IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P. Nos.196 & 197 of 2020
& CMP No.1078 of 2020

1. Balachander
2. Saravangniya ... Petitioners in both petitions

Vs.

1.Kaliyaperumal
2. Rajasekaran
3. Muthukumaraswamy
4. Sarala Muthukumaraswamy ... Respondents in both petitions

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 29.01.2019 made in I.A.Nos.269 of 2017 and 363 of 2018 in O.S. No.196 of 2016 respectively, on the file of the Additional Subordinate Court, Tindivanam.

In both the Petitions

For Petitioners : Mr. D. Ravichander

For Respondents : Parties name printed. No appearance.

COMMON ORDER

These revision petitions are filed against the fair and decretal orders dated 29.01.2019 made in I.A.No.269 of 2017 and I.A. No.363 of 2018 in O.S. No.196 of 2016 on the file of the Additional Subordinate Court, Tindivanam.

2. The revision petitioners are the defendants 3 & 4 in O.S.No.196/2016 on the file of the Additional Subordinate Court, Tindivanam. The respondents 1 & 2 /plaintiffs filed the suit against the revision petitioners/defendants 3 & 4 and respondents 3 & 4/defendants 1 & 2 for a Permanent injunction restraining the defendants in the suit to not vacate them except under due process of law.

3. The revision petitioners filed a written statement and thereafter both the parties went for trial after settlement of issues. The first plaintiff examined himself as P.W.1 and marked two unregistered lease deeds dated 28.08.1997 and 20.02.2010 as Ex.A1 & Ex.A12

respectively. Both the lease deeds were for a period of 10 years from the date of lease. When the matter was posted for cross examination of P.W.1, the revision petitioners filed Interlocutory Applications in I.A.No.269 of 2017 and I.A. No.363 of 2018 to eschew Ex.A12 and Ex.A1. The respondents 1 & 2 /plaintiffs filed a counter contending that the plaintiffs are in possession of the suit property and in order to prove their possession, the unregistered lease deeds have been marked as Ex.A1 and Ex.A12. It was also contended that when objections were not raised at the time of marking of these documents, the revision petitioners/defendants cannot now seek for eschewing the same. After full contest, the learned Additional Subordinate Judge, Tindivanam, dismissed both the applications vide his orders dated 29.01.2019 on the following grounds:

i. The revision petitioners/defendants did not raise any objection at the time of marking Ex.A1 and Ex.A12.

ii. An unstamped instrument once admitted in evidence cannot be called in question at any stage of the suit proceedings on the ground that the instrument was not duly stamped.

iii. An unstamped document even if admitted in evidence cannot be acted upon by the Court by virtue of Sections 35 and 36 of the Indian Stamp Act.

iv. Merely because Ex.A1 and Ex.A12 are marked on the side of the plaintiffs, the same cannot be taken into consideration as proof and only after full fledged trial, the nature and the execution of the documents can be considered.

4. Challenging the said orders, the present Civil Revision Petitions are filed.

5. Heard Mr. D. Ravichander, learned counsel appearing for the revision petitioners. No representation on behalf of the respondents.

6. The learned counsel appearing for the revision petitioners contended that objection as to the admissibility of a document can be

raised even after the document has been marked as an exhibit or even in appeal or revision if the objection is with regard to inadmissibility of a particular document. Reliance was placed upon the decision in ***R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P Temple and another*** reported in ***(2003) 8 SCC 752***. He would further contend that since in the instant case, the lease deeds are for more than 11 months, the same have got to be registered under Section 17 of the Indian Registration Act and that since the stamp duty penalty has not also been paid, it cannot be admitted in evidence even for collateral purpose. He also drew the attention of this Court to Section 47 of the Registration Act, which reads thus:

> *"49. Effect of non-registration of documents required to be registered.—No document required by section 17 [1] [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*
> *(a) affect any immovable property comprised therein, or*
> *(b) confer any power to adopt, or*
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been*

registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 2 , 3 or as evidence of any collateral transaction not required to be effected by registered instrument.]"

7. It is well settled that if a document which is to be compulsorily registered has not been registered, it cannot be admitted in evidence. In the instant case admittedly Ex.A1 and Ex.A12, which are lease deeds for a period of 10 years, have not been registered as per Section 17 of the Indian Registration Act. As per Section 35 of the Indian Stamp Act, an unregistered instrument can be admitted in evidence on payment of stamp duty penalty for collateral purpose. If stamp duty penalty is not paid, the unregistered document cannot be permitted to be marked as an exhibit even for collateral purpose. In the instant case, even the stamp duty penalty has not been paid by the respondents/plaintiffs.

However, the trial court admitted both the documents and marked them as Ex.A1 & Ex.A12. The revision petitioners did not raise any objection at the time of marking the said documents. The learned counsel for the revision petitioners contended that merely because the revision petitioners did not raise any objection at the time of marking the documents, the Court cannot admit a document which is inadmissible in evidence. Moreover, both the unregistered lease deeds cannot be used for any purpose and therefore, the same have to be eschewed from the evidence.

8. The provisions of Sections 17 and 49 of the Registration Act and Section 35 of the Indian Stamp Act are clear as to the aspects of admissibility of an unregistered instrument in evidence. In the decision in ***T.Balachandran, Prop. of Balu Tex, Loganathapuram, Erode Taluk and District vs. T.C. Shanmugam*** reported in ***2013(2) CTC 832*** relied on by the trial court, it is held that an unstamped document even if admitted in evidence cannot be acted upon by the Court. Similarly the trial court relied upon the decision in ***Kaliyaperumal vs Dhanapandi***

reported in ***(2010) 3 MLJ 857*** wherein it is held that an unstamped instrument once admitted in evidence cannot be called in question at any stage of suit proceedings on the ground that the instrument was not duly stamped.

9. It is relevant to extract Section 36 of the Indian Stamp Act.

> "36. Admission of instrument where not to be questioned.—Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped."

10. The trial court has not even directed the respondents/plaintiffs to pay the stamp duty penalty for the unregistered lease deeds. Since the documents are already marked as Ex.A1 and Ex.A12, the learned Additional Subordinate Court, Tindivanam, is directed to impound the documents Ex.A1 and Ex.A12 and direct the

respondents/plaintiffs to pay stamp duty penalty for the same. If stamp duty penalty is not paid by them, Ex.A1 & Ex.A12 cannot be considered by the trial court even for collateral purpose as per Section 35 of the Indian Stamp Act.

11. With the above directions, the Civil Revision Petitions are disposed of. No costs. Consequently connected miscellaneous petition is closed.

10.10.2022

Index : Yes/No

Internet : Yes/No
Speaking/non speaking
bga

To

1. The the Additional Subordinate Court, Tindivanam.

2. The Section Officer, VR Section, High Court, Madras.

R.HEMALATHA, J.,
bga

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