IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1763 of 2014
and
M.P.No.1 of 2014

Ranganayagi ... Petitioner

Versus

1.Vasudeva Reddiar
2.Gopal Pillai
3.Jegadesan ... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 25.03.2014 made in I.A.No.141 of 2014 in O.S.No.297 of 2007 on the file of the II Additional District Munsif, Ulundurpet.

For Petitioner : Mr.C.Munusamy

For R1 : No appearance

For R2 & R3 : Notice dispensed with

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ORDER

Aggrieved by an order dated 25.03.2014 dismissing the petition to receive the documents in part, the plaintiff/petitioner has filed this Civil Revision Petition.

2. The revision petitioner filed a suit for permanent injunction against the respondents in O.S.No.297 of 2007, on the file of the II Additional District Munsif, Ulundurpet. Pending suit, the petitioner had filed an application in I.A.No.141 of 2014 seeking leave of the Court to receive two documents namely, (i) Gift Deed dated 07.01.1996 executed by Vinobaji Bhoodan Movement in favour of the Govindasamy Nayakar, the father-in-law of the 1st plaintiff, and (ii) a Sale Deed in favour of 2nd plaintiff's son, Saravanakumar. The 1st respondent filed a counter saying no objection for reception of second document. However, the reception of first document was opposed by the 1st respondent on the ground that it was an unstamped, unregistered document. The respondents 2 and 3 remained *ex-parte.* Accepting the objections raised by the 1st respondent, the Trial Court dismissed the I.A.No.141 of 2014 in O.S.No.297 of 2007 as far as the first document is concerned and aggrieved by the same, the present Civil

Revision Petition is filed.

3. Heard the learned counsel for the petitioner. Though the first respondent served and his name has been printed in the cause list, there is no representation for him. The second and third respondents remained *ex-parte* before the Lower Court and hence notice to them is dispensed with.

4. When the Revision is taken up for hearing, it is pointed out that the bar under Section 35 of the Indian Stamp Act, 1899 is total and unless the petitioner is prepared to pay the stamp duty together with penalty, the documents cannot be admitted in evidence for any purpose including the collateral purpose.

5. The learned counsel for the petitioner agreed to pay the stamp duty together with penalty as contemplated under the Indian Stamp Act. He also submitted that he is ready to take necessary steps for payment of stamp duty together with penalty.

6. The submission made by the learned counsel for the petitioner is

recorded.

7. It is settled law if a document is unstamped or insufficiently stamped, the bar under Section 35 of the Indian Stamp Act is total and such a document cannot be used for any purpose including collateral purpose. However, the defect is curable one, if the person, who seeks reception of the unstamped document pays necessary stamp duty together with penalty, the Court can admit it in evidence for a limited purpose. (i.e., for using the document for collateral purpose)

8. It will be useful to refer to the following observation of the Hon'ble Supreme Court in ***2001 (4) SCC 197 = AIR 2001 SC 1321 (Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle and Ors.)*** in this regard :

> 11. ....
>
> **"38. Instruments impounded how dealt with.-**
>
> (1) Where the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits, such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the

> Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf. (2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

12. It is clear from the first sub-section extracted above that the court has a power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. When the court chooses to admit the document on compliance of such condition the court need forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid the Collector has no other option except to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof.

13. In the present case, an argument is raised that the instrument is not actually an agreement of sale as envisaged in the Schedule to the Stamp Act(subject to amendment made by the State of Andhra Pradesh) but it is only a deed of compromise entered into by two disputing persons. We refrain from expressing any opinion on the said plea as it is open to the parties to raise their contentions regarding the nature of the document before the trial court. In the present case the trial court should have asked the appellant, if it finds that the instrument is insufficiently stamped, as to whether he would remit the deficient portion of the stamp duty together with a penalty amounting to ten times the

> deficiency. If the appellant agrees to remit the said amount the court has to proceed with the trial after admitting the document in evidence. In the meanwhile, the court has to forward a copy of the document to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty as provided in Section 40(1)(b) of the Act. Only if the appellant is unwilling to remit the amount the court is to forward the original of the document itself to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty. The penalty of ten times indicated therein is the upper limit and the Collector shall take into account all factors concerned in deciding as to what should be the proper amount of penalty to be imposed."

9. In the light of the observations made by the Hon'ble Supreme Court in the case law referred above, if the petitioner come forward to pay deficit Stamp Duty together with penalty, the Court can admit Document No.1 for collateral purposes.

10. Therefore, the Civil Revision Petition is allowed by setting aside the portion of the order passed by the learned II Additional District Munsif, Ulundurpet in I.A.No.141 of 2014 in O.S.No.297 of 2007, partly dismissing application in respect of the first document dated 07.01.1996. The petitioner shall take necessary steps for payment of stamp duty together with penalty, payable on first document viz., the Gift Deed dated 07.01.1996 executed by

Vinobaji Bhoodan Movement in favour of the Govindasamy Nayakar. On such payment, the petitioner is at liberty to use the document for collateral purpose only. It is made clear that the document cannot be relied on for proving main transaction.

11. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2022

Index: Yes/No
Speaking Order: Yes/No
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To

1.The II Additional District Munsif,
Coimbatore.

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

S.SOUNTHAR, J.

sp

C.R.P.(PD).No.1763 of 2014

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