



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD).No.837 of 2016 and
C.M.P. (MD)No.4223 of 2016

Vijaya ... Petitioner/Petitioner/
Defendant
Vs.
Sundari ... Respondent/Respondent/
Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 25.01.2016 in I.A.No.422 of 2015 in O.S.No.142 of 2013 on the file of the Additional Sub Court, Dindigul and allow this Civil Revision petition with costs throughout.

For Petitioner: Mr.H.Lakshmi Shankar

For Respondent: Mr.A.Hariharan

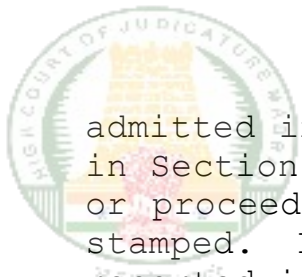
ORDER

The defendant in O.S.No.142 of 2013 on the file of the Additional Sub Court, Dindigul, is the Revision petitioner herein.

2. The said suit has been filed by the respondent herein for recovery of a sum of Rs.2,24,960/- from the Revision petitioner herein. The suit has been laid on the strength of a Othi Deed. The said document was marked as Exhibit on the next day of filing of proof affidavit. The Revision petitioner filed I.A.No.422 of 2015 for impounding the said document in terms of Section 35 of the Stamp Act. The said application was dismissed by order dated 25.01.2016. The correctness of the said order is questioned in this Civil Revision petition.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the respondent/plaintiff pointed out that the document in question was marked without any objection from the Revision petitioner's side. Therefore, he contended that Section 36 of the Stamp Act would come into play. The said provision states that where an instrument has been



admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. In this regard, he placed reliance of the decision reported in **2013 (2) C.T.C.89 (P.Lakshmanan v. Muniappan)**.

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5. I am unable to agree with the submissions advanced by the learned counsel for the respondents.

6. As rightly contended by the learned counsel for the Revision petitioner, the document in question being a Othi Deed requires to be duly stamped and is compulsorily registrable. Admittedly, the document in question has not been registered. It has been executed on a Twenty Rupees Stamp paper. As regards, the defence raised on the strength of Section 36 of the Stamp Act, it is seen that the objection with regard to admissibility of the document in question was raised one day after the document was marked as an Exhibit.

7. I am of the view that when a document that is compulsorily registrable has not been registered, it can be used only for collateral purpose. But then, Section 35 of the Stamp Act cannot be ignored. In this regard, the learned counsel for the Revision petitioner drew the attention of this Court to the decision reported in **2013 (2) C.T.C. 864 (G.Ramamoorthy Vs. M.S.R.Sivakumar and another)**. Paragraph No.11 of the said decision reads as under:-

"11. Further, under Section 35 of the Stamp Act, the procedure has been laid down for collection of Stamp duty penalty and a duty is also cast upon the Court to collect the Stamp duty penalty and procedure for collecting Stamp duty has been laid down under Section 38 of the Stamp Act and therefore, the Court having directed the First defendant to pay Stamp Duty penalty on the document which was marked along with proof Affidavit and also rejected the Memo filed by the first respondent to recall that order stating that the order passed on 19.10.2010 was a judicial order which cannot be reviewed and also confirmed the same by rejecting the Interlocutory Application filed by the first defendant to the same effect, the Court below should not have passed the impugned order reviewing its own order on the basis of the Judgment reported in **Kaliya Perumal V. Dhandapani, 2010 (2) C.T.C. 689**. Therefore, the order



of the Court below dated 06.06.2011 recalling its own order is set aside and the order dated 19.10.2010 is restored."

8. In this case, it is seen that after the filing of proof affidavit by the plaintiff, the next day the documents got marked. The Court below has not applied its mind as to whether an insufficiently stamped document as this has to be impounded or not. The Court below has a duty under Section 33 of the Stamp Act to examine and impound an insufficiently stamped document. That apart as rightly pointed out by the learned counsel for the Revision petitioner, the proviso to Sub rule 1 of Rule 4 of Order 18 states that where the documents are filed and the parties rely upon the documents, proof and admissibility of such documents which are filed along with affidavit shall be subject to orders of the Court. Therefore, in this case, the Court below has a duty to ensure that the deficit stamp duty as well as the penalty is paid. Only thereupon, the document in question can be used for collateral purpose.

9. Therefore, the order impugned in this Civil Revision petition stands set aside and I.A.No.422 of 2015 stands allowed as prayed for. The Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl-Side)

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Sub Assistant Registrar(CS-III)

To

1. The Additional Sub Judge,
Dindigul.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+ 1 CC TO MR.A.HARIHARAN , ADVOCATE IN SR NO.81904
+ 1 CC TO MR.H.LAKSHMI SHANKAR, ADVOCATE IN SR NO.82060

PMU

BU/PM/SAR-III :25.10.2018 : 3P/6C