BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD) No.2111 of 2015
and M.P.(MD) No.1 of 2015

1.Duraichamy
2.Yesudas Devaraj ... Petitioners/Petitioners/Plaintiffs

-vs-

Mayileri ... Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for records and set aside the fair and executable order dated 13.03.2015 passed in the application in I.A.No.1025 of 2014 in O.S.No.35/2012 on the file of the Principal District Munsif, Ambasamuthiram.

For Petitioners : Mr.T.R.Jeyapalam
For Respondent : Mr.R.J.Karthick

O R D E R

The revision petitioners are the plaintiffs in O.S.No.35/2012 on the file of the Principal District Munsif, Ambasamuthiram and in the suit, the plaintiffs sought for permanent injunction, etc. During pendency of the suit, the 1st plaintiff filed an application in I.A.No.1025 of 2014, seeking permission for remittance of sufficient stamp duty and the said application was dismissed, on the ground that there is no necessity to pay the stamp duty. Aggrieved by such finding, the revision petitioners/plaintiffs are before this Court.

2. It is the case of the revision petitioners that they had filed the suit for permanent injunction and when the case was posted for marking documents, the plaintiffs came to know that an important unregistered document was marked on their side and the same is a vital document. Since it was an unregistered document, there is a possibility of the Trial Court in not allowing the plaintiffs to mark it and in that event, they would not be in a position to prove their case. It is the further case of the petitioners that the Trial Court, on the basis of the submission made on the side of the

respondent herein that the document is inadmissible in evidence, had held that no question of payment of stamp duty arose for such document, which is highly arbitrary and in violation of the provisions of the Indian Stamp Act, 1899.

3. The revision petitioners state that the unregistered document was executed only to indicate the omitted part of the sale deed regarding standing trees on the property and therefore, the impugned sale deed is admissible in evidence. However, the Trial Court, without considering all these factual matrix involved in the case, has simply rejected the plea of the petitioners. Hence, it is prayed that the order of the Trial Court is liable to be set aside.

4. On the contrary, learned counsel for the respondent/defendant would contend that the question to be resolved in this case is as to who is in possession of the the property and to prove the same, the plaintiffs attempted to rely on an unregistered document, which is legally impermissible to rely. Moreover, it cannot be construed that mere payment of stamp duly will entitle a party to convert the same as legally acceptable. Therefore, it is contended that when the document is inadmissible in evidence, the voluntary and unnecessary inclination of the plaintiffs to pay the stamp duty is not at all unwarranted and therefore, this petition is liable to be dismissed.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The petitioners have invoked the provisions of Sections 33 and 35 of the Indian Stamp Act r/w Section 151 of CPC to impound the unregistered sale deed, which is insufficiently stamped. According to the petitioners, the document marked was an unregistered one and if the same is rejected by the Trial Court at the fag end of the trial on the reasoning of its un-registration, it would fetch irreparable loss to them and therefore, as a precautionary measure, they sought to permit them to pay stamp duty for the same. On the other hand, it is the submission of the respondent that based on the unregistered document, the plaintiffs cannot claim any relief. The apprehension of the plaintiffs is that, because of non payment of required stamp duty, the Trial Court should not have passed any adverse order against them at the final stage of the matter.

7. Before appraising the facts, it is apposite to extract Sections 33 and 35 of the Indian Stamp Act, 1899 as under:

"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 India when such instrument was executed or first executed: Provided that—

(a) 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 (5 of 1898);

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—
(a)[the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

35. Instruments not duly stamped inadmissible in evidence, etc.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that—

<u>(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;</u>

(b)where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

8. A bare reading of the above provisions would make it clear that the instrument not duly stamped is inadmissible in evidence, etc., in other words, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person and therefore, the apprehension of the plaintiffs cannot be brushed aside. Of course, it is true that no value or sale consideration has been prescribed in the document, but at the same time, it has been specifically executed in order to describe the omitted part of the previous sale deed, which was duly registered. Admittedly, the document was already marked and it is the plaintiffs, who are willing to pay the duty for the same from their pockets and the defendant can have no say for that. If th Trial Court rejects the document at a later point of time for non payment of duty, ultimate sufferer would be plaintiffs and not anybody else. Therefore, finding force in the contention raised by the learned counsel for the petitioners, this Court is of the view that the order dated 13.03.2015 passed in I.A.No.1025 of 2014 in O.S.No.35 of 2012 by the learned Principal District Munsif, Ambasamuthiram, is liable to be dismissed.

9. In the result,

a) this civil revision petition is allowed and the order dated 13.03.2015 passed in I.A.No.1025 of 2014 in O.S.No.35 of 2012 by the learned Principal District Munsif, Ambasamuthiram, is hereby set aside;

b) the petitioners / plaintiffs are permitted to pay the stamp duty for the unregistered document dated 03.07.2002 within aperiod of two weeks from the date of receipt of a copy of this order;

c) the Trial Court is directed to conduct the trial of the case in O.S.No.35 of 2012 on day-to-day basis and dispose of the same within a period of three months from the date of payment of stamp duty, without giving any unnecessary adjournment to either parties and the parties shall also cooperate for early disposal of the suit within the stipulated period prescribed above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To:

1. The Principal District Munsif,
   Ambasamuthiram.

2. The Record Keeper,
   V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 68932
+ 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 68398

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TE/RP/SAR-2 : 30/07/2018 : 5P/6C

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