BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

C.R.P.(MD)(PD)No.643 of 2021
and
C.M.P.(MD)No.3500 of 2021

1.Chittammal
2.Mahalingam ... Petitioners

-vs.-

1.Sonai
2.Eswaran
Lingan @ Lingam
3.Angalaeshwarai ...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed in I.A.No.264 of 2020 in O.S.No.81 of 2012 on the file of the District Munsif Court, Periyakulam, dated 07.01.2021.

For Petitioners :Mr.B.Muthukarthikeyan
For Respondents :Mr.R.Shankar Ganesh
for M/s.Dictum Law Firm

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ORDER

The Civil Revision Petition has been filed seeking to quash the impugned order passed by the learned District Munsif, Periyakulam, dated 07.01.2021, in I.A.No.264 of 2020 in O.S.No.81 of 2012.

2.The respondents, as plaintiffs, filed a suit in O.S.No.81 of 2012 before the District Munsif Court, Periyakulam, for a declaration to declare the sale deed, dated 27.03.2012 as null and void and for other injunctions. It is the case of the plaintiffs that the first plaintiff has purchased the suit schedule property from one Ramathaver and his sons Muthiah and Kanthan, by way of a registered sale deed, dated 17.02.1986. Thereafter, the first plaintiff has sold the suit schedule property to one Ganesan on 16.05.1989, who in turn, sold the suit schedule property to the third plaintiff on 17.08.1989. Subsequent to which, the third plaintiff has divided the suit schedule property into two halves and settled the suit Item No.1 in favour the first plaintiff by way a registered settlement deed, dated 23.09.2011 and settled the suit Item No.2 in favour of the second plaintiff by way a registered settlement deed, dated 23.09.2011.

3.Since the documents executed by the first plaintiff in favour of Ganesan and the documents executed by Ganesan in favour of the third plaintiff were unregistered, the plaintiffs filed an application in I.A.No.I.A.No. 264 of 2020 in O.S.No.81 of 2012 to impound those documents and to mark the same during evidence.

4.The defendants have objected to the application by contending that the documents alleged to have been relied upon by the plaintiffs are unregistered documents and as per Section 17(**1**) of the Registration Act, a property, which is worth more than the value of Rs.100/- has to be registered and the documents, which are not registered, as per the Registration Act, cannot be marked before the Court. The defendants further contended that the plaintiffs have filed the said application only to protract the proceedings and seeks dismissal of the said application.

5.The trial Court by taking note that the unregistered documents contain the value of Rs.3.00/- and Rs.2.50/- stamp duty and there is no impediment for the said documents to be marked as documents in the suit with conditions

Challenging the said order, the defendants have filed the present Civil Revision Petition.

6.The learned Counsel for the petitioners contended that as per Section 17(1) of the Registration Act, 1908, specifically states that a property, which is worth more than the value of Rs.100/-, has to be registered as document, viz-a-viz., by referring to Section 49 of the Registration Act, 1908, the learned Counsel contended that it relates to the effect of non registration of document. Admittedly, the trial Court has failed to taken into consideration Section 17(b) and Section 49 of the Registration Act, 1908. The learned Counsel further contended that it is nothing but of circumventing not only payment of stamp duty, but also to usurp the property, as the documents are unstamped sale deeds, which cannot be relied upon.

7.The learned Counsel for the petitioners/defendants relied upon a judgment of this Court reported in ***2020 (1) CTC 47*** between ***Thangamuthu and others vs A.Jeyaraj***, wherein, a learned Single Judge has held as follows:

> *10. Eventhough the un-registered sale deed has been marked as Ex.A1, if the document is inherently inadmissible, it*

can be objected, even at the later point and failure to object to its admission, when it was marked, would not make it automatically admissible.

....

12. It is clear from the judgments that have been cited on the side of the petitioners that a document, which is compulsorily registrable under the Registration Act, cannot be admitted in evidence, unless, it is registered. If a document is inherently bad for non-registration, it cannot be cured by paying deficit stamp duty and penalty. It is even a settled position of law that such documents cannot be looked into even for collateral purposes."

8.The learned Counsel further contended that without considering the same, the trial Court has simply allowed the application without assigning any reasons, which needs interference of this Court.

9.*Per contra*, the learned Counsel appearing for the respondents/plaintiffs contended that the application was filed only to impound the above documents and as per Section 35 of the Indian Stamp Act, 1899, the Registering Authority has right to register the document after making an application by the author of the document to make necessary deficit stamp duty. The learned Counsel for the respondents further submitted that since the documents, which are to be marked, are more relevant to the suit, non marking of those documents will cause irreparable loss to the respondents/plaintiffs and he sought for dismissal of this petition.

10.The learned Counsel for the respondents/plaintiffs relied upon the order passed by this Court in ***C.R.P.No.4201 of 2022***, dated 10.04.2024, between ***E.Venkatesan (Died) and others vs Thenmozhi,*** wherein, a learned Single Judge of this Court had held as follows:

> *"7.It is well settled law that the unregistered sale deed cannot be relied upon for sale purpose, however as per proviso of Section 49 of Registration Act, the unregistered documents can be received for collateral purpose. In this case, the trial Court has only impounded the document and sent for collection of penalty of stamp duty and not marked the document as exhibit by admitting the document as evidence. As rightly observed by the trial Court, the objection in respect of the genuineness and admissibility of the document can be raised by the parties at the time of marking of documents and merely because of sending the documents for collection of stamp duty will not amounts to validate the document. Therefore, the order passed only to mere collection of stamp duty would not affect the right of the parties. Since the document has not been marked as evidence, the petitioner herein can raise his objection at the time of marking the documents and it is for the trial Court to consider the objection, if any raised by the parties in accordance with law. Therefore, the order passed by the trial Court does not warrant interference. Hence, the present Civil Revision Petition has no merits and the same deserves to be dismissed."*

11.Heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents.

12.The only point for consideration is whether the respondents/plaintiffs has made out a case with regard to the impounding the unregistered sale deeds, dated 16.05.1989 and 17.08.1989.

13.It is not in dispute that when the document's values more than Rs.100/-, the said document has to be registered as per Section 17(b) of the Registration Act, whereas, the said documents in question are not registered and only a value of Rs.3.0/- and Rs.2.50/-, respectively, were affixed in the said document. Similarly, when a document is not registered as per Section 49 of the Registration Act, then the value of the document cannot be taken into consideration. However, an argument was advanced by the learned Counsel for the respondents/plaintiffs that in view of Section 35 of Indian Stamp Act, 1899, it is always open to the Registering Authority to claim the deficit of stamp duty from the respondents/plaintiffs.

14.Though the documents, dated 16.05.1989 and 17.08.1989 and the application to impound the aforesaid documents was filed before the trial Court on 15.10.2020, the learned Counsel for the respondents/plaintiffs could not give any reason for the unexplained delay and such an application cannot be allowed to impound the documents on the request made by the respondents/plaintiffs.

15.The learned Counsel for the respondents/plaintiffs contended that there are two gift deeds in favour of the first and second plaintiffs, where, the above documents, which has been referred to be impounded, confers title on the third plaintiff without registration by the competent authority.

16.The power under Section 49 of the Registration Act, 1908, reads as follows:

> *"49. Effect of non-registration of documents required to be registered.—No document required by section 17 1 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall— (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: Provided that an unregistered document affecting immovable*

*property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 2 , 3 *** or as evidence of any collateral transaction not required to be effected by registered instrument.]"*

17.It is to be noted that if an unregistered document to be marked as a document is different from a document to be impounded by the plaintiffs. Marking of a document is different, relying on a document is different.

18.It is for the sake of convenience, the meaning of "*impounding*" as found in Blacks Law Dictionery is extracted hereunder:

"1.To place (something, such as a car or other personal property) in the custody of the police or the Court, often with the understanding that it will be returned intact at the end of the proceedings.

"2.To take and retain possession of (something such as a forged document to be produced as evidence) in preparation for a criminal possession."

19.The meaning of "*impound*" as found in Oxford Advanced Learner's Dictionar (New 9th Edition) is extracted hereunder:

"Impound: Something (of the police, courts of law

etc) to take something away from somebody, so that they cannot use it."

20.The learned Counsel for the petitioners/defendants relied on a judgment of this Court in ***C.R.P.(MD)No.1493 of 2011***, dated 02.06.2020, between ***Amertham vs Thannace and another***, wherein, the learned Single Judge has held as follows:

> *15.After referring to the judgments above extracted, the learned Counsel appearing for the petitioner submitted that the unregistered sale deed dated 25.11.1973 can be received and marked for proving collateral purpose, namely, the possession of the property by the petitioner. The learned Counsel then relied upon few judgments of this Court and submitted that the unregistered document can be impounded for collection of stamp duty and penalty and relied upon for collateral purpose. In the case of Thailammai and others v. Karuppanan and others reported in 2008 (2) CTC 11, this Court held that after payment of stamp duty and penalty, the document could be marked and relied upon for a collateral purpose. In yet another judgment of the learned Single Judge of this Court in the case of M.Periyakaruppan and another v. Nachiyappan and another reported in 2008-4-L.W. 165, after referring to Section 33 of the Stamp Act, it is held that it is the duty of the Court, at the time of marking any document to assess the sufficiency of the stamp duty paid. It is further observed that if a document is unstamped or insufficiently stamped and unregistered, it is the duty of the Court to impound and issue necessary direction in that regard so that on payment of necessary stamp duty and penalty, the Court could mark it subject to its admissibility. He also relied upon another judgment of the learned Single Judge of this Court in the case of Navinraj v. Gnanasekar and others reported in 2017 (2)*

MWN (Civil) 165 wherein it is observed that the Court must not refuse to admit merely because an objection has been raised by the parties, in stead, it must collect stamp duty and thereafter Court may record objections and defer its opinion thereon at judgment stage. In that case, the learned Judge set aside the order of the trial Court refused to admit the document and directed the trial Court to impound the document to concerned Collector for adjudication as envisaged under Section 38 (2) of the Stamp Act and to keep the suit in abeyance till the trial Court receives the report. On the basis of various judgments relied upon by the petitioner, it was suggested that the petitioner is willing to pay stamp duty and penalty once the document is referred to the Collector concerned in terms of Section 38(2) of the Stamp Act and then to permit the petitioner to mark the same for collateral purpose as explained in various judgments of the Hon'ble Supreme Court."

21.In this above order, this Court has taken note that there is no impediment to impound the document and thereafter, to mark the same and it is for the trial Court to valuate the evidence of material at the time of marking the document. It is to be noted that the plaintiff had obtained a gift deed, dated 23.09.2011, in which the unregistered sale deed has been referred and by virtue of the said document, the title has been transferred to the respondents/plaintiffs through gift deed.

22.This Court feels that there is a substantial force in the arguments advanced by the petitioners/defendants and in view of the categorical finding of this Court in ***Thangamuthu's*** case (referred supra), the order passed by the learned District Munsif, Periyakulam, dated 07.01.2021, in I.A.No.264 of 2020 in O.S.No.81 of 2012. is set aside and the Civil Revision Petition is partly allowed. As the suit is of the year 2012, the trial Court is directed to conclude the trial within a period of one year from the date of receipt of a copy of this order. The trial Court is at liberty to consider all the submissions of the plaintiffs and the documents be marked with objection, if any and its admissibility of documents, which are in dispute before the Court, the trial Court shall evaluate the evidence on the basis of the documents marked on either side. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2024

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

The District Munsif, Periyakulam.

N.SENTHILKUMAR, J.

cmr

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