



C.R.P.No.354 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2021

Coram:

THE HONOURABLE MR.JUSTICE S. S. SUNDAR

C.R.P.(PD) No.354 of 2019

in

C.M.P.No.2503 of 2019

1. Kumar
2. Ramesh

...Petitioners

Vs.

1.Muthukumarasamy
2.Renganathan
3.Saminathan

...Respondents

PRAYER: Petitions filed under Article 227 of the Constitution of India against the fair and fair and decreetal order of the District Munsif Court at Jayankondam, dated 03.12.2018 in I.A.No.710 of 2018 in O.S.No.71 of 2012.

For Petitioners : Mr.Valliappan P.
For Respondents : M/s.Senthilvadivu

ORDER

The revision petitioners are the plaintiffs in the suit in O.S.No.71 of 2012. The above suit has been filed by the revision petitioners for declaration of the first plaintiff's title over 'A' schedule and second plaintiff's title over suit 'B' schedule property. The suit is also for consequential



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permanent injunction.

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2. The suit was contested by the first defendant by filing a detailed written statement. The second defendant also filed independent written statement disputing the title of revision petitioners. During the pendency of the suit, the revision petitioners filed an application in I.A.No.710 of 2018 to mark a document dated 23.04.1999. In the affidavit filed in support of the above petition, the petitioners have stated that the document dated 23.04.1999 is a Partition Deed signed by the sharers and that the said document can be marked as evidence to prove that there was an oral partition. The said application was dismissed by the lower Court on the ground that the document is neither stamped nor registered and therefore the said document cannot be admitted in evidence even for collateral purpose.

3. The trial Court found that the a reading of the document would certainly show that the parties have signed to acknowledge actual partition and therefore a document to prove partition cannot be admitted when the document is neither stamped nor registered. The contention of the petitioners that the document can be marked to prove a previous oral partition as the document refers to such oral partition and that it does not require either



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stamp duty or registration was rejected by the Lower Court.

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4. With regard to the contents of the documents, it is seen from the document that the partition has taken place under the very document dated 23.04.1999. No oral partition is recorded. Though the document is styled as Partition List, the parties have signed to acknowledge the transaction which is in the nature of partition. It is not a document recording past transaction.

5. In the above circumstances, this Court is unable to find any irregularity in the conclusion reached by the lower Court. However, the learned counsel appearing for the revision petitioners relying upon a judgment of the Hon'ble Supreme Court for the proposition that the document if impounded can be looked into for collateral purpose. In the case of *Sita Ram Bhama Vs. Ramvatar Bhama* reported in [(2018) 3 CTC 441], the Hon'ble Supreme Court considered a memorandum of family arrangement. It was held that the nomenclature of the document is not a deciding factor. The legal position that an unstamped instrument is not admissible in evidence even for collateral purpose. It has been held by the Hon'ble Supreme Court in para 12 to 15 as follows:

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated



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09.09.1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and order of trial court allowing the application under Order XII Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted.

13. There is only one aspect of the matter which needs consideration, i.e., whether the document dated 09.09.1994 which was inadmissible in evidence could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. Further, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. A two-Judge Bench judgment of this Court in *Yellapu Uma Maheswari and another vs. Buddha Jagadheeswararao and others*, (2015) 16 SCC 787, is appropriate. In the above case also admissibility of documents Ext. B-21 dated 05.06.1975 a deed of memorandum and Ext. B-22 dated 04.06.1975 being an agreement between one late Mahalakshamma, respondent No.1-plaintiff and appellant No.1-defendant came for consideration. Objection was taken regarding admissibility which was upheld both by the High Court and trial court. Matter was taken up by this Court. In the above case, this Court held that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents. This Court after considering both the documents, B-21 and B-22 held that they require registration. In paragraph 15 following was held:

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is



compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.”

14. After holding the said documents as inadmissible, this Court further proceeded to consider the question as to whether the documents B-21 and B-22 can be used for any collateral purpose. In the above context the Court accepted the submission of the appellant that the documents can be looked into for collateral purpose provided appellant-defendant to pay the stamp duty together with penalty and get the document impounded. In paragraphs 16 and 17 following has been laid down:

“16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy(AIR 1969 AP 242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21



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and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the civil appeal is partly allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy.”

15. Following the law laid down by this Court in the above case, we are of the opinion that document dated 09.09.1994 may be admissible in evidence for collateral purpose provided the appellant get the document impounded and to pay the stamp duty together with penalty as has been directed in the above case.

6.This Court has no hesitation to accept the argument of the learned counsel appearing for the petitioners, if he advance the proposition that the document can be admitted in evidence for collateral purpose in case the document is impounded and stamp duty and penalty is collected from the petitioners. This Court feels it unnecessary to refer to other judgments for the proposition that the Court can admit the document for collateral purpose in case the document is impounded and stamp duty and penalty is paid.

7. Under Section 33 of the Indian Stamp Act, 1899, it is the duty of the Court to impound the document in case if it is found that the document is unstamped or insufficiently stamped. Learned counsel appearing for the petitioners submit that the petitioners are prepared to pay stamp duty and



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penalty if it is impounded and to rely upon such document for collateral purpose in the course of trial. Learned counsel is entitled to rely upon the document for collateral purpose if the document is impounded and the stamp duty with penalty is collected.

8. It is in such circumstances, this Court find that the order passed by the learned District Munsif Court, Jayankondam is proper. However, the lower Court is directed to impound the document in terms of Section 33 of the Stamp Act. Once the document is impounded and stamp duty and penalty is collected by getting a certificate from the concerned authority, the trial Court is directed to admit the document for any collateral purpose, which is admissible in terms of Section 49 of the Registration Act 1908.

9. With the above directions, this revision petition is disposed. Connected miscellaneous petition is closed. No costs.

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ska/AP
Index : Yes / No
Speaking Order/Non Speaking Order

To
District Munsif Court,
Jayankondam



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S.S.SUNDAR, J.
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