



CRP.No. 2332 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 2332 of 2023
and
Civil Miscellaneous Petition No. 14190 of 2023

G. Kumar

...Petitioner

Versus

1. K. Esakki
2. A. Thasarathan

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to direct the XVIII Additional City Civil Court, Chennai to reject the unstamped and unregistered document marked as Ex.A4 dated 28.01.2011 in O.S.No. 3389 Of 2021.

For Petitioner : Mr.K. Raghuraman



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ORDER

This Civil Revision Petition has been filed seeking a direction to the XVIII Additional City Civil Court, Chennai to reject the unstamped and unregistered document marked as Ex.A4, dated 28.01.2011 in O.S.No. 3389 Of 2021.

2. According to the revision petitioner/defendant, the first respondent/plaintiff has filed a suit in O.S.No. 3389 of 2021 before the XVIII Additional City Civil Court, Chennai, for directing the defendant to execute and register a sale deed in respect of the suit property in favour of the plaintiff as per the registered agreement of sale, dated 27.01.2011 entered into between the plaintiff and the petitioner/defendant bearing Document No. 398 of 2011 after receiving the balance sale consideration of Rs.3,45,000/- pertaining to the property viz., 901 sqft. of land with building thereon at New No. 3, Old No. 2, West Vanniyar Street, Nesapakkam, Virugambakkam, Chennai-600 078, morefully described in the schedule of the plaint; for mandatory injunction directing the defendant to obtain rectification deed for the releasae deed bearing Document No. 393 of 2011

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with respect to correction of exact survey number and permanent injunction restraining the defendant from in any manner interfering with peaceful possession and occupation of the suit property by the plaintiff and restraining the defendant from alienating the suit property/creating any encumbrance over the suit property in favour of any one. During the pendency of the suit proceedings, the first defendant filed objection petition, dated 30.01.2023 not to permit the plaintiff to mark the receipt filed as Document No. 4 dated 28.01.2011 as an evidence as it is unstamped and unregistered document. In spite of the objection made by the petitioner/defendant, the said document has been marked as A4. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The petitioner/defendant has contested the suit by filing written statement and denying all the averments made in the plaint.

4. According to the respondent/plaintiff, he has filed the suit for specific performance of a registered agreement for sale deed dated 27.01.2011. The said agreement has been marked as Ex.A3. Pursuant to



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the said agreement, he has paid a further sum of Rs.11,55,000/- by cash. Since the parties had cordial relationship, the plaintiff did not obtain a duly stamped receipt. However, dispute arose and the suit has been filed. The original receipt dated 28.01.2011 has been produced before this Court along with the original plaint. The document in question is styled as receipt not duly stamped and therefore, the plaintiff seeks leave of this Court to fix the penalty and stamp duty as per Section 35 of the Indian Stamp Act, 1899 so as to take the document on record and mark the same as evidence on behalf of the plaintiff. The plaintiff undertakes to pay the stamp duty as well as the penalty as fixed by this Court. The document in question is a receipt. As per the Sl.No. 53 of the Schedule I of the Stamp Act, the stamp duty payable for receipt for evidencing monetary transaction of more than Rs.5,000/- is Re.1/-.

5. As per Section 35 (a) of the Indian Stamp Act, the plaintiff is liable to pay a stamp duty of Re.1/- with a penalty of Rs.5/-. The plaintiff files the present undertaking and without prejudice to the provision contained under Section 35 (c) of the Indian Stamp Act. According to the



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said provisions where an agreement is contained in more than 2 documents and one is duly stamped the other document would not suffer for want of stamp duty. Hence, the plaintiff prays to take the memo on record and permit him to pay the stamp duty of Re.1/- and penalty of Rs.5/- on the receipt filed herewith as Document No. 4 dated 28.01.2011 so as to mark in the evidence on behalf of the plaintiff.

6. Heard the learned counsel for the revision petitioner and perused the materials available on record.

7. On a perusal of the records, it reveals that the suit was filed by the first respondent/plaintiff for specific performance. Pending the suit, the plaintiff/1st respondent filed a memo to permit the plaintiff to pay the stamp duty and penalty for the receipt and mark the same as Document No.4. The first defendant filed objection memo dated 30.01.2023 stating that memo filed by the plaintiff is inadmissible in facts and law as per Section 35 (a) of the Indian Stamp Act, 1899. Further, the plaintiff had stated in the plaint and his proof affidavit that the Document No. 4 is a original one. But, he



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mislead the Court and filed the unstamped and unregistered Document No.4, dated 28.01.2011 which is in question.

8. The said objection memo also states that as per section 33 of the Indian Stamp Act, 1899 any instrument with deficiency or inadequate in stamp duty is not admissible and not permitted to mark as an evidence. The same is established and made an observation by this Court in **Saroja (Deceased) Vs. Vasantha Duraisamy and Anr.**, reported in **2023 (1) CTC 226**, the Indian Stamp Act, 1899 (2 of 1899), Section 33 Unstamped/Unregistered document, not permitted to be marked as evidence by the Court below, the same was withdrawn on objection. Subsequent impounding of document, whether permissible-held, not permissible plea to impound document for insufficient stamping must be raised at first instance, later witness cannot seek impounding of document, when document itself not before court power to impound under Section 33 can be exercised only when insufficiently stamped document tendered in evidence.

9. The Court below failed to see that the receipt is unstamped and



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unregistered and also over writing document inspite of that permitted to mark the document as Ex.A4 is illegal and contrary to the Indian Registration Act. The Court below ought to have seen that at the time of the agreement, the respondent/plaintiff only paid Rs.1,00,000/- on 27.01.2011 the recital of document mentioned that the balance sale consideration shall be paid at the time of execution and registration of the sale deed. But cleverly not make an endorsement with the document, simply obtain the signature from the 1st defendant on 28.01.2011 clearly established it is purpose of creating the document.

10. On perusal of the case status, it reveals that PW1 present before the Court below, memo filed by the plaintiff is recorded. The plaintiff has been directed to pay Rs.11 on production of original receipt as stamp duty and penalty. Call on 09.01.2023. Memo—both side heard. As per Sechedule-I, Article 53 of the Indian Stamp Act, 1899, the present receipt attracts stamp duty of Rs.1 and penalty of Rs.10/-. Hence the plaintiff is directed to pay Rs.11 on production of original receipt.

11. The document in question is only a receipt and the same can be



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taken on record after payment of appropriate stamp duty. However, the genuinity of the said document and other details of the said document can be cross-examined by the petitioner to establish its veracity and genuinity of the document by let-in appropriate evidence. Therefore, this Court is of the view that the petitioner is permitted to canvas all the points before the trial Court.

12. In view of the above discussions, the Civil Revision Petition is disposed of. Further, this Court directs the trial Court to dispose of the suit in O.S.No.3389 of 2021 pending on the file of XVIII Additional City Civil Court, Chennai as expeditiously as possible. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
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1. The XVIII Additional City Civil Court, Chennai
2. The Section Officer, V.R. Section, High Court, Madras.



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V. BHAVANI SUBBAROYAN, J

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