



WEB COPY



C.R.P.No.3156 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 09.12.2022

PRONOUNCING ORDERS ON : 14.12.2022

Coram:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.No.3156 of 2015
and MP.No.1 of 2015

Saroja (deceased)

1.Jayalakshmi

2.Lalitha

Laila (deceased)

3.Vino @ Vinoth

... Petitioners/
Petitioners 2, 3 & 5
Defendants 2, 3 & 5

.Vs.

1.Vasanth Duraisamy

2.Vijayalakshmi

3.Varalakshmi @ Kalyani

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal order dated 07.01.2015 passed in I.A.No.1373 of 2014 in O.S.No.61 of 2001 by the District Munsif court, Tiruvallur and allow the I.A.No.1373 of 2014 in O.S.No.61 of 2001, by allowing the above Civil Revision Petition.



C.R.P.No.3156 of 2015

For Petitioners : Mr.R.Munusamy

For Respondents : Mr.R.Balachandran
for R1

Mr.V.Jayaprakash
for R2 and R3

ORDER

The defendants 2,3 and 5 are the petitioners in this Civil Revision Petition. They have challenged the fair and decretal order dated 07.01.2015 passed in I.A.No.1373 of 2014 in O.S.No.61 of 2001 by the District Munsif Court, Tiruvallur.

2. The respondents 1 to 3/plaintiffs filed O.S.No.61 of 2001 seeking for the relief of declaration of title over the suit properties and for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties. The cause of action for filing the suit was that the 1st plaintiff had executed a Power of Attorney in favour of defendants 1 to 4 on 26.08.1997 and it was subsequently cancelled on 27.08.1997 and it was also informed to the defendants and inspite of the same, sale deed came to be executed in favour of the 5th defendant by defendants 1 to 4 and an attempt was also made to trespass into the properties. Aggrieved by the same, the suit was filed before the Court below.



C.R.P.No.3156 of 2015

WEB COPY

3. The pleadings were completed, issues were framed and the suit reached the stage of trial. In the year 2007, an *ex parte* decree was passed and this *ex parte* decree came to be set aside on 21.04.2013. Thereafter, the trial commenced and the examination of the witnesses on the side of plaintiff was over and on the side of the defendants, D.W-1 was examined and this went on till June 2014.

4. The defendants filed I.A.No.1373 of 2014 and the 5th defendant who filed the sworn affidavit stated that there is a consent letter that was given by the plaintiff along with the Power of Attorney document and since this consent letter was not stamped or registered, D.W-1 was not able to mark this document during trial even though it was filed as a document along with the proof affidavit. Hence, the defendants wanted this consent letter to be impounded and to be sent to the Revenue Divisional Officer for collecting the stamp duty and penalty under Section 33 of the Stamp Act, 1899. The above application was contested by the plaintiff and the Court below after considering the contentions raised on either side, was pleased to dismiss the application through order dated 07.01.2015. Aggrieved by the same, this Civil Revision Petition has been filed before this Court.



C.R.P.No.3156 of 2015

WEB COPY

5. Heard Mr.R.Munusamy, learned counsel for the petitioners, Mr.R.Balachandran, learned counsel for R1 and Mr.V.Jayaprakash, learned counsel for R2 and R3.

6. The main ground that has been urged before this Court by the learned counsel for the petitioners is that the 1st plaintiff while executing the Power of Attorney document had also executed the consent letter dated 30.10.1995 and based on the same, the suit property was sold to the 5th defendant. The 1st plaintiff, after giving her consent to the defendants 1 to 4, wriggled out of the same and an attempt was made by D.W-1 to mark the consent letter and it was filed along with the proof affidavit of D.W-1. Since the document was unstamped and unregistered, it was not permitted to be marked during the trial. Hence, the 5th defendant wants this document to be impounded under Section 33 of the Stamp Act, 1899 so that the plaintiffs can be directed to pay the stamp duty and penalty and thereafter, this document can be relied upon by the 5th defendant in its entirety or at least for collateral purposes.

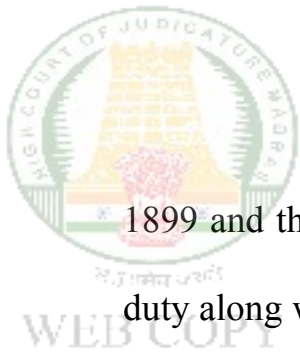


7. The learned counsel for the petitioners, to substantiate his submissions, relied upon the following judgments:

- a. **JupudiKesava Rao v. Pulavarthi Venkata Subbarao and Others** reported in (1971) 1 SCC 545.
- b. **Ram Rattan (dead) by L.Rs. v. Bajrang Lal and Others** reported in (1978) 3 SCC 236and
- c. **Gangappa and Another v. Fakkirappa** reported in(2019) 3 SCC 788.

8. The learned counsel appearing on behalf of the respondents submitted that the consent letter which was unstamped and unregistered is inadmissible in evidence and therefore, there is no question of a document being impounded which is not before the Court. That apart, the application was only filed to drag on the proceedings and a suit that was filed 21 years back is yet to see the light of the day. Hence, the learned counsel sought for the dismissal of this Civil Revision Petition.

9. The judgments that have been relied upon by the learned counsel for the petitioners make it clear that the first limb of Section 35 of the Stamp Act, 1899 shuts out from evidence any instrument chargeable with duty unless it is duly stamped. Where an instrument which is not duly stamped or insufficiently stamped is tendered in evidence, the Court has to impound it as obligated by Section 33 of the Stamp Act,



C.R.P.No.3156 of 2015

1899 and then proceed further as required by Section 35 to recover the deficit stamp duty along with penalty.

10. There is absolutely no quarrel on the proposition of law that was put forth by the learned counsel for the petitioners. In order to impound a document, the Court must have that document before it. The Court cannot be expected to go after a person and make him bring the document and thereafter, impound it. It must also be borne in mind that where a document is inherently bad for non-registration, it cannot be cured by paying deficit stamp duty and penalty. Useful reference can be made to the judgment of this Court in *Ammamuthu Ammal v. Devaraj* reported in (2011) 5 Mad LJ 15, in this regard.

11. In the affidavit that was filed in support of I.A.No.1373 of 2014, there is absolutely no indication that D.W-1 attempted to mark the consent letter and it was objected and thereafter it was withdrawn. There is only an indication in the application that the consent letter formed part of the proof affidavit filed by D.W-1. This, by itself, does not prove that the document was actually attempted to be marked through D.W-1. Even assuming that the document was attempted to be marked through D.W-1 and it was objected, then and there a plea must have been made before



C.R.P.No.3156 of 2015

the Trial Court to impound the document in exercise of powers under Section 33 of the Stamp Act, 1899. Once such an opportunity was not utilised by the defendants and they missed the bus, a further witness on the side of the defendants cannot ask for impounding the document at a later point of time, since the document itself is not before the Court. If such an application is entertained, the Court must direct a party to bring the document and thereafter, impound it. Such exercise of power goes beyond the purview of Section 33 of the Stamp Act, 1899, since the power can be exercised under Section 33 only when the insufficiently stamped document is tendered in evidence before the Court. This presupposes that the document must be actually available before the Court.

12. The Court below, while dealing with the application, also took into consideration the earlier conduct of the defendants and came to a conclusion that the application itself has been filed only to drag on the proceedings. This Court does not find any illegality or infirmity in such a finding rendered by the Court below.

13. In the light of the above discussion, this Court does not find any merits in this Civil Revision Petition and there is no ground to interfere with the order passed by the Court below and in the result, this Civil Revision Petition stands dismissed.



C.R.P.No.3156 of 2015

There shall be a direction to the Principal District Munsif Court, Tiruvallur to dispose of O.S.No.61 of 2001 within a period of three months from the date of receipt of copy of this order and a compliance report shall be filed after the disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2022

KP
Internet
Index:Yes
Speaking Order: Yes



WEB COPY



C.R.P.No.3156 of 2015

To

Principal District Munsif Court,
Tiruvallur.



WEB COPY



C.R.P.No.3156 of 2015

N.ANAND VENKATESH. J.,

KP

**Pre-Delivery Order in
C.R.P.No.3156 of 2015**

14.12.2022