BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 09.09.2019

Judgment Pronounced on : 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.(MD).No.855 of 2012
and
M.P.(MD).No.2 of 2012

1.Thangamuthu
2.Sumitha
3.Arumugam .. Petitioners / Petitioners / Defendants

Vs.

A.Jeyaraj .. Respondent / Respondent / Plaintiff

PRAYER:- Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.800 of 2011 in O.S.No.228 of 2007, dated 28.10.2011, on the file of the II-Additional District Munsif Court, Tirunelveli, insofar as the liberty given to the respondent to mark the document after payment of stamp duty is concerned.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.S.Mani

ORDER

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below giving liberty to the respondent to mark the document after paying sufficient stamp duty.

2. The petitioners are the defendants in the suit. The respondent filed a suit in O.S.No.228 of 2017 against the petitioners seeking for the relief of declaration and consequential permanent injunction.

3. After the completion of the pleadings, issues were framed and the case was at the stage of trial.

4. The respondent/plaintiff marked a sale deed, dated 14.02.1986, which was valued at Rs.2,000/- and which was an

un-registered and insufficiently stamped document. This document was marked as Ex.A1. The petitioners filed an application in I.A.No.800 of 2011, before the Court below to reject the said document. The Court below allowed the petition and rejected the document. However, it gave liberty to the respondent to mark the said document after payment of sufficient stamp duty. The petitioners/defendants are aggrieved by the said liberty that was granted by the Court below.

5. The learned counsel for the petitioners submitted that the documents, which are compulsorily registrable and which are not sufficiently stamped, can never be taken in evidence and therefore, the Court below ought not to have granted liberty to the respondent to cure the defect. The learned counsel submitted that the unregistered sale deed can never be relied upon and it cannot be looked into by the Court below.

6. The learned counsel for the petitioners, in order to substantiate his submissions, relied upon the following judgments:

"1. Vasantha Ammal vs. Gunasekaran, reported in 2011(3) MLJ 59;
2. S.Kaladevi vs. V.R.Somasundaram and Others, reported in 2009(2) MLJ 361;
3. Ammamuthu Ammal (died) and Others vs. Devaraj and Others reported in 2011(5) MLJ 15 ;

4. S.Venkatachalam and others vs. Kamalathal and another, reported in 2019 (2) CTC 88;
5. K.B.Saha & Sons Pvt. Ltd., vs. Development Consultant Ltd., reported in 2008 (5) CTC 260;
6. Arulsingamani and another vs. S.VAiguntha Rajan and another, reported in 2000(1) CTC 12."

7. Per contra, the learned counsel for the respondent/plaintiff submitted that the Court below has rightly given liberty to the respondent to pay sufficient stamp duty and thereafter, mark the document. The learned counsel submitted that the order passed by the Court below is perfectly in accordance with law.

8. The learned counsel for the respondent in order to substantiate his submissions, relied upon the following judgments:

"1. Sita Ram Bhama vs. Ramvatar Bhama, reported in 2018 (3) MWN (Civil) 206;

2. Manickam vs. Chinnasamy and others, reported in 2011 (5) CTC 206;

3. Avinash Kumar Chauhan vs. Vijay Krishna Mishra, reported in (2009) 3 MLJ 409 (SC)."

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. Eventhough the un-registered sale deed has been marked as Ex.A1, if the document is inherently inadmissible, it can be objected, even at the later point and failure to object to its admission, when it was marked, would not make it automatically admissible.

11.Useful reference can be made to the judgment in Arulsingamani and another, referred supra, in this regard.

12. It is clear from the judgments that have been cited on the side of the petitioners that a document, which is compulsorily registrable under the Registration Act, cannot be admitted in evidence, unless, it is registered. If a document is inherently bad for non-registration, it cannot be cured by paying deficit stamp duty and penalty. It is even a settled position of law that such documents cannot be looked into even for collateral purposes.

13. It is not necessary to extract all the judgments cited by the learned counsel appearing on either side, since the law is well settled in this regard.

14. The judgments that have been cited by the learned counsel for the respondent may not come to his aid, since the Hon'ble Supreme Court in those judgments has categorically held that in view of Section 35 of the Stamp Act, 1899, the document, which falls under the said provision, shall not be admitted for any purpose whatsoever. This would also include for collateral purpose.

15. In view of the above settled position of law, the Court below went wrong in giving such a liberty to the respondent to pay sufficient stamp duty and thereafter, mark the document. Such liberty ought not to have been given by the Court below, since the document in question is per se inadmissible. Therefore, the liberty granted by the Court below in the order passed in I.A.No.800 of 2011 in O.S.No.228 of 2017, dated 28.10.2011, is hereby set aside.

16. In the result, this Civil Revision Petition is allowed and the learned II-Additional District Munsif, Tirunelveli, is directed to complete the proceedings in O.S.No.228 of 2007, within a period of three months from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

PJL

To
The II-Additional District Munsif,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-86511[F] dated 13/09/2019)

Pre-Delivery Order
made in
C.R.P.(MD).No.855 of 2012
12.09.2019

JMN(01.10.2019) 4P : 3C