in one document one a settlement in favour of the 4th defendant therein and the other a will. It was therefore held that part of the instrument which constitutes a will did not require any stamp and will be admissible in evidence for proving the bequest contained therein. It was for that reason that the learned Judge said that Sec. 35 of the Stamp Act has no application to a case where one of the separate*

> *instruments relating to one such matters would not at all be chargeable under the Act as in the case before him."*

The Supreme court also quoted with approval the following passages from the Judgment of the Andhra Pradesh High Court in ***T.Baskar Rao vs. T.Gabriel***:

> *"5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence."*
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> *.................*
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> *"7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."*

After quoting the said passages, the Hon'ble Supreme Court held in categorical terms that an unregistered document cannot be used even for collateral purpose, if it is not duly stamped or the conditions found in Section 35 of the Stamp Act are not complied with.

10. What the trial court has done is to impound the document to enforce compliance with the requirements of Section 35 of the Indian Stamp Act, 1899. This has been done in exercise of the power conferred on the court below by Section 33 r/w section 35 of the Indian Stamp Act, 1899. This court does not find any defect or infirmity, much less exercise of jurisdiction not

conferred on it or exercise of jurisdiction with illegality or material irregularity. The impugned order also cannot be said to be one which can amount to miscarriage of justice warranting interference by this court in exercise of its power of superintendence over the courts below under Article 227 of the Constitution of India. There is no merit in the revision and the revision does not even merit admission.

In the result, the civil revision petition is dismissed at the threshold. However there shall be no order as to cost. Consequently, the connected miscellaneous petition is also dismissed.

07-04-2016

Index :Yes
Internet :Yes
asr/-

To

1.The Principal District Munsif, Cuddalore

P.R.SHIVAKUMAR,J.

Asr/-

C.R.P.(PD)No.866 of 2016
and
C.M.P.No.4800 of 2016

Dated : 07-04-2016