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C.R.P. No. 3350 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3350 of 2024
and
C.M.P. No. 17984 of 2024

L.Suganshwaran

... Petitioner / Plaintiff

Vs.

1. Paramashivam Nadar

2. P.Ramachandran

...Respondents / Defendants

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the docket order dated 31.07.2024 in O.S. No. 4245 of 2019 pending on the file of the XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr. R.Sunil Kumar,
Assisted by Mr. K.T.S.Sivakumar

For Respondents : Mr. D.Gopinathan

ORDER

This Civil Revision Petition arises against the docket order dated 31.07.2024 passed in O.S. No. 4245 of 2019 on the file of the XVII Assistant City Civil Court, Chennai.



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2. The Civil Revision Petitioner is the plaintiff in the suit. He presented O.S. No. 4245 of 2019 seeking for the relief of permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the property except otherwise in accordance with law.

3. The case of the plaintiff is that he is possession and enjoyment of the property after his predecessor in interest namely one Tmt. Veerammal had been given possession of the property by the Temple as a tenant. He would plead that Veerammal died on 29.07.1993 and thereafter the legal heirs are in possession.

4. Summons was served on the defendant and the detailed written statement was filed by him.

5. According to the defendant, the suit schedule mentioned property was purchased by his son P.Ramachandran from the brother of the plaintiff L.Rishikesan. He would plead that he is in possession and enjoyment of the property from the date of purchase and that the building is owned by his son P.Ramachandran and 3 other persons namely K.Palanivel, Mani and Vijaya.

There is no dispute between the parties that the property belongs to Arulmigu



Arunachaleswarar Temple at Thiruvannamalai.

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6. These fact is being brought forth only in order to state that neither the plaintiff nor the defendant claim title to the property. Both would agree that the property belongs to the aforesaid Temple. Being a suit for injunction, it is the case of the defendants that they are in possession of the property pursuant to the unregistered sale. They sought to mark the document during the course of trial and the plaintiff objected to the same. By the impugned order, the court below permitted the defendant to mark the document. Aggrieved by the same, the present Revision Petition.

7. Heard Mr. R.Sunil Kumar, learned counsel for Mr. K.T.S.Siva Kumar, learned counsel for the petitioner and Mr.D.Gopinathan, learned counsel for the respondents.

8. Mr. R.Sunil Kumar would submit that an unregistered & unstamped sale deed cannot be received in evidence for any purpose. Mr.D.Gopinathan, learned counsel for the respondents would submit that the document while it is not a registered one, it is stamped.

9. The position of law insofar as an unstamped document is concerned,



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has been settled by the Hon'ble Supreme Court of India in *Avinash Kumar Chauhan -vs- Vijay Krishna Mishra* reported in (2009) 2 SCC 532. The Court has laid down that an unstamped document cannot be received for any purpose. A perusal of the document which has been produced by the plaintiff would show it is not a case of an unstamped document but it is a case of insufficiently stamped document. An insufficiently stamped document would necessarily have to suffer the proceedings under Section 33 of the Indian Stamp Act, 1899 and would have to be impounded before the matter can be proceeded further. Mr.D.Gopinathan would submit that his client is ready for the document to be impounded and that he will also pay the necessary penalty charges that may be levied by the Court.

10. Insofar as the plea of Mr. R.Sunil Kumar that an unregistered document cannot be received in evidence, I am unable to accept the same. By virtue of the proviso appended to Section 49 of the Registration Act, an unregistered document can be received for “collateral purpose” for which the document has been executed. The purpose for which the document has been produced in the present suit is not for claiming title under the document but, in order to prove that the defendants are in possession of the property. Such a requirement would obviously be collateral to the main purpose i.e., sale.



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11. Mr. D.Gopinathan, learned counsel for the respondents would refer to the judgment in ***Bondar Singh and others -vs- Nihal Singh and others*** reported in **2003 (2) CTC 635** to plead that an unstamped unregistered sale deed can be utilised for the purpose of the suit.

12. A careful perusal of the facts in the above judgment would show that it was a suit which had been presented for declaration that the defendants are claiming title by adverse possession. They pleaded that they had taken possession of the property pursuant to an unregistered unstamped document. It was in those circumstances that the Court held that the document can be received in evidence because the defendants entry into the property is based on the said document. However that judgment cannot be stretched to include a case where the plaintiff is claiming that he had purchased the superstructure of the property from the brother of the plaintiff. Since the plaintiff has objected to receive the receipt of the document even at the time it had been tendered, Section 36 of the Indian Stamp Act, 1899 would also not operate. Therefore, while confirming the order of the learned Judge dated 31.07.2024, there shall be direction to the Trial Court to impound the document and collect the deficit stamp duty and penalty from the defendants.

13. With the above observations, the docket order dated 31.07.2024 in



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O.S. No. 4245 of 2019 passed by the XVII Assistant City Civil Court stands confirmed. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
pal/kmk

To

The XVII Assistant City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.,

pal

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