

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.830 of 2014
and
M.P.No.1 of 2014

1. Ravi
2. Pazhanisami .. Petitioners

vs

1. Rajaraman
2. Sumathi
3. The Assistant Engineer (Rural North)
Tamil Nadu Electricity Board
Kurinjpadi, Cuddalore District. .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.10.2013 passed by the learned Additional District Munsif, Cuddalore in I.A.No.398 of 2013 in O.S.No.44 of 2011.

For Petitioners : Mr.R.Gururaj

For Respondents : Served - No appearance

ORDER

The defendants 1 and 2 have come up with the above revision, challenging the order dated 11.10.2013 passed by the learned Additional District Munsif, Cuddalore in I.A.No.398 of 2013 in O.S.No.44 of 2011 in partly allowing their application filed under Order VIII Rule 3 of the Code of Civil Procedure to condone the delay in filing the documents and to receive the same.

2. The respondents 1 and 2 /plaintiffs filed the suit seeking declaration declaring their title to the suit property, for recovery of possession and for a mandatory injunction. Pending suit, the above application was filed by the defendants to condone the delay in filing certain documents and to receive the same in evidence. The said application was resisted by the plaintiffs by stating that the first document is an unregistered sale deed and that the same cannot be received in evidence. The court below after considering the submissions made on either side partly allowed the application by condoning the

delay in filing document Nos.2 to 8 and received the same in evidence. Insofar as Document No.1 is concerned, since it is an unregistered sale deed, the same was rejected. Aggrieved by the same, the present revision is preferred.

3. Heard the learned counsel for the petitioners. Despite service being effected, there is no representation on behalf of the respondents either in person or through an Advocate.

4. It is contention of the revision petitioners that the Court below has erroneously fell into error in not admitting the sale deed and only if the document is permitted to be marked, the same can be adjudicated. It is also contended that the court below could have directed the defendants to pay the stamp duty and penalty or could have impounded the document and sent it to the Stamp Collector. According to them, the unregistered sale deed could have been permitted to be marked after payment of stamp duty and penalty. Accordingly, they prayed for allowing the revision petition by

setting aside the order passed by the court below.

5. At this juncture, I would like to refer to the judgment of the Hon'ble Apex Court reported in **(2001) 3 SCC 1 (Bipin Shantilal Panchal Vs. State of Gujarat and another)** wherein it is held that any objection raised while marking the document pertaining to the insufficiency of stamps, the same shall be adjudicated immediately. Only when the document is not registrable the same may be received in evidence subject to its proof and relevancy. The relevant paragraphs are as follows:

"13. 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 realized 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.

14. 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 suggested above can be followed.)

[emphasis supplied]

6. Keeping the aforesaid principles in mind, if the case on hand is analyzed, it is seen that the Court below, has rightly rejected the first document, which is an unregistered sale deed as inadmissible in evidence. It has held that an unregistered sale deed has to be compulsorily registered as per Section 17 of the Registration Act. Further, the Hon'ble Apex Court in the aforesaid judgment has held that even if there is deficiency in stamp duty that application has to be adjudicated immediately.

But, in this case, the defendants are seeking to mark the unregistered sale deed as document for the adjudication of the case, which was correctly dealt with by the court below and dismissed the same as not admissible in evidence.

7. In view of the above, I do not find any infirmity in the order passed by the court below, warranting interference in this revision.

8. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

13.02.2017

vj2

Index: yes/No

Internet: yes

To

The Additional District Munsif, Cuddalore

**PUSHPA SATHYANARAYANA,J.,
vj2**

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