



CRP No.2340 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.12.2022
Pronounced on : 21.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2340 of 2016
in C.M.P.No.12059 of 2016

Kandhan

..Petitioner

Vs.

1.Munusamy
2.Velankanni
3.Raja

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 28.04.2015 in I.A.No.1095 of 2014 in O.S.No.64 of 2009 passed by the District Munsif, Madurantakkam, Kanchipuram District, and by allowing this CRP.

For Petitioner : Mr.N.Nagu Sah

For Respondents

For R1 & 2 : No appearance

For R3 : Mr.B.Jawahar

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order dated 28.04.2015 passed in I.A.No.1095 of 2014 in O.S.No.64 of 2009 on the file of the District Munsif, Madurantakkam, Kanchipuram District, thereby



dismissing the petition filed to receive the stamp duty, penalty and to mark the unregistered sale deed for collateral purpose.

2. The petitioner is the plaintiff and he filed a suit for declaration and permanent injunction in respect of the suit schedule property. The case of the plaintiff is that he is the owner of the suit property and he is in possession and enjoyment of the suit property which was originally owned by his father. His father and one Daniel sold an extent of 62 cents to the mother of the plaintiff by a registered sale deed dated 17.7.1984. The remaining extent of 32 cents in same survey number was sold by the first respondent herein and his brother infavour of the plaintiff's mother on 10.6.1991 under an unregistered sale deed. From the date of purchase, the plaintiff's mother was in possession and enjoyment of the entire property and she dug a well in the said property and also obtained electricity service connection in her name. She was in possession and enjoyment of the suit property more than the statutory period and prescribed title over the suit property by adverse possession also. The Patta was also transferred to her name and hence, she is the absolute owner of the suit property. She executed a settlement deed in favour of the plaintiff on 24.09.2008 and after the settlement deed, the plaintiff is in possession and enjoyment of the suit property. Now, the defendants claimed the suit property



and attempted to trespass into the suit property in view of the exclamation of land value. Hence the suit.

3. The case of the defendants is that the plaintiff is an absolute owner of the property only in respect of 62 cents out of 94 cents and the remaining 32 cents of suit property was owned by the defendants and they were in possession and enjoyment of the same. An unregistered sale deed dated 10.6.1996 is not valid since it was not a registered one as contemplated under Section 49 of Registration Act. Pending suit, the petitioner filed an application to mark the unregistered document dated 10.6.1991 in I.A.No.623 of 2011 in O.S.No.64 of 2009 and the same was dismissed by the Trial Court by a fair and decreal order dated 7.4.2011. Aggrieved by the same, the petitioner preferred a civil revision petition before this Court in C.R.P.No.4056 of 2011 and this Court also dismissed the civil revision petition and confirmed the order passed by the Trial Court. Once again, the petitioner filed an another application in I.A.No.1095 of 2014 in O.S.No.64 of 2009 to receive the stamp duty, penalty and to mark the unregistered sale deed dated 10.6.1991 for collateral purpose and the sale was also dismissed. Aggrieved by the same, the present civil revision petition.



4. The learned counsel for the petitioner would submit that only because of the earlier petition was dismissed and confirmed by this Court, the present application was also dismissed. The payment of deficit stamp duty and penalty in respect of the insufficiently stamped document is permissible under proviso to Section 35 of Indian Stamp Act. An insufficiently stamped and unregistered sale deed cannot be admissible in evidence for collateral purpose. The petitioner want to rely upon the unregistered sale deed dated 10.6.1991 only for the collateral purpose to prove the factum of possession which was already handed over to him. It was not filed with an intention to trace his title. Further, the specific case of the petitioner is that the petitioner's mother was in possession and enjoyment of the suit property and after settlement deed, the petitioner is in possession and enjoyment of the suit property. Therefore, the unregistered sale deed can very well be marked for collateral purpose.

5. In support of his contention, he relied upon the judgment reported in **2018 (3) CTC 441** in the case of **Sita Ram Bhama Vs. Ramvatar Bhama**, wherein, the Hon'ble Supreme Court of India held that in a suit for partition an unregistered document can be relied upon for collateral purpose namely severancy of title, nature of possession of various shares but not for the primary purpose namely 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. 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. The Hon'ble Supreme Court of India further held that the unregistered document is admissible in evidence for collateral purpose subject to the payment of stamp duty and penalty.

6. Per contra, the learned counsel for the respondents would submit that admittedly, the sale deed dated 10.6.1991 is an unregistered one. The respondents categorically denied in their written statement that an unregistered document dated 10.6.1991 is not a valid one and it was not executed by the defendants at any point of time in favour of the plaintiff's father. The defendants are in possession and enjoyment of the suit property. Therefore, the unregistered document cannot be marked for any purpose. The petitioner already filed a petition for the very same prayer and the same was rejected and confirmed by this Court by an order dated 03.04.2014 in C.R.P.No.4056 of 2011. He further pointed out that the alleged unregistered sale deed is a single transaction namely on the date of sale, the possession was also handed over. Therefore, it cannot be marked for collateral purpose. The provision under



Section 49 of Registration Act, is very clear that a collateral transaction must be independent of indefeasible from the transaction to effect which the law required registration. The documents required to be registered is not admissible into evidence under Section 49 of Registration Act.

7. In support of his contention, he relied upon the judgement reported in **2021 (5) CTC 859** in the case of **Saminathan Vs. Sukumar**, wherein, this Court held that unregistered document has to suffer fate of non-registration, except if introduced for proving collateral transaction is often wrongly termed as collateral purpose. Possession of property claimed through document indicates transfer of right in immovable property. Therefore, the unregistered document cannot be an evidence to prove the possession.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The petitioner filed a suit for declaration and injunction on the strength of the settlement deed executed by his mother dated 24.9.2008. Originally, 60 cents of the suit property in the same survey number was owned by the plaintiff's father by a registered sale deed dated 17.7.1984 to an extent of 62



cents. In so far, the remaining property to an extent of 32 cents is concerned, it was sold out by the first defendant and his brother by an unregistered sale deed dated 10.6.1991. Thereafter, the petitioner's mother was in possession and enjoyment of the entire property and subsequently, she executed a settlement deed in favour of the petitioner. The petitioner already filed a petition in I.A.No.623 of 2011 in O.S.No.64 of 2009 for marking of the unregistered document dated 10.6.1991 and the same was dismissed and confirmed by this Court in C.R.P.No.4056 of 2011 by an order dated 3.4.2011. While dismissing the CRP, this Court relied upon the various judgments of the Hon'ble Supreme Court of India and dismissing the CRP. The petitioner filed a suit for declaration in respect of the suit property by relying upon the two sale deeds dated 17.7.1984 and 10.6.1991 respectively. Therefore, the petitioner intended to prove the purchase of the suit properties by his father through the sale deeds.

10. It is not the case of the petitioner that to prove the sale deed for collateral purpose when it being so and the definite case of the plaintiff is that on the basis of the sale deed, the possession of the suit property was also passed, the said sale deeds cannot be used for collateral purpose for the purpose of possession. Section 35 of the Stamp Act, enables that a document to be received in evidence on payment of stamp duty and penalty if the document is



charged, but not stamped on payment of deficit duty and penalty after it is insufficiently stamped.

11. It is relevant to rely upon the judgment reported in **2021 (5) CTC 859** in the case of **Saminathan Vs. Sukumar**, in which, this Court has held as follows;

“17. An unregistered document has to suffer the fate of non-registration. An exception is, if it is introduced to evidence a “collateral transaction”. A Collateral transaction is often wrongly termed as collateral purpose. The said Collateral transaction for evidence which an unregistered Partition Deed is produced should also be compulsorily registrable. Possession of a property claimed through a document indicates transfer of a right in immovable property. Thus, an unregistered document cannot be an evidence to prove possession, since the document which grants that right of possession has not been registered.”

Thus, it is clear that an unregistered sale deed dated 10.6.1991 cannot be an evidence to prove possession, since the document which grants that right to possession has not been registered.



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12. In view of the above, this Court finds no infirmity or illegality in the orders passed by the Courts below. Accordingly, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The District Munsif,
Madurantakkam, Kanchipuram District.



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G.K.ILANTHIRAIYAN.J.

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Pre-delivery order made in
CRP.No.2340 of 2016

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