BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.11.2017

Pronounced on : 21.06.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD)(MD)No.1992 of 2017
and
CMP(MD)No.10029 of 2017

A.Rajaram .. Petitioner/Respondent/Tenant

Vs.

P.Chinnakani ... Respondent/Petitioner/Landlord

PRAYER: Petition filed under Article 227 of the Constitution of India, against the order, dated 21.09.2017, passed in R.C.O.P.No.1 of 2016 by the Rent Controller/Principal District Munsif, Nagercoil, Kanyakumari District.

For Petitioner : Mr.R.Murugan

ORDER

This Civil Revision Petition has been filed by the revision petitioner / tenant against the order, dated 21.09.2017, passed in R.C.O.P.No.1 of 2016 by the Rent Controller / Principal District Munsif, Nagercoil, Kanyakumari District, whereby and whereunder the learned Rent Controller has held that the rental agreement, which wants to be marked on the side of the revision petitioner / tenant, has to be referred to the District Collector under Section 38 of the Indian Stamp Act for proper valuation and payment of stamp duty.

2. The brief facts of the case are as follows:

(a) According to the respondent / landlord, he had purchased the dismissed premises and also the nearby premises, where he has been running a travel business and the revision petitioner / tenant has already been informed about the change of ownership. In order to expand the business, the respondent / landlord required that demised premises. When the respondent / landlord had sent a notice demanding vacant possession of the demised premises, the revision petitioner / tenant has sent a reply notice with the false allegation that under unregistered lease agreement, he has given a sum of Rs.12 lakhs as advance to the previous owner and he had spent Rs.6 lakhs for the purpose of improvement of the demised premises.

(b) According to the revision petitioner / tenant, he had entered into an unregistered lease agreement with one A.Rajamony on 03.08.2014 for running a business in the demised premises, as per which the rate of rent was fixed at Rs.7,500/- p.m. and Rs.12 lakhs was given as advance. The revision petitioner / tenant had also spent Rs.6 lakhs for the purpose of improvement in the demised premises. He has been paying rent regularly without any arrears. While so, a notice has been served to him with regard to the change of ownership of the building. He was ready to pay rent through the respondent's / landlord's bank account on 06.01.2016, but the respondent / landlord refused to give bank account number. Though in the rental agreement, the receipt of Rs.12 lakhs was acknowledged by erstwhile owner, with the mala fide intention to evict the petitioner / tenant, the respondent / landlord has filed the eviction petition.

(c) While so, the revision petitioner / tenant has filed a miscellaneous petition seeking to mark the unregistered lease agreement and also the receipts relating to the payment of rent and purchase of materials for the improvement of the demised premises. The Court below, after hearing both sides, has held that for marking the lease document, under Section 35 of the Indian Stamp Act, the revision petitioner / tenant has to pay stamp duty and as the revision petitioner / tenant stated that there is no necessity to pay stamp duty, the Court has to refer the document to the District Collector for proper valuation of stamp duty payable and for payment of the same. For getting opinion of the revision petitioner / tenant, the Court below has adjourned the matter to 03.10.2017. While so, challenging that order, the revision petitioner / tenant has hurriedly come up with this revision petition.

3. The learned counsel for the revision petitioner / tenant strenuously argued that the revision petitioner / tenant sought to mark the unregistered lease agreement only for the collateral purpose of establishing the payment of advance amount and not for proving the main purpose of tenancy. The learned Rent Controller has failed to consider the same.

4. The learned counsel for the revision petitioner / tenant would further submit that if the Rent Controller decided that the said document needs payment of stamp duty, he ought to have impounded the same and referred it to the Stamp Collector, but the Rent Controller directed the revision petitioner / tenant to pay deficit stamp duty on or before 03.10.2017, which is against law.

5. I have paid my anxious consideration to the submissions made by the learned counsel for the revision petitioner / tenant and perused the materials available on record.

6. The only question to be decided in this case is whether the learned Rent Controller was right in holding that the revision

petitioner / tenant has to pay deficit Court fee for marking unregistered lease agreement?

7. Before going into the above question, this Court is inclined to refer to Section 35 of the Indian Stamp Act, which reads as follows:

> "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--
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> (a) any such instrument not being an instrument chargeable with a duty not exceeding twenty paise only or mortgage of crop (Article 41(1) of Schedule I) chargeable under Section 3 with a duty of fifty paise or a bill of exchange or promissory note, shall, subject to all just exceptions, 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 ;
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> (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 on payment of a penalty of one rupee by the person tendering it;
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> (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 proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 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. From the above provision, it is clear that no instrument chargeable with duty shall be admitted in evidence for any purpose. Therefore, there is a total bar for admitting any document in evidence if the document is not duly stamped. Though Section 35 prohibits admission of instrument which is not duly stamped, by reason of the provisio, such instrument shall be admitted in evidence on payment of penalty.

9. Admittedly, in this case, the revision petitioner / tenant wants to mark unregistered and unstamped lease agreement for establishing the payment of advance amount to the tune of Rs.12 lakhs to the erstwhile owner. The respondent / landlord has objected to the marking of the said document for want of registration and stamp duty. It is settled law that if an agreement is reduced into writing and it purports to create, declare, assign, limit, or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act. If the agreement is stamped but not registered, it can be looked into for collateral purposes. A person cannot claim a right under the said document, which is being looked into only for collateral purpose. An agreement which is not stamped and not registered cannot be looked into for any purpose, in view of the specific bar in Section 35 of the India Stamp Act.

10. Here, in this case, the document viz., the lease agreement comes within the purview of Schedule I of Section 35(a) of the Indian Stamp Act. Though the lease agreement entered for 11 months need not be registered, for the purpose of marking the document even for collateral purpose, it should be duly stamped. Further, the Hon'ble Supreme Court in the decision reported in (2008) 2 MLJ 1115 (SC) (Thiruvengada Pillai Vs. Navaneethammal) has held that even if an agreement is not executed on requisite stamp paper, it is admissible in evidence on payment of duty and penalty under Section 35 or 37 of the Indian Stamp Act. Therefore, when an instrument which is not duly stamped is produced before the Court for the purpose of admitting the same in evidence, as per Section 35 of the Stamp Act, such instrument cannot be admitted in evidence and if the person who produces the document is willing to pay the stamp duty penalty, then a duty is cast upon the Court to impound the document and direct the party to pay penalty as per proviso (a) to Section 35 of the Act and follow the procedure contemplated under Section 38(1) of the Act. In case, the person refuses to pay penalty as fixed by the Court and requested the Court to send the document to the Collector for impounding and determination of penalty and also the stamp duty payable on that document, the Court has to send the document in original to the Collector as contemplated under Section 38(2) of the Stamp Act. On receipt of such document, the Collector has to follow the procedure contemplated under Section 40 of the Act.”

11. In this case, it is seen that the Court below has rightly directed the matter to be listed on 03.10.2017 for the purpose of ascertaining the willingness of the revision petitioner / tenant about the payment of the stamp duty penalty. But, the revision petitioner / tenant, without even looking into the order passed by the Court below, has stated before this Court that the Court below has directed him to pay stamp duty on or before 03.10.2017. In view of the above, the order passed by the Court below is perfectly valid and the same need not be interfered with.

12. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

To.

The Principal District Munsif /
Rent Controller,
Nagercoil, Kaniyakumari District.

+1cc to Mr.R.Murugan, Advocate, SR.No.69257.

order made in
CRP(PD)(MD)No.1992 of 2017
21.06.2018

gcg

RAM/PN/SAR 1/11.07.2018/5P/3C