



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Reserved on 03.04.2017)
Delivered on : 06.04.2017

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CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 611 of 2017
and
CMP (MD) No. 2736 of 2017

A. Raja Bhoopathi (Died)

1) R. Jansirani

2) R. Ranjit Kumar

3) R. Thiruvikramaraja

4) R. Vinothini

... Petitioners/Petitioners/Plaintiffs

vs.

A. Vivekanandan

... Respondent/Respondent/Defendant

Petition filed under Article 227 of the Constitution of India, against the order dated 07.12.2016 passed in I.A.No.370 of 2016 in O.S.No.21 of 2012 on the file of the First Additional District Judge, Madurai.

For Petitioner : Mrs. P. Jessi Jeeva Priya

ORDER

The revision petitioners are the legal heirs of one A. Raja Bhoopathi, who instituted the suit for partition against his brother who is the respondent herein. Pending suit, Raja Bhoopathi died and the revision petitioners were impleaded as plaintiffs.

2. When the suit was posted for trial, the revision petitioners sought leave of the Court to mark photocopy of a document alleged to have been executed by the parties concerned on 01.03.2007. The said document which carries the caption 'family arrangement', is an unregistered and under-stamped, besides being a photocopy and not original.

3. The Trial Court taking note of these three factors, has declined the request of the revision petitioners to admit the said document. Aggrieved by it, the present revision petition is



4. According to the revision petitioners, the original of the said document was with Annamalai Chettiyar, who is the father of Late A. Raja Bhoopathi and A. Vivekanandan. After his demise, the respondent herein, who was taking care of Raja Bhoopathi, is in possession of the original document and therefore, photocopy of it was sought to be marked, which is permissible under Section 65(a) of the Indian Evidence Act.

5. The further case of the revision petitioner is that though the document carries the caption as 'family arrangement', it is only a 'memorandum of understanding' reached between the members of the family and therefore, registration of that document is not a mandatory requirement. Further, the said document neither creates nor declares nor assigns nor limits or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent. Therefore, Section 17 of the Indian Registration Act is not attracted. However, the lower Court erred in dismissing the application to receive the document and mark it as exhibit on the side of the plaintiffs.

6. The learned counsel for the revision petitioners submitted that the suit is for partition, in which, the document sought to be marked has already been referred in the pleadings as well as shown as document No.1 in the list of documents annexed to the plaint.

7. While marking the document through the witness, the Court objected for marking of secondary evidence. Hence, notice was issued to the respondent/defendant to produce the original, since he is in custody of the original document. However, the respondent denied the very existence of such document, which has forced the plaintiffs to mark photocopy.

8. The Trial Court instead of admitting the document, has wrongly declined the request on the ground that the document creates rights in the immovable properties to the parties and it is not properly stamped, hence, barred under Section 35 of the Indian Stamp Act.

9. It is further contended by the learned counsel for the revision petitioners that even if the document is required registration and not adequately stamped, the Court can only direct the impounding of the document as contemplated under Section 38 of the Indian Stamp Act, requiring the Collector to determine the stamp duty by sending the document for such purpose. Instead of following the procedure contemplated under Section 38 of the Indian Stamp Act, the Trial Court has illegally rejected the document.



10. The grounds raised in the revision petition as well as the documents annexed in the typed set perused.

11. The suit is for partition, wherein, two properties described under A and B schedule are sought to be apportioned between the plaintiffs and the defendant equally. The case of the plaintiffs is that the suit properties are joint family properties. Annamalai Chettiyar and his wife Smt. Vasantha Annamalai, 1st plaintiff A. Raja Bhoopathi, who is the son of Annamalai Chettiyar and younger son Vivekanandan, who is the defendant in the suit, are members of the family. On 01.03.2007, there was memorandum of understanding between the family members to divide the family property and the same was reduced into writing. The original was given to Annamalai Chettiyar and photocopies were given to the other members of the family. According to the revision petitioners, on the death of Annamalai Chettiyar, the respondent herein has taken possession of the original document, which is denied by the respondent.

12. The Trial Court after perusing the recital of the said document, has found that it is a document creating right over the immovable properties. Further, it is an arrangement between the family members to be effected in future. Being a secondary document with inadequate stamp and unregistered, the Trial Court has rejected the request to admit the document.

13. The first contention of the revision petitioner is that if the document is not sufficiently stamped, it ought to have been impounded by the Court and proceeded under Section 38 of the Indian Stamp Act, instead of rejecting the request for admitting it as evidence. This submission cannot be countenanced, for the simple reason that the document which has been produced is not the original document, but only a photocopy. Impounding of a document under Section 38 of the Indian Stamp Act is applicable only in case of original document which is not stamped or inadequately stamped. The procedure of impounding cannot be exercised in case of photocopies.

14. In this regard, it is also relevant to consider the judgment of this Court in *Pakkiri vs. Saraswati and others*, reported in 2016 (4) MLJ 500, which in turn, has referred to the decision of the Apex Court in *Avinash Kumar vs. Vijay Krishna Mishra* reported in 2009 (2) SCC 532. The observations of the Supreme Court in Avinash Kumar's case as extracted by this Court in 2016 (4) MLJ 500, is reproduced hereunder:-

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."

15. It is also relevant to consider the judgment of the Andhra Pradesh High Court in *Sanjeeva Reddy vs. Johanputra Reddi*, reported in AIR 1972 AP 373, wherein, it has been held 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.''

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16.The second limb of argument of the revision petitioners is that in the document which is sought to be marked, there is no right over the immovable property being created to any of the party and it is only a memorandum of understanding, though it carries the caption as 'family arrangement'. This submission is also not correct, because, the recital of the document refers about the manner in which the properties mentioned in the document were acquired and the necessity for the parties to divide the properties among themselves. More particularly, the signatories to this document were conscious of the fact that this document ought to be registered therefore, it is specifically stated that within a period of three months from the date of execution, the document should be registered.

17.The said document is dated 01.03.2007. It is admitted by both the parties that Annamalai Chettiyar died on 19.11.2011 and his wife Vasantha Annamalai pre-deceased him on 26.01.2011. Though it is stated in the petition that the family arrangement or the memorandum of understanding as claimed by the revision petitioners was acted upon, it is clear from the fact of non registration of the document within three months as agreed to by the parties, it was not acted upon and being a suit for partition, any memorandum recording previous partition is admissible in evidence though not registered, but not other document which speaks about the division of property *in praesenti or in futuro*.

18.The entire reading of the document sought to be introduced as evidence, speaks about the division of property *in praesenti or in futuro*. Therefore, registration is necessary and without registration, it cannot be considered as evidence as per Section 17 of the Indian Registration Act.

19.In this connection, the observation of the Division Bench judgment of this High Court in *A.C.Lakshmipathy and another vs. A.M. Chakarapani Reddiar and five others*, reported in 2001 (1) CTC 112 (DB) is appropriate to be cited, wherein, this Court considered the requirements of a family arrangement and the effect of non registration and non stamping of such documents. After reviewing the entire case law on the subject, the Division Bench had observed as follows:-

''23.It is now fairly well settled that the co-owners can partition the immovable properties orally. But, however where a document is employed to effectuate a partition or any of the transactions specified in Section



17 of the Registration Act such document must be registered, notwithstanding with the transaction is one which the law does not require to be put into writing. Such unregistered document cannot be looked into to prove the terms of the partition. But, however the same if inadmissible in evidence for the purpose of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The expression 'collateral purposes' is no doubt a very vague one and the Court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple device of calling it 'collateral purpose', a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if it registered.'

20. In the present suit for partition, the document which is sought to be relied upon cannot be considered as a document relied for collateral purpose, since the document speaks about present and future division of property among the sharers, but not the past division. The revision petitioners have innocuously attempted to introduce the document during trial. The Trial Court has consciously found the illegality in admitting this document and therefore, refused to admit the document. Only thereafter, the revision petitioners have issued notice to the respondent to produce the original. Whereas, the very existence of the document itself is denied by the respondent.

21. Under these circumstances, photocopy of the inadequately stamped and unregistered document purported to have been executed under the caption of 'family arrangement' and rechristened by the revision petitioners as 'memorandum of understanding' in respect of family property, is totally inadmissible in evidence in the light of Section 17 of the Indian Registration Act and Section 35 of the Indian Stamp Act. Hence, there is no illegality in the impugned order of the Trial Court.

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

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

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The Ist Additional District Judge, Madurai.

Nbi

RL/2C/6P/MR/10.5.2017

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