



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P(MD)No.1181 of 2019

and

CMP(MD)No.6538 of 2019

Kothandabani

...Petitioner / petitioner / Plaintiff

Vs.

Paneerselvam

... Respondent / Respondent / Defendant

PRAYER: Civil Revision Petition is filed, Under Article 227 of the Constitution of India, against the order, dated 12.10.2018 passed in I.A.No.495 of 2018 in O.S.No.175 of 2014 on the file of the learned Principal District Munsif Court, Kumbakonam.

For Petitioner : Mr.G.Gomathi Sankar

For Respondent : Mrs.M.Maria Vinola

O R D E R

This Civil Revision Petition is directed against the order, dated 12.10.2018 passed in I.A.No.495 of 2018 in O.S.No.175 of 2014 by the learned Principal District Munsif, Kumbakonam.

2.The said application in I.A.No.495 of 2018 in O.S.No.175 of 2014 was filed by the petitioner herein under Order 13 Rule 8 r/w Section 151 of Civil Procedure Code, for the purpose of marking the unregistered mortgage deed, dated 03.04.2008 without payment of stamp duty. The Court below, after hearing both sides, has come to the conclusion that under Section 40 of the Indian Stamp Act, 1899, the petitioner is liable to pay stamp duty along with penalty and by observing the said statement, the Court below dismissed the said application. Challenging the said order, the revision petitioner has filed the present Civil Revision Petition.

3.The learned counsel appearing for the revision petitioner submitted that the petitioner has filed the said application to mark the said unregistered mortgage deed, dated 03.04.2008 only as secondary evidence and therefore, there is no need to pay any stamp duty and therefore, he contended that the order passed by the Court



below is erroneous and the same is liable to be set aside.

4. On the other hand, the learned counsel for the respondent would contend that the petitioner is trying to mark a letter claiming to be an unregistered mortgage deed as secondary evidence. If at all if the same is referred, it will affect the nature of the suit. Therefore, he would submit that the Court below after considering all these aspects and as per Section 40 of the Indian Stamp Act, 1899, has observed that the said document can be considered as evidence only after payment of the stamp duty and therefore, it is a well reasoned order and the same does not require any interference at the hands of this court.

5. Heard the learned counsel for the petitioner; the learned counsel for the respondent and perused the documents available on record.

6. In the present case, the revision petitioner has made an attempt to file the above application to mark an unregistered letter, dated 03.04.2008, claiming to be a mortgage deed without payment of stamp duty. However, the Court below dismissed the said application stating that the revision petitioner herein is liable to pay stamp duty along with penalty. As per Section 40 of the Indian Stamp Act, 1899, the revision petitioner herein is liable to pay stamp duty and the Court below has rightly observed the same. Further, in a decision of this Court in Lakshmipathy, A.C. v. A.M.Chakrapani Reddiar, reported in 2001 (1) CTC 112, it has been held as follows:-

"24. The Courts have in some rulings endeavored to explain what are collateral purposes. It has to be remembered that it is not possible to give an exhaustive list as to what are all the collateral purposes.

*This Court, in the ruling reported in **Panchapagesa v. kalyanasundaram** AIR 1957 Mad. 472, has observed thus:-*

"To sum up it is well settled in a long series of decisions which have since received statutory recognition by the Amending Act of 1929 (vide the concluding words of the new proviso to S.49 of the Registration Act) that a compulsorily registerable but an unregistered document is admissible in evidence for a collateral purpose that is to say, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

*The expression "collateral purpose" is no doubt a very vague one and **the Court must decide in each case whether the purpose for which it is sought to use the unregistered document is really a collateral one or is***



to establish directly title to the immovable property sought to be conveyed by the document. But by the simple device of calling it a "collateral purpose", a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if registered."

28. Similarly Courts have held that the parties cannot let in any oral evidence for proving mortgage and character of possession because on the basis of the unstamped and unregistered document and if such evidence is admitted, it amounts to acting on the unstamped document, which is against Section 35 of the Indian Stamp Act."

7. On perusal of the above Judgment, it clearly appears that unregistered documents can be used only for collateral purpose and the same cannot be taken as primary or secondary evidence, whereas in the present case also, the revision petitioner is intended to mark the same as secondary evidence which is not permissible as per the settled proposition of law. Therefore, the order of the Court below is well reasoned one and the same does not require any interference.

8. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)

Rj2

To
The Principal District Munsif,
Kumbakonam.

+1CC TO MR.M.MARIA VINOLA, ADVOCATE, SR NO.101850
+1CC TO MR.G.GOMATHI SANKAR, ADVOCATE, SR NO.102492

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