



C.R.P.(MD)No.1263 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1263 of 2022

and

C.M.P.(MD)Nos.6920 of 2022 and 5189 of 2023

1.R.Janaranchani
2.R.Jana Agency,
Rep., by its Proprietor,
R.Janaranchani

... Petitioners

-Vs-

1.Chandra
2.The Divisional Manager,
Indian Oil Corporation,
Tiruchirappalli Division,
Shastri Road, Thillai Nagar,
Trichy-620018.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 21.04.2022 passed in I.A.No.9 of 2022 in I.A.No.2 of 2021 in O.S.No.101 of 2021 on the file of the learned Subordinate Judge, Lalgudi.



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For Petitioners : Mr.M.P.Senthil
For R1 : No Appearance
For R2 : Mr.K.Muraleedharan

ORDER

The petitioners are the defendants in O.S.No.101 of 2021 before the Sub-Court, Lalgudi. The suit in O.S.No.101 of 2021 has been filed by the respondent herein for the following reliefs:

“ i.Ejectment of 1st defendant from the suit property and to deliver the vacant possession of the same.

ii.For the costs of this suit.

iii.For any other order as this Court deems fit and thus render justice.”

2.In the list of documents filed under Order VII Rule 14 of C.P.C., the respondent/plaintiff has relied upon on unregistered ground rental agreement, dated 16.07.2020, wherein as per the aforesaid agreement, the petitioners were required to pay a sum of Rs.10,000/- as monthly rent and a sum of Rs.4,00,000/- towards earnest money. In the said suit, the respondent had also filed I.A.No.2 of



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2021 for injunction to restrain the second respondent herein from supplying petroleum products to the first petitioner herein. The petitioners had disputed the execution of the unregistered ground rental agreement, dated 16.07.2020.

3.The petitioners have submitted that there was a registered rental agreement between the petitioners and the respondents on the same date, as per which, the arrangement was to be in force for a period of 21 years 11 months and that the petitioners were required to pay only a sum of Rs.500/- as monthly rent to the respondent/plaintiff and that the petitioners have to vacate the premises at the end of the expiry of the rental period.

4.Under these circumstances, the petitioners filed I.A.No.9 of 2022 to reject the unregistered ground rental agreement, dated 16.07.2020 on the ground that the said agreement was not only unregistered but also un-stamped and therefore, it cannot be admitted in evidence even for collateral purpose. That apart, it is submitted that the said agreement for ground rental agreement is dated 16.07.2020 and is on a stamp papers purchased on 03.05.2021 clearly establishing that the document was a forged document. It is, therefore, submitted that the



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impugned order rejecting the application filed by the petitioner in I.A.No.9 of 2022 and 2 of 2021 to eschew the unregistered ground rent agreement, dated 16.07.2020 is liable to be set aside.

5.The petitioner had secured an interim order from this Court as early as on 27.06.2022, which has been extended from time to time.

6.The respondent has entered appearance and also filed vakalat. The respondents have also filed C.M.P.No.6920 of 2022 to vacate the interim order passed by this Court on 27.02.2022.

7.The learned counsel appearing for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in *Avinash Kumar Chauhan* case, reported in AIR 2009 SC 1489, wherein it was held as follows:

“Para 21. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded,



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we fail to see any reason as to how the document would be admissible for collateral purposes.

7.This Court in the judgment reported in 2005(3) LW page 283 has held as follows:

A conjoint reading of both Sections 35 of the Indian Stamp Act, 1899 and 17(1)(b) of the Registration Act, 1908 in the light of the ratio of the above decision would indicate unmistakably that the unstamped and unregistered document, Ex.A.9 becomes inadmissible in evidence and it follows that the same cannot be looked into for any purpose.”

8.It is submitted that the above said decision of the Hon'ble Supreme Court have been repeatedly followed by several Courts including this Court. The references were made to the following decisions, wherein, similar views have been taken by this Court:

(I).In ***Mandhri Gounder-vs-Durai Gounder (Died) & Ors.***, in ***C.R.P(PD)No.3051 of 2009.***

(ii)In ***Thangamuth-vs-A.Jeyaraj***, reported in ***2020(1)CTC 47***

(iii).In ***R.Kandaswamy-vs-Pacha Gounder & Others***, reported in ***2022-4-L.W.875.***



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9.I have heard the rival submissions made on either side. I have also perused the impugned order and the decisions cited across the bar by the learned counsel for the revision petitioner. I have also perused the counter filed on behalf of the respondent for vacating the interim order. I have also perused the plaint filed in support of the suit in OS.No.101 of 2021.

10.A registered agreement dated 16.07.2020 for a period of 21 years 11 months has been filed by the petitioner agreeing to pay a paltry sum of Rs.500/- to the respondent. It appears to be unreasonable. The respondent on the other hand has heavily placed reliance on unregistered agreement dated 16.07.2020, which is an unregistered document drawn on a stamp paper dated 03.05.2021. Prima facie, it appears to be fabricated for the purpose of filing suit in O.S.No. 101 of 2021. The law on subject is clear if the document is unregistered, it can be received as an evidence for collateral purpose. However, such agreements are required to be properly stamped and proper procedure has to be followed under the Indian Stamp Act. Such a document has to be impounded by calling upon the party presenting to, to pay stamp duty payable together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion



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thereof, as has been provided under (a) proviso to Section 35 of the Indian Stamp Act, 1899. Section 35(a) of the Act which reads as under:

“(a)any such instrument 65 [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;

11.This procedure has to be followed by the trial Court by directing the respondent/plaintiff to pay the deficit stamp duty. Only thereafter the said document can be admitted in evidence, in which case it may be always open to the petitioner to contest the genuinity on the ground that the said document is a fabricated document on a stamp paper dated 03.05.2021. If the proper stamp duty is not paid on unregistered ground rental agreement dated 16.07.2020 it shall not be admitted. Therefore, I am inclined to set aside the impugned order and remit the case back to the Court to exercise the power vested with under Section 35 of the Indian Stamp Act, 1899.



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12.This Civil Revision Petition is allowed with the above observation/direction. No costs. Consequently, connected miscellaneous petitions are closed.

15.06.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To:

1.The Subordinate Judge,
Lalgudi.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN, J.

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