



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2017
(Reserved on 05.06.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) No.1669 of 2014

and

CMP(MD) No.8253 of 2016

1) K.Raju
2) R.Rakku

... Petitioners

vs.

A.Raja

... Respondent

Petition filed under Article 227 of the Constitution of India, against the order dated 14.07.2014 made in I.A.No.244 of 2013 in O.S.No.69 of 2012 on the file of the Principal District Munsif Court, Manamadurai.

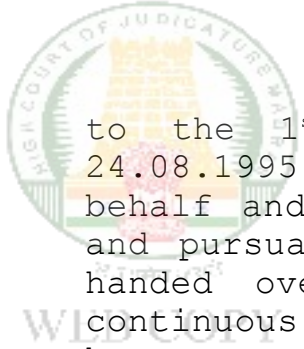
For Petitioners : Mr.J.John
For Respondent : Mr.S.Venkatesh for Mr.A.Sivaji

ORDER

This revision petition is filed by the defendants in O.S.No.69 of 2012. The suit is for redemption of property arising from oral mortgage and to declare the settlement deed executed by the 1st defendant in favour of the 2nd defendant in respect of the suit property as null and void.

2.The case of the plaintiff is that the suit property initially owned by one Vellaiya Konar. The said property devolved upon his son Ganapathy through partition who in turn sold the property in favour of the plaintiff's grand father Alagar Ambalam on 27.10.1969. The father of the plaintiff Iyankalai settled the property in favour of the plaintiff on 15.06.2005. Before that, in the year 1990, possession was given to the 1st defendant based on a oral mortgage. When the plaintiff sought for redemption of mortgaged property on paying a sum of Rs.5,000/-, the 1st defendant not only refused, but also created a void settlement deed in favour of his wife/2nd defendant. Hence suit for redemption and declaration as stated above.

3.Resisting the suit, the defendants have filed written statement pleading that possession of the suit property was given



to the 1st defendant pursuant to the oral sale deed dated 24.08.1995 executed by Iyankalai, father of the plaintiff on his behalf and on behalf of his minor sons Raja/plaintiff and Pandi and pursuant to the said unregistered sale deed, possession was handed over to the 1st defendant and since then, he is in continuous possession and enjoyment of the suit property. Since he was getting old, he settled the suit property in favour of his wife/2nd defendant through a registered document dated 05.02.2007 which is now sought to be declared as null and void.

4.This revision petition arises out of the dismissal of the application filed by the defendants to receive the unregistered sale deed dated 24.08.1995.

5.The Trial Court considering the rival contentions of the parties has dismissed the application to receive the said unregistered sale deed for the reason that under Section 17(1)(b) of the Registration Act, a document which creates or extinguishes right should be sufficiently stamped and duly registered under the Indian Stamp Act and Registration Act respectively. The document sought to be introduced as exhibit is neither registered nor duly stamped. Hence, even for collateral purpose, the said document is inadmissible in evidence.

6.Aggrieved by that, the present revision petition is filed on the ground that there is no prohibition under Section 49 of the Registration Act to receive the unregistered document in evidence for collateral purpose, provided, it is duly stamped or duty and penalty paid under Section 35 of the Indian Stamp Act. The defendants want to rely upon the said unregistered and inadequately stamped document for collateral purpose to establish the nature of their possession over the suit property. According to the revision petitioners, to establish that their possession is neither illegal nor unauthorised, admission of this document into evidence is essential. The petitioners while ready to pay the deficit stamp duty and penalty, there is no legal impediment for admission of the said document into evidence. The refusal to admit the same will highly prejudice the case of the defendants.

7.Per contra, the counsel for the respondent/plaintiff submitted that it is now well settled by a catena of judgments of the Hon'ble Supreme Court and this Court that no unregistered document which creates or extinguishes title over the immovable property worth more than Rs.100/- can be admitted in evidence even for collateral purpose if it is inadequately stamped. Further, if the document is not adequately stamped as per the Indian Stamp Act, by reason of statutory interdiction, no transfer is permissible under the said deed of conveyance.



8. The admitted facts in this case are that the suit property originally owned by Iyankalai which he inherited from his father Alagar Ambalam. The possession admittedly is with the defendants. It is not the case of the plaintiff that possession of the defendants is illegal or unauthorised. The conflict is only regarding how the possession was entrusted to the defendants. While the plaintiff asserts that the possession of the suit property was given to the defendants pursuant to the oral mortgage effected in the year 1990, the contra case of the defendants is that possession was given to them pursuant to the unregistered sale deed dated 24.08.1995. Apart from the validity of the said sale, the very existence and execution of the sale deed by Iyankalai itself is disputed by the plaintiff. In this regard, it is relevant to extract below the observation of the Hon'ble Supreme Court in the case of **Bondar Singh vs. Nihal Singh** reported in **(2003) 4 SCC 161:-**

"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-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the 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 lands. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorised."

9. In the present case, the nature of possession of the plaintiff over the suit property is not questioned. The alleged unregistered sale deed which conveys transfer of title is not permissible in law and the supposed collateral purpose is not available for the defendants for dual reason. Firstly, it is unregistered document and secondly, it is not adequately stamped. Under Section 35 of the Indian Stamp Act, a document which is not adequately stamped is not admissible in evidence for any purpose whatsoever, provided, the deficit stamp duty and penalty is collected as per the provisions of the said Act. In this case, there is no collateral purpose involved for admitting the unregistered sale deed. Hence, necessity to admit the document after collecting the necessary duty and penalty does not arise.



Hence, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To:

The Principal District Munsif Court,
Manamadurai.

+1 CC to M/s.J.JOHN, Advocate, SR No. 59057.

+1 CC to M/s.A.SIVAJI, Advocate, SR No. 59503.

NBI

PSM/RSK/SAR1/19.06.2017/4P/4C

order made in
CRP (PD) (MD) No.1669 of 2014
07.06.2017