IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.04.2019

DELIVERED ON: 24.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP PD No.3491 of 2009 and
MP No.1 of 2009

1. Malarappa Gounder
2. Shanmugam
3. Eswari ... Petitioners

Vs.

1. Nallammal
2. Sarasayammal
3. Sellamuthu Gounder
4. Karuppasamy
5. Sivagami
6. S.K.Nallasamy
7. R.Marappan
8. M.Senthilkumar
9. Selvamani ... Respondents

Prayer Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 10.09.2009 passed in I.A.No.111 of 2009 in O.S.No.924 of 2004 by the I Additional District Munsif, Bhavani.

For Revision Petitioners : Mr.V.Balamurugan
for M/s V.Ayyadurai

For respondent No.3 : Mr.N.Manoharan

Respondent No. 2 to 8 : No appearance

ORDER

This civil revision petition has been filed as against the orders passed by the trial court in I.A.No.111 of 2009 in O.S.No.924 of 2004, dismissing the application, filed to review the order, fixing the stamp duty penalty in respect of the unregistered partition deed dated 27.08.1981.

2. The brief facts leading to file this civil revision petition is as follows. The revision petitioners are the plaintiffs in O.S.No.924 of 2004, who filed the suit for partition. Pending suit, the defendants 3 to 5 had filed an application in I.A.No.108 of 2005 to mark an unregistered partition agreement dated 27.06.1981, which was opposed by the plaintiffs and that application was dismissed by the trial court. Against which, CRP No.1011 of 2005 was filed before this court, and vide order dated 29.11.2006, this court directed the trial

court to ascertain the stamp duty and penalty payable upon the disputed document, then call upon the party, who wants to rely upon the document to pay the stamp duty and penalty and then, on payment of such stamp duty and penalty, admit the document in evidence and whether the document is for collateral purpose or otherwise, which could be decided at later stage, while hearing the case,

4. In pursuant to the above order, the unregistered partition deed dated 27.08.1981 was sent to the Sub Registrar, Bhavani to fix the stamp duty and penalty. However, the Sub Registrar appeared before the trial court on 01.07.2009 and expressed his inability to fix the stamp duty, as there was no particulars about the survey number. Therefore, the trial court had issued a copy of plaint to the Sub Registrar for the purpose of fixing the stamp duty and penalty. Thereafter, it appears that, the Sub Registrar had fixed the stamp duty at Rs.260/- with penalty to 10 times. Accordingly, the stamp duty at Rs.260/- and the penalty to 10 times which comes to Rs.2,600/-, totalling to Rs.2,860/- has been paid by the defendants. Against which, an application in I.A.No.111 of 2009 had been taken

out by the plaintiffs to review that order, but the same was dismissed by the trial court. Hence, the revision petitioners came up with the present revision petition.

5. The learned counsel appearing for the revision petitioners would contend that the stamp duty and penalty has not been properly arrived and therefore, the order of the trial court, fixing the stamp duty at Rs.260/- with 10 times penalty at Rs.2,600/- is not correct and prayed for allowing the revision.

6. The learned counsel appearing for the 3rd respondent would contend that as per the direction given by this court in CRP No.1011 of 2005, the stamp duty and penalty has been fixed, and the trial court had properly adopted all the procedures and sent the copy of the plaint to the Sub Registrar for impounding the document and the Sub Registrar had also fixed the stamp duty and penalty. Hence, there is no error or illegal in the orders passed by the trial court and prayed for dismissal of the revision petition.

7. It is to be noted that, when the instrument has not been

duly stamped, as per Section 33 of the Indian Stamp Act, 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, and not properly stamped, such authority has no option except to impound the same.

8. Section 33A of the Stamp Act gives the powers to authority enable them to recover deficit stamp duty, after registration of any instrument.

9. Section 35 of the Stamp Act deals with inadmissible of document which was not duly stamped. However, except the documents referred under clause (a) of Section 35 of the Stamp Act document can be admissible in evidence on payment of the duty with which the same is chargeable or in case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees or with 10 times the amount of the proper duty.

10. Though unstamped documents required to be

impounded, as per Section 33 of the Stamp Act, except four categories of the documents mentioned in Section 35(a) of the Stamp Act, the other documents can be admitted in evidence on payment of duty.

11. Admittedly, in this case, the document had been referred to Sub Registrar to fix the market value to arrive duty, payable on such document. It is relevant to note that in the G.O.Ms.No.736, Revenue, dated 15.03.1971, the Government of Tamil Nadu notified that all the Registrars and Sub Registrars appointed under the Indian Registration Act are " Collectors" for the purpose of Section 31, 32 and 40 of the Indian Stamp Act. Section 31 of the Indian Stamp Act deals with the " Adjudication as to proper stamp". Section 32 deals with " Certificate issuable by the Collector" and Section 40 deals with the power of the Collector to impound the document.

12. The Division Bench of this court in a judgment in ***The Joint Sub Registrar Office, Coimbatore Vs. Prasanth Chadran reported in 2005(3) MLJ 628*** taken note that inview of the above

G.O.Ms.No.736, Revenue, dated 15.03.1971, the Government of Tamil Nadu , only the Sub Registrar is the proper person to adjudicate the insufficient stamps. In an earlier round of litigation, this court in a civil revision petition in CRP No.1011 of 2005, directed the trial court to ascertain the stamp duty and penalty. The trial court has rightly referred the document in question to the Sub Registrar office to impound the document. The Sub Registrar had expressed his inability to impound the document, as there was no survey number in the document and hence the trial court again sent the same document along with a copy of the plaint to note down the survey number. Since the Tamil Nadu Government by its G.O.Ms.No.736, Revenue, dated 15.03.1971, notified that all the Registrars and the Sub Registrars appointed under the Indian Registration Act are collectors, the Sub Registrar, Bhavani fixed the market value of the property mentioned in the unregistered partition deed of the year1981.

13. The above order has been sought to be reviewed by the revision petitioners on the ground that the duty has not been fixed properly. Once the concerned authority has fixed the value of the property by adopting proper procedure, that cannot be challenged.

Merely the stamp duty and penalty is paid, the same will not cure the registration aspect, which is mandatory under Section 17 of the Registration Act. The admissibility of the document for any purpose has to be decided, by keeping the specific bar contained in Section 49 of the Registration Act. The Proviso to Section 49 of the Registration Act provided exception to the unregistered document, to prove the collateral transaction alone, which would not affect the immovable property. Therefore whether or not document sought to be used for any transaction affecting such property, its validity and evidential value has to be decided by the court. Hence, there is no error or infirmity in the order passed by the trial court and the same does not warrant any interference by this court.

14. In the result, the civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed. The order of the trial court is confirmed.

24.04.2019

Index : yes/no
Internet : yes/no

Speaking order/non-speaking order
mst

To

The I Additional District Munsif, Bhavani.

N.SATHISH KUMAR. J.,
mst

Pre-delivery Order in
CRP PD No.3491 of 2009 and
MP No.1 of 2009

24.04.2019