IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 13.12.2017	Date of Pronouncing Order 20.03.2018

CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.3756 of 2017

1.K.Dharmalingam
2.K.Kothai
3.V.Chellammal
4.V.Dayalan
5.V.Prabhu

..petitioners

Vs.

1.Valliammal
2.S.Banu
3.The Sub-Registrar,
Manavalanagar, Thiruvallur
Taluk and District. ..Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India challenging the order and decretal order in IA.No.1279 of 2015 in OS.No.124 of 2008 on the file of District Munsif, Tiruvallur dated 12.04.2017.

For Petitioners : Mr.V.Lakshminarayanan

For Respondents : Mr.M.R.Khapali for R1 & R2

ORDER

The respondents / plaintiffs have filed a suit in OS.No.124 of 2008 for declaration and permanent injunction against the revision petitioners herein / defendants. According to the petitioners, Kanniappa Naicker is the absolute owner of the property, orally sold the suit property for Rs.650/- to Thiruvengada Naicker on 19.01.1974 and passed delivery of possession to Thiruvengada Naicker, by confirming the oral sale and also executed, unregistered sale deed dated 19.01.1974 in favour of Thiruvengada Naicker. The said document has been shown as document No.1, in the list of documents in the above said suit. The respondents / plaintiffs filed an application in IA.No.1279 of 2015 to send the document to Revenue Divisional Officer, Tiruvallur to ascertain the correct stamp duty and to collect the same with minimum penalty. The counter statement has been filed by the revision petitioner / first defendant, under Section 33 of the Indian Stamp Act to send the sale letter dated 19.01.1974 to Revenue Divisional Officer, Tiruvallur for impounding, thereby ascertaining the correct stamp duty and to collect the same with minimum penalty is not maintainable. According to the first defendant, the sale letter itself is forgery. Hence, the application is not maintainable. Therefore, the said letter dated 19.01.1974 is not liable to levy stamp duty, since it is time barred, under the Indian Stamp Act as well as Limitation Act. The trial court considered the decisions of this Court, in the case of *Karuppannan Vs. Thavasiappan and another* reported in ***(2006) 4 MLJ p 706*** and in the case of *Avinashkumar Chauhan Vs. Vijay Krishna Mishra* reported in ***(2009) 3 MLJ 409 (SC)***, wherein it has been held that there is a statutory obligation on all the authorities to impound the document, which is not duly stamped, and that the Court, being an authority to receive a document, in evidence, is bound to give effect thereto. The trial court while allowing the application by holding that the court itself can assess the stamp duty and collect the penalty on its own and it is not necessary to send the same to the Revenue Divisional Officer, Tiruvallur. Challenging the aforesaid order, the revision petitioners have filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioners would submit the said application has been filed by the respondent to impound the document for assessing the same under Section 33 of Indian Stamp Act. The court below has allowed the application by

holding that the court itself, has power to assess the sale deed is contrary to law and beyond its jurisdiction. The contention of the revision petitioners, after marking a document, the court has to send for the authority concerned for assessment, without following the provision of law, allowing the application is erroneous and perverse. Therefore, the order passed by the court below is liable to the set aside.

3. The learned counsel for the respondent has relied upon the decision of the Hon'ble Supreme Court in the case of Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle and another reported in (2001) 4 SCC 197, wherein in paragraphs 11 and 13, it has been held as follows.

> *"11. We extracted the relevant sub-sections of Section 47-A for the purpose of showing that the whole route followed hitherto was wrong as Section 47-A would not come into the picture at all since nobody has a case that the instrument concerned was ever presented for registration. In the context of this instrument being presented*

before the civil court the relevant provision to be noticed is Section 40 of the Stamp Act. Sub-section (1) of that section says that when the Collector impounds an instrument under Section 33, or receives any instrument sent to him under Section 38 (2) he shall adopt the procedure laid down in the sub-section. In this context Section 38 is to be looked into. It is extracted below:

38. Instruments impounded, how dealt with – 1) when the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

13. In the present case, an argument is raised that the instrument is not actually an agreement of sale as envisaged in the Schedule to the Stamp Act (subject to amendment made by the State of Andhra Pradesh) but it is only a deed of compromise entered into by two disputing persons. We refrain from expressing any opinion on the said plea as it is open to the parties to raise their contentions regarding the nature of the document before the trial court. In the present case the trial court should have asked the appellant, if it finds that the instrument is insufficiently stamped, as to whether he would remit deficient portion of the stamp duty together with a penalty amounting to ten times the deficiency. If the appellant agrees to remit the said amount the court has to proceed with the trial after admitting the document in evidence. In the meanwhile, the court has to forward a copy of the document to the Collector for the purpose of adjudicating on the question of deficiency of the *stamp duty as provided in Section 40 (1) (b) of the Act. Only if the appellant is unwilling to remit the amount the court is to forward the original of the document itself to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty. The penalty of ten times indicated therein is the upper limit and the Collector shall take into account all factors concerned in deciding as to what should be the proper amount of penalty to be imposed."*

4. The respondents have also relied upon the decision of this Court in the case of V.Ponnusamy Vs. N.Namis Dhas and others reported in 1998 (1) MLJ 407, wherein this Court has held as follows.

"13. There is no dispute that the Court below which is competent to receive document could impound the mortgage deed in question after examination of the deed Sec.33 of the Stamp Act enables the Court below, to examine and impound the

mortgage deed which was produced by the petitioner alongwith the plaint and it has rightly impounded the document as the document has not been duly stamped. Sec.38 of the Indian Stamp Act provides as to how the instruments impounded has to be dealt with, sub-Sec.(1) of Sec.38 of the said Act enables the Court below which receives and admits the document in evidence after collecting the stamp duty and penalty as provided under Sec.35 of the Stamp Act to send a copy of the authenticated document to the Collector together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, Sub Sec.(2) of Sec.38 of the Act refers to several other cases i.e., whether the document is impounded but the stamp duty and penalty have not been collected, the document impounded should be sent in original to the Collector. When a document insufficiently stamped is tendered but not admitted in evidence, the court has to exercise discretion under Sec.38 (2) of the said Act and has to send the impounded document to the Collector.

14. In other words, if the party filing the document wants it to be admitted in evidence, then only the court shall collect the stamp duty and penalty and admit it in evidence. But, if the party, instead of requiring the document to be admitted in evidence merely wants to send it to the Collector to be dealt with under Sec. 40 of the said Act, the Court has no option but to send it to the Collector as provided under Sec.38. The Court also cannot compel the party to pay the stamp duty and penalty and for admitting it in evidence.

17. In the petitioner / plaintiff so chooses, he could either pay the stamp duty and penalty and if he is not prepared to pay the stamp duty and penalty at this stage, the Court has to forward the same to the Collector and it cannot return the impounded document to the plaintiff / petitioner."

5. The learned counsel for the petitioners relied upon

the provisions under Sections 33 and 38 of the Indian Stamp Act, which reads as follows.

> ***"33. Examination and impounding of instruments*** *-*
>
> *(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office,except an officer of police before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same.*
>
> *(2) For that purpose every such person shall examine every instrument, so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in 3[India] when such instrument was executed or first executed :*
>
> *Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI, of the Code of Criminal Procedure, 1898;*

***38. Instruments impounded how dealt with.** -*

(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

6. In the present case on hand, the court below allowed the application by stating that the court itself can assess the stamp duty and collect the penalty on its own, is contrary to the aforesaid provisions of the Indian Stamp Act. At this stage, filing the instant application to impound the document and the same is ordered to be assessed by the court for the amount of duty and penalty levied is not maintainable.

7. By considering the scope of Sections 33 and 38 of the

Act, which deal with the power, and the decision cited supra, impound the Instrument and to assess the stamp duty and to collect the deficit stamp duty and penalty by the court is unsustainable in law and the same is liable to be set aside. It is open to the respondents to file an application, at later stage, under Sections 33 and 38 of the Indian Stamp Act, if so advised.

8. In fine, the impugned order passed in IA.No.1279 of 2015 in OS.No.124 of 2018 passed by the learned District Munsif, Tiruvallur is set aside and the Civil Revision Petition is allowed with above directions. No costs.

20.03.2018

Speaking/Non-speaking order
Index :Yes/No
Internet : Yes/No
lok

To

The District Munsif,
Tiruvallur

D.KRISHNAKUMAR. J,

lok

Pre-delivery Order
in CRP.PD.No.3756 of 2017

20.03.2018