



WEB COPY



C.R.P.(PD).No.1918 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1918 of 2023 &
C.M.P.No.12159 of 2023

1.P.Sivakumar
2.V.Sridhar

... Petitioners

-Versus-

S.Saraswathi

... Respondent

Revision filed under Article 227 of the Constitution of India seeking to set aside the order passed by the IV Additional District Judge, Coimbatore in I.A.No.2 of 2022 in O.S.No.398 of 2019 dated 17.04.2023.

For Petitioners : *Mr.E.K.Kumaresan*

For Respondent : *Mr.N.Somasundar*

ORDER

This civil revision petition arises against the order of the learned IV Additional District Judge, Coimbatore in I.A.No.2 of 2022 in O.S.No.398 of 2019 dated 17.04.2023.



C.R.P.(PD).No.1918 of 2023

WEB COPY

2. The revision petitioners are the plaintiffs in the suit. The suit is one for specific performance of an agreement of sale dated 16.05.2013. According to the plaintiffs, the defendant had entered into an agreement by way of a registered document. Prior to this suit, on account of the fact that a neighbour attempted to trespass into the same, the present plaintiffs and the defendant together presented a suit in O.S.No.1875 of 2013 on the file of the V Additional District Munsif Court at Coimbatore.

3. It is not in dispute that the suit had subsequently been transferred to the file of the II Additional Subordinate Court at Coimbatore and renumbered as O.S.No.887 of 2018. While the matter was pending, it is the case of the petitioners that the defendant executed a letter of extension on 16.06.2016 extending the period of agreement dated 16.05.2013 by a further period of three years. This document has been produced along with the plaint as plaint document No.9.

4. During the course of evidence, the plaintiffs filed a proof affidavit and produced the letter of extension addressed to their lawyer, Mr.Soundararajan.



C.R.P.(PD).No.1918 of 2023

The document was received as evidence and was also exhibited as Ex.A4.

Subsequently, the defendant, feeling aggrieved by the marking of this letter, took out an application in I.A.No.2 of 2022 stating that the Court would have to examine the document in the light of Section 35 of the Indian Stamp Act and Sections 64 and 65 of the Indian Evidence Act, in line with Order XIII Rule 3 of the Code of Civil Procedure. According to the defendant, she had specifically pleaded that the letter dated 16.06.2016 was a rank forgery and had invited the attention of the learned District Judge to Paragraph 14 of the written statement. She would state that since Ex.A4 is a forged and unstamped document, it cannot be received in evidence and the same has to be “demarked”.

5. The plaintiffs filed a counter stating that the document, which has been accepted, is only an extension letter by which the period given under the agreement dated 16.05.2013 was extended by a further period of three years and on the basis of this document, the plaintiffs seek to bring the suit within time. They would also plead that there is no necessity to “demark” the document and sought dismissal of the petition.



C.R.P.(PD).No.1918 of 2023

6. The learned Judge, by the order impugned in this revision, had allowed the application in the interest of justice. I should state here that there is absolutely no discussion in the order as to the scope and power to “demark a document” which has already been exhibited during the course of trial.

7. Challenging the said order, the present revision has been filed.

8. The learned counsel for the petitioners would submit that there is no provision under the Code of Civil Procedure to unmark a document which has already been marked. He would state that the relevancy and genuineness of the document can be gone into only at the time of final disposal. There is always time to the defendant to confront and expose them, during the course of cross-examination of the plaintiffs on the said document.

9. The learned counsel for the respondent would submit that the agreement, which is registered, cannot be novated by way of an unregistered document and would rely upon Sections 91 and 92 of the Indian Evidence Act in order to further his argument. He would further submit that the original document being stamped, the extension of agreement also should be stamped,



C.R.P.(PD).No.1918 of 2023

and therefore, it is inadmissible for want of stamp duty under Section 35 of the Indian Stamp Act. He would draw my attention to the judgment of the Uthanchal High Court in *Raghuberi (deceased) and Others vs. Ved Pal and Others*, AIR 2011 Uttaranchal 38 and that of this court in *Kuppammal vs. Mu.ve Pethanna Chetty*, AIR 1956 Madras 250. He would state that, in the light of these two judgments, this revision deserves dismissal.

10. I have carefully analysed the order of the court below and gone through the records.

11. It is not in dispute that the document which has been exhibited as Ex.A4 is a plaint document. The plaintiffs relied upon the said document for the purpose of extension of time of a registered agreement dated 16.05.2013 by a further period of three years. It is also not in dispute that the plaintiffs had filed it along with their proof affidavit and the said proof affidavit has also been served on the learned counsel appearing for the defendant before the trial court.



12. The dispute primarily relates to the fact that being an unstamped extension letter, it is inadmissible in evidence. I have my own doubts whether the letter giving extension of time requires registration. Under the proviso to Section 49 of the Registration Act, even the original document of agreement of sale need not be registered for the purpose of presenting it in a suit for specific performance. If the original itself does not require registration, I am afraid that the subsequent extension letter need not be registered.

13. Apart from that, the document under Ex.A4 has been sent by Registered Post with acknowledgement due, and the said cover has also been exhibited along with Ex.A4. The letter, to my knowledge, does not attract stamp duty. Even assuming a letter attracts stamp duty in terms of Section 35, by virtue of Section 36, once a document is admitted in evidence, the same cannot be questioned as provided under Section 36 in terms of Section 61 of the Indian Stamp Act. While Section 35 is a specific bar to receive an unstamped document, once it is received, the operation of Section 36 kicks in, and the document received cannot be returned for want of stamp duty under Section 35 of the Indian Stamp Act.



14. Insofar as the judgment in **2011 AIR Uttarakhand 38** relied upon by the learned counsel appearing for the respondents is concerned, the judgment related to giving an oral evidence contrary to the written document. This was rejected in terms of Sections 91 and 92 of the Indian Evidence Act. I do not know how the said judgment is applicable to the facts of the case because it is not the plea of the plaintiffs that there is an oral extension of time granted, but it is his specific plea that by way of the letter under Ex.A4, the defendant had addressed the learned counsel for the plaintiffs stating that she had agreed on 16.06.2016 for extension of the period of agreement dated 16.05.2013.

15. Insofar as the second judgment in **AIR 1956 Madras 250** is concerned, it dealt with the scope of Order XIII Rule 4 of the Code of Civil Procedure. In other words, a reading of the judgment shows that the mere fact that the document has been admitted does not mean the court should presume its genuineness or validity. All that has been done in the present case is that the document has been received as an exhibit on the side of the plaintiffs, on account of the fact that they had exhibited the same through their proof affidavit. It is here that the judgment referred to by the learned counsel for the petitioners becomes relevant.



WEB COPY

16. The Bombay High Court had taken a view in ***Sultan Suleman Qureshi vs. Mrs. Anisa Rafiq Charolia and Others, 2016 SCC Online Bom 9798*** that once a document is marked as an Exhibit, the same cannot be de-exhibited. This is the exact prayer that the petitioners want and has, unfortunately, been acceded to by the trial court.

17. In the light of the above discussion, the order demarking the document is set aside. The document will remain on the file of the Court as Ex.A4. However, the defendant has raised a specific plea in paragraph 14 of the written statement that the document is a forgery, and the genuineness of the said document would necessarily be gone into by the court at the time of final disposal.

18. It is always open to the defendant to cross examine the plaintiffs or P.Sivakumar alone who is said to have written the document at the time of their examination.

19. Since the plea of forgery is taken, it is open to the defendant to take



C.R.P.(PD).No.1918 of 2023

out an application for comparison of signature in terms of Section 45 of the Indian Evidence Act if she is able to produce before the court a contemporary document for the said period. It is for the defendant to raise all the objections, including as stated above with respect to the genuineness or in fact the existence of the said document at the time of cross examination, and the same cannot be gone into in the revision arising out of the interlocutory application.

20. In view of the above, this civil revision petition is allowed. The order passed by the learned IV Additional District Judge, Coimbatore in I.A.No.2 of 2022 in O.S.No.398 of 2019 dated 17.04.2023 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

14.06.2024

nl

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order



WEB COPY



C.R.P.(PD).No.1918 of 2023

To

1.The IV Additional District Judge, Coimbatore



WEB COPY



C.R.P.(PD).No.1918 of 2023

V.LAKSHMINARAYANAN, J.

nl

C.R.P.(PD).No.1918 of 2023 &
C.M.P.No.12159 of 2023

14.06.2024