IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:21.12.2016
Pronounced On:03.01.2017

Coram

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.158 of 2008

1.Rukmani
2.Natarajan
3.Arumugam ... Appellants/Appellants/Defendants

.Vs.

G.Natarajan(died)
Smt.Bagyam ... Respondents/Respondents/Plaintiffs

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Second Additional Subordinate Judge's Court at Coimbatore dated 09.07.2007 in A.S.No.45 of 2007 confirming the judgment and decree of the First Additional District Munsif Court at Coimbatore dated 13.07.2006 in O.S.No.190 of 1984.

For Appellants : Mr.P.Valliappan

For Respondent : Mr.J.Hariharan for Mr.V.Nicholas

J U D G M E N T

The defendants are the appellants herein. The appeal is directed against the concurrent finding of the Courts below allowing the suit for recovery of rental arrears, damages for use and occupation and recovery of vacant possession of the suit property.

2. For the sake of convenience, the parties are described as per their rank and status shown in the suit.

3. The case of the plaintiff is that the plaintiff's mother let out the suit premises to one Rangiammal for rent and after the demise of Rangiammal, her daughter-in-law and grandson, who are the first and second defendants respectively continued to be in possession of the suit property as tenant paying rent of Rs.25/- p.m. Since the suit property was in dilapidated condition, the plaintiff requested the defendants to vacate the premises for demolition and re-construction. The defendants stopped paying rent and refused to vacate the premises. Hence, notice was issued to the defendants on

8.11.1983 to vacate and deliver the vacant possession of the suit property.

4. The defendants in their written statement denied the landlord-tenant relationship between their mother Rangiammal and the plaintiff's mother. They contented that the said Rangiammal and her husband Mara Vannan were living in the suit property since 1925. Mara Vannan died leaving behind his wife, two sons and three daughters. The legal heirs of Mara Vannan are holding the property in their own right. Muthan and Arumugam are sons of Mara Vannan. First defendant and the Second defendant are the wife and son of Muthan respectively. The third defendant is the son of Mara Vannan. The defendants are in occupation of their respective portions in the suit property. Neither the defendants nor their forefathers were tenant under the plaintiff or his mother. Being in possession and enjoyment of the property, since 1925, they claim possessory title over the suit property and pray for dismissal of the suit.

5. Before the trial Court, 5 witnesses were examined as P.W.1 to P.W.5 and 64 documents were marked as Exs.A1 to Ex.A64 on the side of the plaintiff and 2 witnesses were examined as D.W.1 and D.W.2 and one document was examined as Ex.B1 on the side of the defendants. The Advocate commissioner was examined as CW-1 and through him, his report, plan and surveyor's plan were marked as Ex.C-1 to Ex.C-5 on the side of the Court. The Chitta, Adangal and plan in respect of S.No. 286 was marked as Ex.X-1.

6. The trial Court, on considering the pleadings and evidence, has decreed the suit granting 3 months time to the defendants to vacate and deliver the vacant possession of the suit property to the second plaintiff. Aggrieved by the judgment of the trial Court, the defendants preferred appeal but lost. Hence, this second appeal.

7. This Court, while admitting the Second Appeal has formulated the following Substantial Questions of Law for consideration:-

> "(1) When the appellants and their predecessors are in possession and enjoyment of the suit property, which is a Natham Poramboke, ever since 1925, whether the respondent is entitled to decree for delivery of possession, in the absence of any evidence to show that the appellants are her tenant?
>
> (2)Whether the Courts below are correct in law in placing reliance upon Exs.A63 and 64 unregistered and unstamped lease deeds, which are inadmissible in evidence and cannot be looked into for any purpose?"

8. Mr.P.Valliappan, the learned counsel for the appellant/defendants submitted that, the discrepancies in the survey number mentioned in the suit schedule and the exhibits relied by the plaintiffs were not taken note by the Courts below. The suit property is not situated in Gopal Pillai Lane, but in Vannar lane. Likewise, Exs.A56 to 59 do not tally with the description of the suit property. Contrary to law, the Courts below have admitted and relied on Exs.A63 and A64, which are unregistered documents and inadmissible in evidence. Ex.A53-sale deed does not relate to the suit property. While the plaintiff has failed to establish the landlord-tenant relationship, the Courts below ought to have dismissed the suit. Instant, the Courts below by undue reliance on the inadmissible documents have arrived at an erroneous conclusion .

9. Per contra, Mr.J.Hariharan, the learned counsel appearing for the respondent submitted that, on facts after appreciating the dossier of documents such as Exs.A-3 to A-13 and Exs.A-39 and A-40, the Courts below have rightly concluded that the suit property is situated at new Door No.132 and its old door number is 249. Recently, the door number is changed to 281. The portion in which the plaintiff resides is door No.131 and its old door Number is 247 and 248. Tax receipts for that portion is also in the name of the plaintiff and marked as Exs.A-43 and A44. In the Advocate Commissioner's reports and plans, the suit property is clearly identified and there is no doubt or ambiguity in the description of the suit property. The title deed to the suit property Ex.A-53 is of the year 1927. It stands in the name of Gopal Pillai, who is none other than the father of the first plaintiff and father-in-law of the second plaintiff. The lease deeds Exs.A-63 and A64 executed by Rangiammal in favour of Gopal Pillai establishes the factum of landlord and tenant relationship. Therefore, there is no reason to interfere with the reason stated in the judgment of the Courts below.

10. Firstly, the learned counsel for the appellants/plaintiffs contented that the lease deed Exs.A-63 and A64 are unregistered and unstamped documents and therefore, it should not be looked into for any purpose. In support of his contention, he relied upon the following judgments:- (i) The judgment of the Hon'ble Full Bench of this Court in Muruga Mudaliar (deceased) and others v. Subba Reddiar reported in 1950 (2) MLJ 818, wherein it is held as follows:

> "Per Rajamannar, G.J- Section 49(c) of the Registration Act prohibits the use of an unregistered instrument in any legal proceeding in which such a document is sought to be relied on in support of a claim to enforce or maintain any right, title or interest to or in immovable property. So long as the document is not sought to be relied on

as evidence of any right, title or interest to or in immovable property, there is nothing to prevent the document being received in evidence. In this view, it might be that a distinction will have to be made between a suit for specific performance and a suit for damages. If the only claim in the proceedings is a personal one for damages for breach of contract that there can be no possibility of immovable property being affected by the reception of the unregistered document which may be only used in support of the claim for damages.

Per Satyanarayana Rao, J.- The prohibition against admissibility enacted by Section 49 of the Registration Act is not an absolute one, but the section renders the unregistered document inadmissible only for the two limited purposes specified in clause (a) and © and leaves it available to be used in evidence for other purposes.

The distinction that was drawn, as would be seen, is between using the document as evidence of a transaction affecting immovable property and using it merely to prove the contract. There is no objection to the latter, but the former cannot be permitted under Section 49.

Per Panchapagesa Sastri J.--What is prohibited by Section 49(c) of the Registration Act is the reception of the unregistered document in evidence of the transaction itself. The section does not merely prohibit the granting of a relief by way of an ultimate decree, a relief affecting immovable property. The reference to the conjoint words"any transaction affecting such property" is significant. A relief for damages for breach of a contract to lease can be given only if the plaintiff succeeds in establishing that there was a contract which was broken. It is to establish that contract that he wants the unregistered lease to be received in evidence. The section prohibits the reception of the document as evidence of the transaction. The section cannot be construed to mean that the document can be received in evidence as establishing the transaction but relief should be denied on the basis of the transaction so established in so far as such relief affects immovable property alone".

(ii) The Judgement of this Court in D.Balachandran, Prop.of Balu Tex, Loganathapuram, Erode Taluk and District v. T.C.Shanmugam reported in 2013 (2) CTC 832, wherein this Court held in paragraphs 4 and 5, which read as follows:

> "4. Admittedly, Ex.A2 is a Lease Deed for a period of five years and therefore, as per Section 17 of the Registration Act, the said document is compulsorily registrable. Therefore, when a document, which is compulsorily registrable, is not registered, that document cannot be looked into to prove the contents of the lease and as per Section 49 of the Registration Act, such document can be received in evidence for collateral purpose. Therefore, even though,the document was marked as Ex.A2, having regard to the provision of Sections 17 & 49 of the Registration Act, the said document can be looked into only for collateral purpose as the document is not a registered document.
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> 5.However, the position under the Stamp Act is entirely different. Under Section 35 of the Stamp Act, 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, unless such instrument is duly stamped. Therefore, as per Section 35 of the Stamp Act, there is a total prohibition to receive in evidence the unstamped document".

(iii) The judgment of the Hon'ble Apex Court in Ahmedsaheb (D) by L.Rs.and Ors. v. Sayed Ismail reported in AIR 2012 Supreme Court 3320, wherein para 13 reads as follows:

> "13...........Exhibit 69 was relied upon not for any collateral purpose, but for the support of the main claim of arrears of rent. The suit was for arrears of rent and Exhibit 69 was filed to show the agreement of lease of the demised premises, the other terms of the lease and the rate of rent between the parties. Therefore, the contention that the document was filed merely for establishing some collateral transaction, cannot be accepted....."

(iv) The judgment of the Andhra Pradesh High Court Yellapu Uma Maheswari and Anr. v. Buddha Jagadheeswararao and Ors. Reported in 2015 AIR SCW 6184, wherein paras 15 and 18 read as follows:

> "15.S ection 17(1)(b)of the Registration Act mandates that any document, which has the

> effect of creating and taking away the rights in respect of an immovable property, must be registered and Section4 9 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered u/S.17 of the Act.
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> 18......In a suit for partition, an unregistered document can be relied upon for collateral purpose, i.e., severancy of title, nature of possession of various shares, but not for the primary purpose i.e., division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose, it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B22 for collateral purpose subject to proof and relevance."

11. In all the above cited cases and other judgments on this point, while dealing with documents of this nature, which is neither stamped nor registered, the point emphasised is, the Courts have to consider Sections 17 and 49 of Registration Act, 1908 and Sections 33, 35 and 36 r/w Section 61 of the Indian Stamp Act, 1899. On such consideration, what emanates is that, for any document, if registration is mandatory, but unregistered, it cannot be looked into for any purpose, except for collateral purpose. Whereas a document, which is not duly stamped, cannot be acted upon even for collateral purpose, until the same is impounded.

12. In this case, the facts established by the plaintiffs through documentary evidence and oral evidence are that, Gopal Pillai has purchased the suit property vide Ex.A53, dated 29.07.1927. The house tax for the suit property is paid by Gopal Pillai and his successors. The plan approval for the buildings was obtained by them. As the owner and title holder of the suit property Pappammal-the wife of Gopal Pillai had let out the property for lease to Rangiammal, the mother of the defendants under Ex.A-63 in the year 1957, the lease is renewed in the year 1971, by the first plaintiff vide Ex.A64.

13. Exs.A63 and 64 are unregistered and unstamped documents. These two exhibits are relied on by the plaintiffs only to show, how the defendants came in occupation of the suit property and does not claim any right through it. While Section 49 of Registration Act,1908 permits unregistered documents to be admitted into evidence for collateral purpose, Section 36 of the Stamp Act, 1899 restricts questioning unstamped document,

after being admitted in evidence. Exs.A63 and 64 are documents of the year 1957 and 1971 respectively. While admitting these two documents, the defendants have not objected for admitting these documents. Therefore, under Section 36 of the Indian Stamp Act, 1899, once a document, which has not been duly stamped, has been admitted in evidence, without any objection, later the admissibility of that document cannot be challenged on the ground that it has not been duly stamped.

14. On further examination of Exs.A-63 and 64, this Court finds that they are rental notes in the nature of lease for one year. The monthly rent is fixed at the rate of Rs.1.00 per month in Ex.A63, dated 21.05.1957 and Rs.3.00/- per month in Ex.A64, dated 30.01.1971. The whole amount payable under Ex.A63 is Rs.12.00/- and under Ex.A-64 is Rs.36.00/-. Therefore, the stamp duty on these instruments payable under Entry 35 (lease) read with Entry 15 (bottomory bond) of the Schedule 1 annexed to the Indian Stamp Act, 1899, is 4 annas. While presenting these two documents before the Court, the plaintiffs ought to have paid stamp duty penalty as per Proviso (a) to Section 35 of the Indian Stamp Act, 1899, but the plaintiffs had failed to pay it. However, when the Court admitted these documents, the defendants did not question the admissibility of these two exhibits. Under such circumstances, Sections 36 and 61 of the Indian Stamp Act, 1899 comes into operation. As held by the Supreme Court in Yellapu Uma Maheswari and Another -vs- Buddha Jagadheeswara Rao and others (2015 AIR SCW 6184) cited supra, the irregularity could be cured by resorting to Section 38 of the Indian Stamp Act, 1899 and the plaintiffs need not be de-suited for their omission to pay stamp duty penalty.

15. Secondly, the learned counsel for the appellants, referring the judgment of the Supreme Court in Anathula Sudhakar -vs- Buchi Reddy reported in 2008 (6) CTC 237, submitted that, when the title of plaintiffs is under cloud (or) in dispute and he is not in possession (or) not able to establish possession, necessarily the plaintiffs will have to file suit for declaration, possession and injunction. Whereas, even after disputing the title vide reply notice-Ex.B-1, the plaintiffs have not chosen to seek relief of declaration. Therefore, the relief of possession is unenforceable, without relief of declaration.

16. On perusal of Ex.B-1-Reply Notice issued by the defendants 1 and 2 and their written statements, it is clearly expressed their denial of plaintiffs title and the alleged landlord-tenant relationship. Though the plaintiffs have not mentioned about the lease deeds in their notice, the defendants in their reply notice-Ex.B-1 voluntarily referred and denied the execution of any lease deed by them (or) their mother Rangiammal. They claim possession since 1925, but not a single piece of document is produced by the defendants to show their

possession. To take umbrage of the above cited Supreme Court judgement, there must be cloud or genuine dispute over the plaintiffs title, which requires judicial scrutiny. A meek or fake denial of title for the sake of denial does not mandate the plaintiffs to seek the superfluous relief of declaration.

17. Contrary to the claim of the defendants that they are in possession of the suit property since 1925, the plaintiffs have proved that Rangiammal initially was put in possession of the suit property by first plaintiff's father in the year 1957 and the defendants are continued to be in possession after the demise of Rangiammal. The suit is for recovery of property based on the title document Ex.A-53 and not based on the lease deeds. No relief is sought based on these documents. Exs.A-63 and 64 are relied only for the collateral purpose to show the defendants are permissive occupants and not a trespasser or occupier of property res nullius.

18. For the aforesaid reasons, this Court holds that the Substantial Questions of Law formulated by this Court and other grounds canvassed by the appellants does not carry any merit, hence it is liable to be dismissed.

19. In the result, this Second Appeal is dismissed and the judgment of the trial Court as confirmed by the first appellate Court is confirmed. For the purpose of collecting stamp duty and penalty on Ex.A-63 and Ex.A-64, this Court delegates the power to the trial Court (First Additional District Munsif Court), Coimbatore. On receipt of the case records, The trial Court is directed to impound Exs.A-63 and A-64. Thereafter, on determining the stamp duty and penalty payable as per Section 35 and 61(2) of the Stamp Act, 1899, the Court shall forward the same to the District Collector under Section 61 (3) of the Indian Stamp Act, 1899 for further adjudication as per law. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Second Additional Subordinate Judge,
Ist Additional Sub Court,
Coimbatore.

2.The First Additional District Munsif,
Ist Additional District Munsif,
Coimbatore.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.946
+1cc to Mr.V.Nicholas, Advocate, S.R.No.342

S.A.No.158 of 2008

NRI(CO)
CA(31/01/2017)