IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2022

Pronounced on :25.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.945 of 2017
and
CMP.No.4717 of 2017

Saritha

... 7th Respondent / 7th Defendant / Petitioner

v.

1.M.A.Shanmugham
2.Pulli Gounder @ Vella Gounder (died)
3.Kannammal @ Kaliammal
4.Palanisamy
5.Sundarasu
6.Parvathy
7.Ravi (died)

... Respondents 1 to 6 / Defendants 1 to 6 / Respondent 2 to 7

8.Sathamani
9.Papaathi
R8 and R9 brought on record as Lrs of the deceased R2 viz., Pulli Gounder alias Vella Gounder vide Court order dated 23.02.2022 made in CMP.No.13819, 13824 and 13829 of 2021 in CRP.No. 945 of 2017

10.Kanagaraj
11.Dhanam
R10 and R11 brought on record as Lrs of the deceased R7 viz., Ravi vide Court order dated 23.02.2022 made in CMP.No.14947 of 2021 in CRP.No.945 of 2017.

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.01.2017 made in I.A.No.186 of 2015 in O.S.No.138 of 2009 on the file of the District Munsif Court, Paramathy.

For Petitioner	..	Mr.L.Thirumalaisamy
For R1	..	Mr.C.Munusamy

ORDER

The 7th defendant in O.S.No.138 of 2009 on the file of the District Munsif Court, Paramathy is the revision petitioner herein. O.S.No.138 of 2009 had been filed by the 1st respondent herein / plaintiff, seeking permanent injunction restraining the defendants therein from interfering with peaceful possession of the suit schedule property and for costs of the suit.

2.The suit schedule property is vacant land measuring 2.29 acres together with easementary rights for movement of men, animals, vehicles and is situated in S.No.229/1 in Kupperikapalayam Village in Paramathy, Namakkal District. The plaintiff, had claimed right to enjoy the said land to the execlusion of the defendants, on the basis of an unregistered and unstamped Muchalika dated 15.08.2008 which family arrangement had been entered into among the plaintiff and the 1st, 2nd and 5th defendants before the Village Panchayat. However, the patta for the suit schedule land stood in the joint names of the plaintiff and the 1st and 7th defendants. The 7th defendant was also the beneficiary of two sale deeds dated 24.09.2008 and 26.09.2008 executed by the 2nd defendant and by the 5th and 6th defendants respectively.

3.The 7th defendant had filed written statement in the suit questioning the right title and interest of the plaintiff over the suit schedule property.

4.Let me not enter into a detailed discussion on the aspects raised in the genealogy of the parties and the disputes therein.

5.Issues were framed and parties were invited to adduce evidence. At that time, the plaintiff filed I.A.No.138 of 2009, under Section 151 CPC seeking permission to mark as an exhibit, the unstamped and unregistered Muchalika dated 15.08.2008. It was stated in the affidavit filed in support of the said application that since 15.08.2008 was a national holiday, the document though executed could not be presented for registration. It was also stated that the plaintiff did not know that the document required registration.

6.However, the document is essential to decide the issues in the suit and it was also stated that the plaintiff was prepared to pay the penalty on the stamp duty and therefore sought permission to mark the said document as an exhibit during trial.

7.The 7th defendant filed a counter denying the very execution of the document on 15.08.2008 or on any other date. It was also stated that the plaintiff was a Court bird and knew the intricacies of judicial proceedings and therefore cannot plead ignorance that the said document required registration. It was also stated that mere payment of penalty towards the stamp duty would not regularize the document and non-registration can never be cured. It was also stated that the plaintiff had also commenced adducing evidence as PW-1 and that the document cannot be introduced, after the trial had commenced. It was urged that the application should be dismissed.

8.The District Munsif, Paramathy in the order dated 13.01.2017, considered the statement of the plaintiff that he was prepared to pay the penalty of ten times the stamp duty and therefore stated that issues regarding the particular execution and non-execution of the document can be decided on analyzing evidence and therefore permitted marking of the said document.

9.Questioning that particular order, the 7th defendant has filed the present Civil Revision Petition.

10.Even before examining whether the unstamped and unregistered Muchaika dated 15.08.2008 could be admitted in evidence, one further fact pointed out by Mr.T.L.Thirumalaisamy, learned counsel for the revision petitioner will have to be addressed. It was pointed by the learned counsel that the Muchalika had been executed on a Fifty Rupees non-judicial stamp paper purchased on 14.07.2008 bearing No.H 764334 from P.Thiagarajan, a stamp paper vendor. This stamp paper was the first page of the Muchalika. The other pages are green sheets in which the terms of Muchalika had been typed and the parties had also signed. It was however pointed out by Mr.T.L.Thirumalaisamy, learned counsel for the revision petitioner that this particular stamp paper on which the Muchalika had been typed had also been examined by the Revenue

Tahsildar, Thiruchengode, who by proceedings dated 09.02.2011 in an application with respect to patta, with respect to the very same suit property, by proceedings dated Na.Mu.4583-2009-U, had observed that the aforementioned stamp paper H 981304 is said to have been sold by P.Thiyagarajan, stamp paper vendor on 14.07.2008, but, however, the treasury had sold this aforementioned stamp paper to P.Thiyagarajan only on 08.05.2009. It was further observed that there were some suspicious circumstances surrounding the very stamp paper itself.

11.I would not enter into further discussion on the above allegation, but place it on record that the very stamp paper in which the Muchalika had been written is subject matter of enquiry.

12.Coming to the issue of an unstamped and unregistered document and the issue whether it could be produced as evidence in a judicial proceedings, it would be worthwhile to examine the provisions of law in the first instance.

13.Section 35 of the Indian Stamp Act, 1899 is as follows:

"35. Instruments not duly stamped inadmissible in evidence, etc.- 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, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that-

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and anyone of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898); (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

14.Section 17 of the Registration Act, 1908 is as follows:

"17. Documents of which registration is compulsory.-

(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in

immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have

been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of sub-section (l) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1A) 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; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by Governmen]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of

the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered."

15.Section 49 of the Registration Act, 1908 is as follows:

"49. Effect of non-registration of documents required to be registered.— No document required by section 17 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) or as evidence of any collateral transaction not required to be effected by registered instrument."

16.An examination of the aforementioned provision leads to the following conclusions;

(i).An unstamped or inadequately stamp document cannot be admitted in evidence for any purpose in accordance with Section 35 of the Indian Stamp Act, 1988 unless it is properly stamped.

(ii).It can be stamped and admitted in evidence provided, penalty under Clause A of Section 35 of the Act, is paid.

(iii).A document which creates or assigns any right either in the present or in the future in any immovable property has to be compulsorily registered under Section 17 of the Registration Act, 1908.

(iv).A document which has to be compulsorily registered cannot be received in evidence with respect to any transaction relating to that particular property mentioned in the document in view of the prohibition under Section 49 of the Registration Act, 1908.

17.A family arrangement or a Muchalika in effect grants right or title to certain portions of property to a few individuals and also at the same time takes away rights and title of some of the parties to the other portions. This document therefore comes squarely under Section 17 of the Registration Act, 1908, as a document which has to be compulsorily registered and under Section 49 of the Registration Act, 1908, a document which has to be compulsorily registered cannot be admitted in evidence.

18.The offer of the 1st respondent / plaintiff to pay the penalty towards stamp duty can only cure the effect of stamping the document to the value of the property, but non-registration can never be cured. This has to be examined in conjunction with the allegation that there are certain suspicious surrounding the purchase of the stamp paper itself. All these factors, when cumulatively examined would lead to the irresistible conclusion, that the document can never be admitted as evidence. It is not properly stamped. There is a suspicion raised about the only stamp paper produced. It is compulsorily registrable. It has not been registered.

19.The contention of the 1st respondent that the document was not registered because, 15.08.2008 was a national holiday cannot be accepted as a ground in a Court of law, because even if it is to be assumed that the stamp paper had been purchased lawfully and in accordance with the rules, the stamp paper had been purchased on 14.07.2008. The date on the stamp paper shows 14.07.2008. The document could have been presented for registration even on any other subsequent date. The parties were all residents of the same village and there has been no plea taken that the parties were not available for presenting the document for registration. Even otherwise, there is a provision provided in the Registration Act itself for compulsory registration of a document already executed. Therefore, those contentions are rejected by me.

20.In ***Yellapu Uma Maheswari and another vs Buddha Jagadheeswara Rao and others (2015) 16 SCC 727 : (2016) 2 LW 656***, the Hon'ble Supreme Court, was concerned with two unstamped, unregistered partition deeds which had been marked as Exs.B21 and B22. Their admissibility was under challenge. It was held as follows:

> *"15. It is well settled that 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 and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition."

21.The law is therefore clear. The unstamped and unregistered Muchalika can never be the basis for seeking any right in a judicial forum. The 1st respondent / plaintiff can lead evidence regarding possession in manner known to law and that evidence can be questioned by the revision petitioners / 7th defendant in the suit. But the document dated 15.08.2008 being unstamped and unregistered cannot be admitted in evidence and cannot be considered as the basis for seeking right, title and interest.

22.The order in I.A.No.186 of 2015 dated 03.01.2017 passed by the District Munsif, Paramathy, is therefore set aside. The Civil Revision Petition is allowed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.The parties are directed to go back to the Trial Court and proceed further with the trial. Since the suit is of the year 2009, the District Munsif, Paramathy, is directed to endeavour to dispose of the suit, on or before 31.10.2022.

25.03.2022

Internet:Yes/No
Index:Yes/No
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To
The District Munsif Court, Paramathy.

C.V.KARTHIKEYAN,J.

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Pre-delivery order made in

C.R.P.PD.No.945 of 2017
and
CMP.No.4717 of 2017

25.03.2022