



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No.358 of 2016 (PD)
and C.M.P. (MD) No. 1513 of 2016

1. Sumathi
2. Vallimayil

...Petitioners/Petitioners/Defendants

Vs.

Shanmugam Servai

...Respondent/Respondent/Plaintiff

PRAYER : Petition filed under Article 227 of Constitution of India, against the Fair and decreetal order, dated 18.12.2015 passed in I.A. No. 739 of 2015 in O.S. No.113 of 2008 by the learned District Munsif, Mudukulathur.

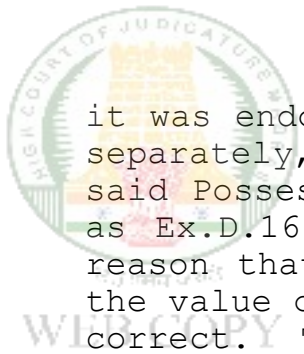
For Petitioners : Mr. K. Kumaravel
For Respondent : Mr.R. Rajamohan
for J. Senthil Kumaraiah

ORDER

This petition has been filed, against the Fair and decreetal order, dated 18.12.2015 in I.A. No. 739 of 2015 in O.S. No.113 of 2008 passed by the learned District Munsif, Mudukulathur.

2. The respondent herein/plaintiff has filed a suit in O.S. No. 113 of 2008 on the file of the District Munsif Court, Mudukulathur. In the meantime, the revision petitioners/defendants have filed a petition in I.A No.739 of 2015 in O.S. No.113 of 2008 under Indian Stamp Act, 1899 and Section 33 and 151 of C.P.C., to pay balance stamp duty with penalty in an unregistered deed, dated 07.08.1957 and the same was dismissed by order, dated 18.12.2015. Against the said order, the Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 18.12.2015 in I.A. No. 739 of 2015 in O.S. No.113 of 2008 passed by the learned District Munsif, Mudukulathur.

3. The learned counsel appearing for the revision petitioners submitted that the second petitioner's father has executed a Possessory Right deed, dated 02.08.1952 the same was registered one and thereafter, the same property was further Possessory Right Deed to the respondent herein on 07.08.1957 and further Possessory Right deed is not registered one. He further submitted that, subsequently, the second petitioner's father had paid the lease amount in part and

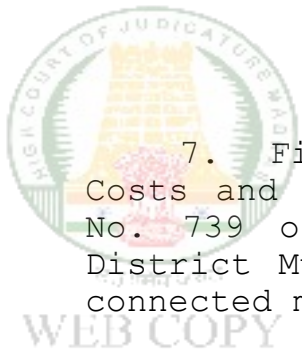


it was endorsed and the respondent herein and his father are living separately, to prove that one, the petitioners have marked the above said Possessory Right deed, dated 07.08.1957 before the trial Court as Ex.D.16. He further submitted that the Court below has given reason that the Ex.D.16 is executed the stamp papers in Rs.7/-and the value of sum of Rs.100/-and it is sufficient and the same is not correct. The deficit stamp duty has to be paid by the petitioners and it can be decided by the District Collector of the concerned District or authorised person. He further submitted that the Court below ought to have sent the document marked before him an Ex.D.16 for impound under Section 33 of Indian Stamp Act, 1899 and the Court below ought to have seen that Ex.D.16 is a unregistered and unstamped document and it has to be impound under Section 33 of Indian Stamps Act, 1899. He further submitted that, after paying these sufficient stamps, the lease deed will be impounded and thereafter, only the document will get legal entity. The Court below ought to have seen that every documents have been marked before the Court of law, it has to be impound under Section 33 of Indian Stamp Act, 1899. Hence, he prayed to allow the Civil Revision Petition.

4. The learned counsel appearing for the respondent herein submitted that Revision Petitioners have abused the process of law and that this petition is liable to be dismissed with costs. In order to substantiate the submission, the learned counsel set out the relevant facts.

5. Heard Mr. K. Kumaravel, learned counsel appearing for the revision petitioners and Mr.R. Rajamohan for J. Senthil Kumaraiah, learned counsel appearing for the respondent.

6. The pleadings, impugned order and oral submissions were considered carefully. As stated above, on perusal of the petitioner, the revision petitioners have filed a petition in I.A. No.739 of 2015 in O.S. No. 113 of 2008 to pay balance stamp duty with penalty is an unregistered deed, dated 07.08.1957. The respondent herein had stated in his counter that the petitioner was filed the petition only to drag on the suit proceedings when it was posted in the list. The document, dated 07.08.1957 was marked as Ex.D.16 in objection since it is an unregistered document. The document is for lease value of 100/- rupees. The deed was written in 7 rupees stamp paper. Therefore, the learned District Munsif, Mudukulathur, has dismissed the petition as excess stamp paid. The objection is only whether an unregistered lease deed can be marked and not regarding stamp duty. Article 35 and Article 15 of the Indian Stamp duty and Lease Value of 100 rupees stamp is sufficient. Here, the disputed document has 7 rupees stamp paper. Therefore, it is sufficiently stamped. The learned District Munsif, Mudukulathur, has rightly dismissed by order, dated 18.12.2015 in I.A. No. 739 of 2015 in O.S. No.113 of 2008.



7. Finally, the Civil Revision Petition stands dismissed with Costs and the Fair and decreetal order, dated 18.12.2015 in I.A. No. 739 of 2015 in O.S. No.113 of 2008 passed by the learned District Munsif, Mudukulathur, is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

memorandum of cases
(Respondent Cost)

Stamp for Vakalatnama	10.00
Advocate's fee	-----
	<u>10.00</u>

(That the petitioner do pay Rs.10/-
Rupees Ten only to the respondent herein)
(Cost memo not filed)

Sd/-
Assistant Registrar(CO)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

ksa

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Munsif Court, Mudukulathur.
2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

Order made in
C.R.P. (MD) No. 358 of 2016 (PD)
23.12.2020

KMK (CO)
TR(08.01.2021) 3P 4C