IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).Nos.2782 and 2783 of 2016
and C.M.P.No.14207 of 2016

Vasantha Vellaisami ...Petitioner in Both C.R.Ps

Vs.

Vivek Sivagiri,
Represented by his
Power of Attorney Agent,
P.Chinnayan ...Respondent in Both C.R.Ps

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the impugned orders dated 12.07.2016 passed in I.A.Nos.13607 of 2015 and 532 of 2016 in O.S.No.6825 of 2012 on the file of VI Assistant City Civil Court, Chennai.

For Petitioner in both C.R.Ps : Mr.Thriyambak J.Kannan

For Respondent in both C.R.Ps : Notice served (No Appearance)

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the impugned orders dated 12.07.2016 passed in I.A.Nos.13607 of 2015 and 532 of 2016 in O.S.No.6825 of 2012 on the file of VI Assistant City Civil Court, Chennai.

2.The respondent filed a suit for declaration and injunction in respect of the suit schedule property as against the defendants, in which the petitioner is the 1st defendant. The respondent filed the suit through his power of attorney-agent. The power of attorney was examined as P.W.1. While examination of P.W.1, the power of attorney marked the document executed by the respondent and it was marked Ex.A1. At that juncture, the petitioner filed petitions in I.A.Nos.13607 of 2015 and 532 of 2016 to impound the Ex.A1 and to stay all further proceedings of the suit. Both the petitions were dismissed and aggrieved by the same, the petitioner preferred these Civil Revision Petitions.

3.The learned counsel for the petitioner would submit that admittedly the Ex.A1, unstamped and unregistered power of attorney executed by the respondent. The power of attorney is none other than the father in law of the respondent. The Ex.A1 has been printed in the hundred rupees stamp paper, which has been purchased in India and thereafter it was sent back to USA. It was executed at USA in front of Notary Public. Thereafter it was sent to India and admittedly, it was not adjudicated before the authority concerned. He further submitted that the said Ex.A1, must be adjudicated before concerned Collector within a period of three months as per the procedure contemplated under the Indian Stamp Act.

4.Further, the Section 17(2)(v) of the Tamil Nadu Registration Act, 1908, contemplated that any document other than the documents specified in sub-section (1-A), not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. Further, he pointed out that the power of attorney, recognized for the purpose of Section 32 of the Tamilnadu Registration Act, viz., the persons to present the document for presentation, if the principal at the time aforesaid does not reside in India a power of attorney executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, Indian counsel or vice counsel or representative of the Central Government. Admittedly, the Ex.A1 is unstamped and unregistered one. Therefore, it is necessarily impounded for payment of Stamp duty and penalty as contemplated under the Tamil Nadu Stamp Act. In support of his contention, he relied upon the following Judgments:-

1.***Government of Andhra Pradesh and others Vs. P.Laxmi Devi [(2008) 4 SCC 720]***

2. ***Malaysian Airlines Systems BHD Vs. STIC Travels (P) Ltd., [(2001) 1 SCC 451]***

3. ***R.Kalyani and others Vs. T.Rose Mukundakumar [2014 (2) CTC 157]***

4. ***D.Balachandran Vs. T.C.Shanmugam [2013-3-L.W.99]***

5.Though notice was served to the respondent and no one has present before this Court, either by person or through his counsel.

6.The petitioner is the 1st defendant in the suit filed by the respondent herein for declaration, declaring that the settlement deed dated

10.01.2007 registered vide document No.73 of 2007 as null and void and for permanent injunction in respect of the suit schedule property.

7.The principal of the plaintiff is residing at USA. He executed the power of attorney in favour of his father in law to conduct the suit, on behalf of him. On the strength of the power of attorney, power agent filed a suit and marked Ex.A1-power of attorney. While the matter was posted for cross examination of P.W.1., the petitioner filed a petition to impound the Ex.A1. According to the petitioner, the Stamp paper of Ex.A1 was purchased at Chennai and it was sent to USA after prompting the power of attorney posted before the Notary Public at USA and then it was sent to India. The said power of attorney executed outside India and as such it requires adjudication within a period of three months as contemplated under Section 17 of the Registration Act.

8.In this regard, the learned counsel for the petitioner relied upon the Judgment in ***D.Balachandran Vs. T.C.Shanmugam [2013-3-L.W.99].*** Relevant paragraphs are extracted here:-

> *5.However, the position under the Stamp Act is entirely different. Under Section 35 of the Stamp Act, no instrument chargeable with duty shall be admitted in*

evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, unless such instrument is duly stamped. Therefore, as per Section 35 of the Stamp Act, there is a total prohibition to receive in evidence the unstamped document.

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9.Further, Section 33 of the Stamp Act, casts a duty upon the person, who is in-charge to receive evidence before whom the instrument is produced, if it appears to him that the same is not duly stamped, impound the same and sub-section 2 of Section 33 laid down the procedure for invoking the process of impounding.

10.Further, a reading of Section 35 also makes it clear that an instrument, which is not duly stamped shall not be acted upon. Under Section 36 of the Stamp Act, admission of an instrument in evidence, shall not be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Therefore, under Section 36 of the Stamp Act, once a document, which has not duly stamped, has been admitted in evidence without any objection, later the admissibility of that document cannot be challenged on the ground that it *has not been duly stamped. But, Section 36 does not lay down any prohibition that such document, which has not been duly stamped and admitted in evidence can be acted upon. Therefore, a combined reading of Sections 35 and 36 of the Stamp Act, makes it clear that even though a document was admitted in evidence, which was not duly stamped, the admission cannot be questioned later by virtue of Section 36 on the ground that the document was not duly stamped. But as per Section 35, the Court shall not act upon that document, unless such document is duly stamped. Therefore, relying upon a document, which is not duly stamped, though admitted in evidence is prohibited under Section 35. Further, as per the Judgment reported in 2003 (8) SCC 752, an objection that the document, which is sought to be proved is itself inadmissible in evidence can be raised at any stage of the case. Therefore, the Court below committed serious error in dismissing the petition filed by the petitioner."*

9.This Court has held that no instrument shall be admitted in evidence for any purpose as contemplated under Section 35 of the Stamp Act, unless such instrument is duly stamped. Further as per Section 33 of the Stamp Act, an instrument, necessarily has to be impounded as per the procedure contemplated under Section 33(2) of the Stamp Act. He also relied upon the Judgment in the case of ***R.Kalyani and others Vs. T.Rose Mukundakumar [2014 (2) CTC 157].*** Relevant paragraphs are given below:-

> *"20.In similar situation, this Court in the Judgment reported in **Dinakaran Vs. Venkatesan and 3 others,** 2007 (5) CTC 77: 2007 (4) LW 342 had directed the Trial Court to ascertain the Stamp duty and penalty payable upon the disputed document, then call upon the defentants who wanted to rely on the document to pay the Stamp duty and penalty and then, on payment of Stamp duty and penalty, admit the document in evidence, whether it is for collateral purpose or otherwise. But however, the admissibility of the document can be decided by framing necessary issues at the later stage while hearing the case. Paragraph Nos.17 & 18 of the Judgment are usefully extracted hereunder:-*
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> *"17.Therefore, it is clear that no document shall be admitted in evidence if it is not properly stamped, and if already not stamped, then Stamp duty should be paid with penalty as prescribed by the authority. As far as the present case is concerned, it is alleged that the plaintiff himself admitted the existence of the Koorchit in his*

evidence. As rightly held by the trial Court unless the document is marked, there will not be any opportunity for the plaintiff to oppose and cross examine the defendants on the execution of the said Koorchit. In the absence of payment of the Stamp duty with penalty, the Trial Court has committed an error in marking the document. Hence, the order of the trial Court is liable to be modified.

18.In the result, this CRP is allowed in part and the order of the trial Court is modified. The trial Court is directed to ascertain the Stamp Duty and penalty payable upon the disputed document, then call upon the defendants who want to rely on the document, to pay the Stamp duty and penalty, and then on payment of Stamp duty and penalty, admit the document in evidence, whether it is for collateral purpose or otherwise, and admissibility of the same can be decided by framing necessary issue at the later stage while hearing the case as guided by the Apex Court in Bipin Shantilal Panchal Vs. State of Gujarat and another 2001 (3) SCC 1. Consequently, connected MP is also dismissed. No costs."

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22.As per Section 33 of the Indian Stamp Act, a duty is cast upon the authority before whom, insufficiently stamped document is produced, to impound the same. In *the light of the Judgments of the Honourable Apex Court and this Court, cited supra, the document not duly stamped cannot be looked into for any purpose, including for collateral purpose. In the case on hand, the petitioners had raised objection well before the document was permitted to be marked."*

10.Likewise, in the case of ***Malaysian Airlines Systems BHD Vs. STIC Travels (P) Ltd., [(2001) 1 SCC 451]*** and a portion of Judgment is given below:-

"5.In my view, the point raised in the IA is not tenable. In a case where the unstamped document (other than bill of exchange) is produced as evidence, within three months of execution, the stamp duty can be collected without impounding and without penalty. If the document is sought to be used as evidence beyond three months, the abovesaid bar of three months shall not apply, and the document can be impounded under Section 33 and stamp duty and penalty are levied, even after expiry of three months.

6.According to the decision of the Full Bench of the High Court of Allahabad in Mohd. Amir Ahmad Khan Vs. Dy. Commr. as affirmed by this Court in Govt. of U.P. Vs. Raja Mohd. Amir Ahmad Khan and also according to *the decision of the Delhi High Court in J.S.Bhalla Vs. G.J.Bhawnani the procedure permitting submission of a document within 3 months of its execution as in Section 18 is for collection of the stamp duty payable on the document. If it is produced as evidence within three months of execution, the stamp duty can be collected under Section 18, read with Section 32, without impounding the document under Section 33. But in case where 3 months have already expired from the date of execution of the document and later on the document is produced before the court as evidence, it is permissible for the court to impound the document and collect the stamp duty and penalty and in such a situation, the time limit of 3 months provided in Section 18 and clause (b) of Section 32 is not attracted. Therefore, the point raised by the respondent in the abovesaid IA cannot be accepted."*

and in the case of ***Government of Andhra Pradesh and others Vs. P.Laxmi Devi [(2008) 4 SCC 720].*** Relevant paragraphs are hereunder:-

"15.Section 33(1) of the Stamp Act states:

33.Examination and impounding of instruments-(1) 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 or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same."*

16.A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorised to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word shall in Section 33(1) shows that there is no discretion in the authority mentioned in Section 33(1) to impound a document or not to do so. In our opinion, the word shall in Section 33(1) does not mean may but means shall. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions. Hence the view taken by the High Court that the document can be returned if the party does not want to get it stamped is not correct."

11.In the light of the above cited Judgments of the Hon'ble Apex Court as well as this Court, the document which is not duly stamped cannot be looked into for any purpose, including collateral purpose. The procedure permitting submission of a document within three months of its execution as contemplated under Section 18 of the Indian Stamp Act, read with clause (b) of Section 32 of the Indian Stamp Act, which has to be produced as evidence within three months of execution and the stamp duty can be collected. But incase, where three months period was already expired form the date of execution of document and later the document was produced before the Court, which is permissible for the Court to impound the document and collect the stamp duty and penalty and as such a situation, the time limit provided under Section 18 (b) r/w 32 of the Indian Stamp Act, will not attract. Therefore, admittedly, Ex.A1 is unstamped and unregistered one. It is liable to be stamped and penalty should be levied. The Court below misconstrued the fact that the respondent already filed a petition for permission under Order 3 Rule 2 and the same was granted. When the permission was duly granted, without challenging the said order, the petitioner cannot file this petition. Further it is held that the validity and genuineness of the document can be decided only at the time of finality of the case.

12.In view of the above, the impugned orders dated 12.07.2016 passed in I.A.Nos.13607 of 2015 and 532 of 2016 in O.S.No.6825 of 2012 on the file of VI Assistant City Civil Court, Chennai, are set aside. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently connected miscellaneous petition is closed.

23.02.2021

Index:Yes/No
Speaking Order: Yes/No
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To
The VI Assistant City Civil Court, Chennai.

G.K.ILANTHIRAIYAN.J,

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