



C.R.P.No.1555 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.04.2024
PRONOUNCED ON : 21.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1555 of 2024
and
C.M.P.No.8365 of 2024

Sivalingam

... Petitioner

Vs.

1.Gilles Maridassou

2.Sivaraman

3.Sivashanmugam

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to allow this civil revision petition and set aside the fair and decreetal order dated 26.03.2024 passed in I.A.No.10 of 2024 in O.S.No.2252 of 2014 on the file of the I Additional District Munsif Court, Puducherry.



C.R.P.No.1555 of 2024

For Petitioner : Mr.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran

For Respondent : Mr.D.Ravichandran

ORDER

The petitioner/first defendant in O.S.No.2252 of 2014 on the file of the learned I Additional District Munsif, Puducherry filed an application under Section 151 CPC r/w. Section 35 of Indian Stamp Act to cancel the marking of license agreement dated 01.01.2002 as Ex.A1 and reject the document for impounding and collection of stamp duty and penalty. The Trial Court dismissed the said petition by order dated 26.03.2024. Against which, the present civil revision petition is filed.

2.For the sake of convenience, the parties are referred to as per rankings in the suit.

3.The petitioner is the first defendant in the suit and the respondents 2 and 3, who are the sons of the petitioner, are the defendants 2 and 3 in the



C.R.P.No.1555 of 2024

suit. The first respondent herein is the plaintiff in the suit. The suit is for a direction to vacate the defendants and hand over possession of the schedule mentioned property by way of mandatory injunction. The case of the plaintiff is that he is the absolute owner of the suit property and he licensed it to the first defendant under license agreement dated 01.01.2002 for a period of 11 months, ending on 30.11.2002, for temporary accommodation of his business of sale of antique furniture in the name and style of 'Kathiravan Furniture'. The first defendant undertook to pay a sum of Rs.55,000/- as license fee for the license period i.e., Rs.5,000/- per month. Further, the first defendant paid a sum of Rs.1,00,000/- as security deposit. Though the license was to terminate on 30.11.2002, the first defendant was allowed to continue to do business in the suit property, orally for every 11 months, the license was periodically renewed. Finally on 01.12.2012, it was extended upto to 30.10.2013. The license fee was increased from time to time and fixed at Rs.35,000/- per month. The plaintiff's contention was that structure and stability was deteriorating and the building was becoming inhabitable and hence, he requested the first defendant to look out for alternate accommodation. The first defendant shifted his business to the



C.R.P.No.1555 of 2024

new address at No.7, Subbiah Salai, Puducherry in and around 2012. When the plaintiff was looking forward to hear from the first defendant regarding paying the license fee arrears and handing over vacant possession of the suit property, the plaintiff received summons in O.S.No.529 of 2014 from the learned Principal District Munsif, Puducherry. This suit was filed by the defendants 2 and 3, namely, sons of the first defendant, for permanent injunction against the plaintiff and his wife. The defendant 2 and 3 propounded a new story as though the plaintiff had orally leased out the suit property to them on a monthly rent of Rs.16,000/- per month and they have paid an advance of Rs.3,00,000/- and they are running the business in the suit property for the last 13 years commencing from February 2003. The plaintiff's contention is that absolutely there is no privity of contact between the plaintiff and the defendants 2 and 3. The plaintiff at no point of time leased out the suit property to the defendants 2 and 3. The plaintiff found that the defendants 2 and 3 created false and fabricated documents for illegal squatting on the premises. The plaintiff caused a legal notice dated 30.08.2014 to the defendants to vacate and handover possession of the suit property and thereafter, filed the suit. The suit was contested by the



C.R.P.No.1555 of 2024

defendants 2 and 3 who filed their written statement. As regards the first defendant summons could not be served. The defendants 2 and 3 failed to furnish the address of their father/first defendant and the case was kept pending for completion of service. Finally, I.A.No.1054 of 2016 filed and paper publication effected, thereafter the first defendant was set exparte on 03.01.2017. The first defendant filed a petition in I.A.No.173 of 2023 on 03.01.2024, exparte order was set aside and thereafter, he participated in the trial. The plaintiff was cross examined elaborately by the first defendant on 20.02.2024 and 22.02.2024, on 22.02.2024 I.A.No.10 of 2024 filed to cancel the marking of license agreement dated 01.01.2002, Ex.A1 and on its dismissal, the present revision petition is filed.

4.The learned senior counsel for the petitioner submitted that the Trial Court ought to have allowed the petition and impounded Ex.A1/license agreement and collected the deficit stamp duty and penalty. She would submit that the Trial Court failed to consider that as per Section 35 of the Indian Stamp Act, the document which is with insufficient stamps has no evidentiary value and on marking the document, the same is to be



impounded. The Trial Court failed to consider that as per Section 33 of the Indian Stamp Act, any document insufficiently stamped is filed, the Court is duty bound to impound the same and collect the deficit stamp duty and penalty and thereafter to proceed further in placing reliance on the said document. The reasoning given by the learned Trial Judge that Ex.A1 marked without objection by the defendants 2 and 3 regarding insufficiently stamped and hence document is marked without objection is not sustainable. In this case, when the document Ex.A1 when it is marked the first defendant was set aside, not participated in the trial at that time and hence, he could not make his objection earlier. After setting aside the exparte order, first defendant participating in the trial, disputed Ex.A1 in his written statement and by cross examination, thereafter petition filed. Though the defendants 2 and 3 raised objection, the Trial Court disallowed the same at that time, stating that the defendants 2 and 3 are not parties to Ex.A1. The Trial Court failed to consider that EX.A1 is with reference to the first defendant and the first defendant alone is entitled to object the same. The other finding of the Trial Court that Ex.A1 is marked and admitted in evidence, the same cannot be questioned now which against the Act.



C.R.P.No.1555 of 2024

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5.The learned senior counsel for the petitioner relied upon the following decisions for the point that Section 33 of the Act cast an statutory obligation on all authorities to impound the document, the Court being an authority to receive a document in evidence is bound to give an effect thereto, the unregistered deed is an instrument which require payment of stamp duty. In this case, the stamp duty not paid and hence the Court is empowered to pass an order in terms of Section 35 of the Act. He further submitted that Section 35 clearly sheds out from evidence any instrument chargeable with duty unless it is duly stamped. The decisions are as follows:

1. *Jupudi Kesava Rao vs. Pulavarthi Venkata Subbarao and others reported in [1971] 1 SCC 545;*
2. *M.Periyakaruppan and another vs. Nachiyappan and another reported in 2008 SCC Online Mad 58;*
3. *G.Ramamoorthy vs. M.S.R.Sivakumar and another reported in 2013 SCC Online Mad 863;*
4. *Vijay vs. Union of India and others reported in 2023 SCC Online SC 1585.*



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6.The learned counsel for the first respondent/plaintiff submits that the defendants 2 and 3 and the first defendant are father and sons. Right from the initial stage, all acting in a collusive manner and the petitioner wantonly kept away from the proceedings. Even the notice dated 30.08.2014 was returned. This returned notice is a document in the plaint. The second defendant returned the notice, the third defendant received the notice and postal acknowledgement produced. The suit was kept pending till 2016 for completion of service. The defendants 2 and 3 failed to furnish the address of the first defendant. Thereafter, I.A.No.1054 of 2016 filed to effect publication of public notice and the petitioner was set exparte on 03.01.2017. The defendants 2 and 3 participated in the trial and filed their written statement on 06.03.2017, thereafter cross examined the first defendant who is aged about 70 years. From the written statement and cross examination, the defendants 2 and 3 projected as though they have no contact with the first defendant. From the written statement and line of cross examination, the defendants 2 and 3 putting forth the case of the first defendant. Hence, they were in the know-how of activities of the first defendant and defence formulated refuting the averments in the plaint for the



first defendant. Though the defendants 2 and 3 claim they are partners in the Kathiravan Furniture Sales Centre, no document produced. The projected oral license granted to the defendants 2 and 3 to run the business from the year 2002 is nothing but figment of imagination and a defence taken to create obstacle on the petitioner's right to reclaim his property. The plaintiff herein is the first defendant in O.S.No.529 of 2014, filed his written statement on 31.07.2014 denying any relationship with the defendants 2 and 3. The second defendant as early as 27.06.2015 addressed a complaint to the Sub Judge, Puducherry for taking legal action against the Court Amin, as though Amin received bribe from the plaintiff and thus the Court Amin reported to the Court that the first defendant refused to receive the summons. Further, the second defendant in his evidence on 10.11.2022 admits that he has got cordial relationship with his father/first defendant till date. The second defendant disputes the signature of the first defendant in Ex.A1, on the contrary the first defendant not raised any question as regards his signature in Ex.A1, despite detailed cross examination conducted on 20.02.2024 and 22.02.2024. Further, the petitioner filed set aside petition on the ground that he came to know about the pendency of the suit through



one of his friend and thereafter, he filed set aside petition which is also beyond the period of limitation, but in any event the exparte order was set aside by the Trial Court on 03.01.2024.

7.Considering the submissions made and on perusal of the materials, it is seen that the suit was filed as early as 2014. The petitioner/first defendant is the father and the defendants 2 and 3 are his sons. Earlier to the suit, the defendants 2 and 3 filed a suit in O.S.No.529 of 2014 before the learned Principal District Munsif, Puducherry. The first respondent/plaintiff prior to filing of the suit caused a legal notice, annexed as document in the plaint. The first defendant initially kept away from the suit despite taking all steps and after due publication, he was set exparte on 03.01.2017. In the meanwhile, the defendants 2 and 3 filed written statement, issues framed and thereafter, trial proceeded. The second defendant questioned the variance in the signature of the first defendant in Ex.A1. The exparte order was set aside in I.A.No.173 of 2023 and the first defendant filed the written statement. The plaintiff's evidence in additional chief was recorded on 03.01.2024. The first defendant elaborately cross examined the plaintiff on



C.R.P.No.1555 of 2024

20.02.2024 and 22.02.2024, in his cross examination he has not specifically denied his signature in Ex.A1. Though the first defendant was kept away from the suit till 03.01.2024, his interest got protected and taken care by his sons/defendants 2 and 3 in their written statement and by their cross examination. It is seen that the second defendant in his evidence admits the cordial relationship with his father/first defendant. The objections for admissibility of exhibit ought to have been made at the threshold even before marking a document or at the time of marking the document/ExA1. In this case, it is not so. Ex.A1 is not a registered document, not required to be stamped at the relevant period to attract the bar of Section 35 of the Indian Stamp Act. Thereafter, now the first defendant going back, taking such a stand and filing petition under Section 151 CPC r/w. Section 35 of Indian Stamp Act to cancel the marking of license agreement dated 01.01.2002, Ex.A1 is not sustainable. The written statement of the first defendant dated 13.02.2023 contains details of the suit and participation of defendants 2 and 3 in the suit and their defence. The first defendant sails with defendants 2 and 3.



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8.It is seen that the defendants 2 and 3 earlier approached this Court in C.R.P.Nos.537 and 647 of 2023 the first defendant kept himself away from the said civil revision petitions. This Court by order dated 21.11.2023 finding that though trial has began in the year 2018 and the case is dragging on without progress for one reason or other and finding that suit is at the penultimate stage for further arguments, gave direction to the Trial Court to dispose of the case within a period of eight weeks from the date of receipt of a copy of the order. But several eight weeks passed by still the case is yet to be disposed of, at this stage the present petition filed.

9. The Trial Court by a detailed order had given reasons which needs no interference. In view of the above, this Court is not inclined to interfere with the order passed by the Trial Court in I.A.No.10 of 2024 in O.S.No.2252 of 2024 dated 26.03.2024. Further, the Trial Court is directed to adhere to the direction given by this Court in C.R.P.Nos. 537 and 647 of 2023 dated 21.11.2023, in any event, to dispose the case in O.S.No.2252 of 2014 within a period of one month from the date of receipt of a copy of this order.



C.R.P.No.1555 of 2024

WEB COPY 10. Accordingly, the civil revision petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

21.06.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

The I Additional District Munsif,
Puducherry.



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C.R.P.No.1555 of 2024

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

C.R.P.No.1555 of 2024

21.06.2024