

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4889 of 2012
& M.P.No.1 of 2012

T.K.Subramanian ... Petitioner

Vs.

Kannan ... Respondent

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.11.2012, made in I.A.No.388 of 2011 in O.S.No.127 of 2010, on the file of the Additional Subordinate Judge, Tiruvannamalai.

For Petitioner : Mr. V.Lakshminarayanan

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 28.11.2012, made in I.A.No.388 of 2011 in O.S.No.127 of 2010, on the file of the Additional Subordinate Judge, Tiruvannamalai.

2. The petitioner is the defendant, respondent is the plaintiff in O.S.No.127 of 2010, on the file of the Additional Subordinate Judge, Tiruvannamalai. The respondent filed the suit for recovery of money. Petitioner filed written statement and is contesting the suit. According to the respondent, the petitioner borrowed money on 29.09.2001 and executed an unregistered mortgage deed on the same day. The respondent marked unauthorized mortgage deed as Ex.A1.

3. The petitioner filed I.A.No.388 of 2011, to reject the said document on the ground that the same is not properly stamped and not registered. In view of Section 59 of Transfer of Property Act and Section 35 read with Section 36 of Stamp Act and Section 17(2) of the Registration Act, the said document is inadmissible. Hence, prayed for rejecting the document, which was marked as Ex.A1.

4. The respondent filed counter affidavit and denied all the averments made by the petitioner and submitted that petitioner had already filed an application in I.A.No.313 of 2010 for rejection of plaint, on the same ground and the said application was dismissed. No further proceeding was initiated and hence, the said

order has become final.

5. The learned Judge, considering all the averments in the affidavit and counter affidavit and relief sought for in the suit, dismissed the application on the ground that respondent is seeking money decree and not a preliminary decree based on the mortgage deed.

6. Against the said order dated 28.11.2012, made in I.A.No.388 of 2011 in O.S.No.127 of 2010, the present civil revision petition is filed by the petitioner.

7. The learned counsel appearing for the petitioner submitted that the respondent had filed the suit, based on the mortgage deed which is unstamped and unregistered and it cannot be marked and relied on by the respondent for the relief sought for in the suit. In support of his contention, the learned counsel appearing for the petitioner relied on the judgment reported in **2013 (2) CTC 89 (P.Lakshmanan Vs. Muniappan):**

"12. As pointed out supra, Ex.A1 cannot be relied on to prove any right under the mortgage, especially

any right in respect of the immovable property, as it has not been registered. The document has been received in evidence only for the collateral purpose of proving the lending of money. Further, unless it is proved that a valid mortgage has been created, the Respondent cannot be heard to contend that the limitation for the recovery of the money secured by Ex.A1 shall be 12 years."

8. Heard the learned counsel appearing for the petitioner and perused the materials on record. Though notice was served on the respondent and his name is printed on the cause list, there is no representation either in person or through counsel.

9. From the typed set of papers, it is seen that Ex.A1 is a mortgage deed. It is stamped with two Rs.500/- stamp paper and one Rs.10/- stamp and the same is not registered. The respondent is relying on the said document to get a money decree. The relief in the plaint shows that respondent is seeking only a money decree. It is well settled that a properly stamped but unregistered document can be marked and relied on for collateral purposes. A Division Bench in a judgment reported in **(2001) 1 MLJ 1 (A.C.Lakshmipathy and another V. A.M.Chakrapani Reddiar**

and others) elaborately considered this issue and held that a properly stamped but unregistered document which is compulsorily registrable can be marked and relied on by the party for collateral purposes. The said judgment was followed by number of subsequent orders. In the present case, the respondent has marked Ex.A1 for collateral purposes, i.e., the amount was paid to the petitioner. In view of the said fact, the said document is admissible in evidence subject to objections, if any by the petitioner. The learned Judge, considered all the above facts properly and dismissed the application. In the circumstances, the judgment relied on by the learned counsel for the petitioner is not applicable.

10. In these circumstances, I hold that there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 23.12.2012. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.07.2017

Index : Yes/No
gsa

V.M.VELUMANI, J.

gsa

To

The Additional Subordinate Judge,
Tiruvannamalai

C.R.P.(PD)No.4889 of 2012
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