



C.R.P.(MD)No.1464 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.02.2024

Delivered on : 22.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1464 of 2019

and

C.M.P.(MD)No.7755 of 2019

R.Indira

: Petitioner/2nd Respondent/
2nd Defendant

Vs.

1.P.R.Subramaniyan

2.M.I.Sheik Moideen

3.A.Posalan

: Respondents 1 to 3/Petitioners/
Plaintiffs

4.R.Arunachalam

5.R.Visalakshi

6.R.Deivanai

7.N.Deivanai

C.T.Chittal (Late)



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8.Deivanai

9.Ramanathan

10.Chidambaram Chettiyar

: Respondents 4 to 10/
Respondents 1, 3 to 9
Defendants 1, 3 to 9

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order made in I.A.No.58 of 2018 in O.S.No.86 of 2014, dated 06.03.2014 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi and set aside the same.

For Petitioner : Mr.T.Antony Arul Raj

For Respondents : Mr.A.R.Kannappan, for R1 & R2

: No Appearance, for R3.

:R4 to R9 dispensed with memo filed

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.58 of 2018 in O.S.No.86 of 2014, dated 06.03.2014 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, permitting the plaintiffs to pay stamp duty with penalty for an unregistered sale deed, dated 22.08.2002.



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2. The respondents 1 to 3 as plaintiffs have filed the suit in O.S. No.86 of 2014 against the revision petitioner and other respondents claiming permanent injunction restraining the seventh defendant and their men from interfering in any manner with the possession of the suit property held by the plaintiffs 1 and 2. The defendants have filed the written statement and are contesting the suit.

3. Pending suit, the plaintiffs have filed an application under Section 151 of C.P.C, seeking orders to permit the plaintiffs to pay the stamp duty with penalty for an unregistered sale deed, dated 22.08.2002. The respondents have filed a counter affidavit raising serious objections. The learned Principal District Munsif, after enquiry, has passed the impugned order, dated 06.03.2019 allowing the petition. Aggrieved by the impugned order, the second defendant has preferred the present revision.

4. The case of the plaintiffs is that the suit property is a portion of vast extent of property in T.S.No.429 in TS ward 3 TS Block 12 within Karaikudi Municipal Limits belonging to Karaikudi Nattars 100 Aal



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Jeevitha Pangudars; that the Karaikudi Nattars Aal Jeevitha Pangudars and the respondents/plaintiffs have been in successive possession and enjoyment of different portions of the said common lands without division of the same among them by metes and bounds; that the suit property had been in possession and enjoyment of the Ayyachami Ambalam father of the third plaintiff, who is a Karaikudi Nattar; that the said Ayyachamy Ambalam during his life time executed a Will, dated 14.12.1975 bequeathing his possessory title to the suit property in favour of his son third plaintiff A.Posalan; that after the demise of the said Ayyachami Ambalam, the Will came into force and the suit property came into possession and enjoyment of the third plaintiff; that the management of the common estate was taken by Karaikudi Vallamba Nattar Nala Sangam and the enjoyment of the Karaikudi Nattars of different portions of common estate was taken note of and a record was prepared in which, the suit property was shown as Plot Nos.141 and 55 in T.S.No.429; that the third plaintiff delivered the possession of the suit property to the first plaintiff, who is also a Karaikudi Nattar for valuable consideration on 22.08.2002 and executed an unregistered document acknowledging such delivery of possession and since then the first plaintiff has been in



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possession and enjoyment of the same by enclosing the said property with diamond wire fencing resting on stone pillars and by raising a shed; that the first plaintiff let out the shed in the suit property to the second plaintiff for running his hardware business therein and that the second plaintiff has been in physical possession and enjoyment of the suit property whereas the first plaintiff has been in constructive possession and enjoyment of the suit property.

5. It is the further case of the plaintiffs that the defendants, who are the strangers to the suit property and not the members of the legal heirs of Karaikudi Nattars, have been attempting to disturb possession of the suit property from 19.05.2014 onwards; that the complaints to the Police were of no avail and parties were directed to seek remedy in a Civil Court and that therefore, the plaintiffs were constrained to file the above suit claiming permanent injunction.

6. The defence of the second defendant is that the mother of the second defendant Visalakshi Achi has purchased the suit property vide sale deed, dated 08.04.1969 for valuable consideration from Ayyachami



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Ambalam and his sons including the third plaintiff; that the said Visalakshi Achi had been in possession and enjoyment of the property since her purchase and after her demise on 29.11.1996, the second defendant and other legal heirs of the said Visalakshi Achi have become jointly entitled to the estate of Visalakshi Achi; that since there arose some disputes among them, a partition suit in O.S.No.8 of 2004 came to be filed on the file of the Sub Court, Devakottai and as per final decree passed therein, all legal heirs have been allotted to their due shares and are in separate possession and enjoyment of their respective portions including the suit property; that the said Ayyachami Ambalam or his son including the third plaintiff, after sale to Visalakshi Achi had no right to reconvey the suit property to any person; that the plaintiffs contention that the said Ayyachami Ambalam had bequeathed his possessory title to the suit property to the third plaintiff vide Will dated 14.12.1975 and after his demise, the third plaintiff had executed a sale deed, dated 22.08.2002 and handed over the possession of the suit property to the first plaintiff and that the plaintiffs 1 and 2 have been in possession and enjoyment of the property are all false and untenable; that the documents filed by the plaintiffs in support of their alleged possessory title and enjoyment of the



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suit property are all sham and fabricated documents created for the purpose to extort illegal money from the defendants and that the plaintiffs have no cause of action to file the suit.

7. The plaintiffs' case in the affidavit filed in support of the petition in I.A.No.58 of 2018 is that the first plaintiff has purchased the suit property measuring 24 cents from the third plaintiff for valuable consideration vide sale deed, dated 22.08.2002; that the third plaintiff handed over the possession of the suit property to the first plaintiff and the first plaintiff has leased out the property to the second plaintiff; that since the sale deed, dated 22.08.2002 is an unregistered document, the first plaintiff could not mark the document; that the first plaintiff is ready and willing to pay the required stamp duty; that since the sale deed is unregistered, the same can be marked to prove the collateral purpose; that no prejudice would be caused to the defendants, if the document is admitted in evidence, after payment of stamp duty and that the plaintiffs will be put to irreparable loss and hard ship, if the document is not permitted to be marked and that therefore, the first plaintiff may be permitted to pay the stamp duty for the sale deed, dated 22.08.2002.



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8. The defendants have filed a counter statement stating that they have also taken a stand that the documents relied on by the first plaintiff are created and fabricated documents; that the stamp paper for unregistered sale deed, dated 22.08.2002 was purchased in the name of one Muthu Palani and the stamp papers were not purchased either in the name of the vendor or in the name of purchaser; that the Registrar Office has sent a reply to the defendants, in pursuance to their application under RTI; that the said stamp paper was not sold to Muthu Palani; that since the plaintiffs have committed forgery and created the documents, the question of paying stamp duty for the said document does not arise at all; that the plaintiffs cannot be permitted to mark unregistered sale deed as the plaintiff is claiming ownership over the suit property and that the defendants will be put to irreparable loss and hardship, if the petition is allowed.

9. It is shocking to notice the way in which, the learned District Munsif has passed the impugned order. The learned District Munsif, after referring the averments of both parties and the preamble portion as well as



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annexure portion in vernacular language, four line order came to be recorded in English and the said order is extracted hereunder :

“Records carefully perused. Petition & Counter averments considered. In the interest of justice an opportunity to be given to the petitioner to prove his case. The genuinity of this petition is challenged by the respondent. This Court is of the view that it will be considered after hearing the both sides in the above suit. Hence petition allowed.”

10. Considering the affidavit averments of the first plaintiff, it is very much clear that he wanted to mark the unregistered sale deed, dated 22.08.2002 and for the purpose of marking, he wanted to pay stamp duty with penalty. Whether the unregistered sale deed, dated 22.08.2002 can be admitted in evidence is the only point required to be considered.

11. The learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in ***Bondar Singh and others reported in Nihal Singh and others*** reported in ***2003 (2) CTC 635***, wherein the plaintiffs therein has claimed title to the suit property on the



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basis of the plea that they had become its owners by adverse possession based on unstamped and unregistered documents; that when the admissibility of the said document was questioned, the Hon'ble Supreme Court has reiterated the legal position that an unregistered and unstamped sale deed, even though not admissible in evidence, can be looked into for collateral purposes.

12.The learned counsel for the revision petitioner has relied on the decision of this Court in ***Saritha Vs. M.A.Shanmugham and others*** reported in **2022 (3) CTC 862**, wherein a learned Judge of this Court, after referring to the provisions of Indian Stamp Act and Registration Act, has listed out the following conclusions:

(i) An unstamped or inadequately stamp document cannot be admitted in evidence for any purpose in accordance with Section 35 of the Indian Stamp Act, 1988 unless it is properly stamped.

(ii) It can be stamped and admitted in evidence provided, penalty under Clause (a) of Section 35 of the Act, is paid.



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(iii) A document which creates or assigns any right either in the present or in the future in any immovable property has to be compulsorily registered under Section 17 of the Registration Act, 1908.

(iv) A document which has to be compulsorily registered cannot be received in evidence with respect to any transaction relating to that particular property mentioned in the document in view of the prohibition under Section 49 of the Registration Act, 1908.”

13. The learned Judge has held that the unstamped and unregistered Muchalika can never be the basis for seeking any right in a judicial forum and the same cannot be admitted in evidence and cannot be considered as the basis for seeking right, title and interest. Recently, this Court had an occasion to consider a similar issue in ***D.Ramasmy and another Vs. C.Thangavel and another*** in C.R.P(MD)No.1634 of 2022, dated 02.02.2024 and the relevant passages are extracted hereunder :



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“21. A learned Judge of this Court, in the case of **Thangamuthu Vs. A.Jeyaraj** reported in (2020) 1 CTC 47 (Mad), has held that if a document is bad for non-registration, it cannot be cured by paying stamp duty and penalty and that such documents cannot be looked into even for collateral purposes and the relevant passage is extracted hereunder;

“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.”

22. In **Thangamuthu's** case referred above, **Hon'ble Mr.Justice N.Anand Venkatesh**, after referring to three judgments of the Hon'ble Supreme Court in **S.Kaladevi Vs. V.R.Somasundaram and others** reported in 2009 (2) MLJ 361, **Sita Ram Bhama Vs. Ramvatar** reported in 2018 (3) MWN (Civil) 206 and **Avinash Kumar Chauhan Vs. Vijay Krishna**



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Mishra reported in (2009) 3 MLJ 409, opined that such unregistered documents cannot be looked into even for collateral purposes.

....

24. Considering the above, the legal position is well settled that even an unregistered and unstamped document can be received in evidence to prove a collateral purpose, provided stamp duty is paid with penalty. In Thangamuthu's case referred above, the proviso to Section 49 of the Registration Act was not taken note of and in view of the legal position settled by the Hon'ble Supreme Court in the decisions referred therein, the decisions in Solai's case and Thangamuthu's case, above referred can only be treated as per incuriam.

25. In the case on hand, though the revision petitioners have been alleging that they wanted to mark the documents for proving the collateral purpose, they have nowhere whispered as to what was the collateral purpose. As rightly contended by the learned counsel appearing for the respondents, it can easily be inferred that they wanted to show that the lease was extended



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for a period of 15 years and to show the advance amount paid by them. Admittedly, it is not for showing the character of possession, as the revision petitioners have themselves admitted that they have become tenants under the previous owner Somasundaram and that the respondents, by admitting the tenancy, have claimed eviction. As rightly contended by the learned counsel appearing for the respondents, the period of tenancy is a main clause of the tenancy agreements and as such, by no stretch of imagination, can be considered as a collateral purpose. Even if stamp duty is paid with penalty, in the absence of any collateral purpose, the same cannot be received in evidence.

14. In the case on hand, as already pointed out, the plaintiffs wanted to prove their alleged possessory title through the unregistered document dated 22.08.2002 and as such, by no stretch of imagination, the same can be considered as a collateral purpose.



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15. Regarding the observation of the learned District Munsif that the said aspect can be considered after hearing the both sides in the above suit, the Hon'ble Supreme Court in ***Bipin Shantilal Panchal vs State Of Gujarat and another*** reported in ***AIR 2001 SCC 1158***, has made it clear if the objection relates to deficiency of stamp duty of a document, the court has to decide the objection before proceeding further and the relevant passage is extracted hereunder :

“14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection



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relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)”

16. Moreover, as already pointed out, the learned District Munsif, without any discussion and without assigning any reason, has passed a cryptic order, allowing the petition. In view of the legal position above referred, this Court has no hesitation to hold that the impugned order is legally unsustainable and the same is liable to be set aside.

17. In the result, the Civil Revision Petition is allowed and the impugned order made in I.A.No.58 of 2018 in O.S.No.86 of 2014, dated 06.03.2014 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, is set aside. The petition in I.A.No.58 of 2018, stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The Principal District Munsif cum Judicial Magistrate,
Karaikudi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P.(MD)No.1464 of 2019
and
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Dated : 22.03.2024