IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2025

CORAM:

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN
CRP.No.4215 of 2025
and CMP.No.21691 of 2025

1.Mohan
2.Kumar
3.Rani ... Petitioners / Defendants 1, 3 & 4

vs.

1.S.Ganesan .... Respondent No.1 / Plaintiff
2.Pannerselvam .... Respondent No.2 / Defendant 2

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decreetal order passed in I.A.No.4 of 2024 in O.S.No.57 of 2022 on the file of the District Munsif Court, Nagapattinam dated 18.06.2025 and to set aside the same.

For Petitioners : Mr.A.Sundara Vadhanan

For Respondents : Mr.S.Parthasarathy

ORDER

The unsuccessful defendants 1, 3 and 4 have preferred this Civil Revision Petition. The plaintiff, namely one Ganesan has filed a Suit in O.S.No.57 of 2022, on the file of the District Munsif Court, Nagapattinam seeking for the relief of Declaration and for Permanent Injunction. The defendants have filed their written statement and necessary issues were framed. The plaintiff examined himself as PW1 and the case was posted for cross examination of PW1 on 27.08.2024 and at that stage, the plaintiff has filed an application in I.A.No.4 of 2024 in O.S.No.4 of 2024 under Section 151 CPC to send the unregistered sale deed for assessment for stamping and for payment of penalty. Upon hearing either side, the Court below, vide order dated 18.06.2025, allowed the application on the ground that while marking the documents the defendants can raise their legal objections and if the documents is sent for assessment and stamping and for payment of penalty, no prejudice would be caused to the either side. Aggrieved over the same, the defendants have preferred the present Civil Revision Petition.

2. The learned counsel appearing for the revision petitioners would submit that the plaintiff is claiming title based on unregistered sale deed which is now

sought to be stamped, when the document requires registration, the impounding of the document will not validate the registration. When the document to be stamped is against the statutory provisions of Registration Act, whether the collection of stamp duty as per Stamp Act can be permissible. When the document is under challenge in the suit by the defendants / revision petitioners herein in the written statement, based on the same, the issue is also framed, whether the proceedings to impound the document for the purpose of paying stamp duty, is only to fill up the lacuna in the case of the plaintiff and the same affects the right of defence of the revision petitioners/defendants. The learned counsel appearing for the revision petitioners, in support of his contentions, relied upon the judgment of this Court in ***Amertham v. Thannace and another [2020 (4) CTC 395]*** to show that unstamped unregistered document is inadmissible in evidence. It cannot be relied upon in Court proceedings when the document becomes basis for a person claiming title. Reliance has been placed to yet another judgment of this Court in ***Gajendiran v. V.Seetharaman and 3 others [CRP(PD)No.1610 of 2016 dated 18.02.2021]*** to show that unregistered sale deed cannot be admitted in evidence a the plaintiff claims title and possession based on unregistered sale deed.

3. *Per contra*, learned counsel appearing for the respondents would submit that an unregistered and unstamped document can be marked as evidence for collateral purpose, where the document now sought to be stamped, when the document requires to be registered, the impounding of the document will not affect the rights of the other side. The revision petitioners/defendants can very well raise their objections while marking the documents. The learned counsel appearing for the respondents, in support of his contentions, relied on the following judgments:

(i) V.Ramesh v. V.Nagaraj [CRP(PD) No.4305 of 2022 dated 04.06.2024]

(ii) Kasthuri v. R.Hemalatha [CRP(MD)No.1877 of 2017 dated 01.02.2022]

(iii) Ananda Nayagi v. Kannikumari and Others [CRP Nos.2893 & 2896 of 2022].

4. This Court heard the learned counsel on either side and perused the entire materials available on record.

5. The Suit is filed for declaration of title based on the unregistered sale deed dated 18.08.1990 or in the alternative to declare the plaintiff's title based on

adverse possession. It is seen from the records that the revision petitioners / defendants have denied the execution of the sale deed dated 25.04.1987 executed by one Marimuthu in favour of the plaintiff, is not a valid one. The said Marimuthu is the father of the defendants 1 to 3. The said Marimuthu died on 10.02.2005. The plaintiff is claiming title based on the unregistered sale deed which is now sought to be stamped. When the document requires to be registered, impounding of the document will not validate the registration alone. The document is yet to be marked. It is brought to the notice of this Court that the Court below, vide letter in D.No. 243/2025 dated 20.06.2025 addressed to the District Revenue Officer, Nagapattinam stating that the Court below sending the unregistered sale deed dated 18.08.1990 for assessing the deficit stamp duty penalty. The proceedings to impound the document for the purpose of paying the stamp duty would not amount to filling up the lacuna and the same will not affect the rights of the defendants / revision petitioners, since the revision petitioners/defendants have a right to raise legal objections while marking the documents.

6. It is well settled that impounding will not validate the registration.

Impounding addresses deficiencies in stamp duty under the Stamp Act. Registration is a separate requirement under the Registration Act. Impounding allows an unstamped document to be admitted as evidence upon payment of duty / penalty, but it does not cure the lack of registration which is necessary to confer title. Impounding and paying stamp duty only cures the defect of stamp duty. It does not cure non-registration. A document that is not duly stamped or is unstamped is inadmissible in evidence for any purpose. Impounding is the process which the Court seizes the document and ensures the required stamp duty and penalty are paid. Once paid, the document becomes admissible in evidence. An impounded but unregistered sale deed cannot be used to prove title or ownership. Its utility is limited to being admitted as a evidence for a collateral purpose, such as proving the nature of possession or the fact of a prior agreement, but not for proving the transactions of sale itself.

7. At this juncture it is useful to refer to the decision in ***Omprakash v. Laxminarayan [(2014) 1 SCC 618],*** wherein the Hon'ble Apex Court observed as under:

"From a plain reading of the aforesaid provision (S. 35 of the

Stamp Act), it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with penalty. As we have observed earlier, the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not been paid and, hence, the trial court rightly held the same to be inadmissible in evidence."

8. It was also observed by the Hon'ble Supreme Court in the decision in ***Bipin Shantilal Panchal v. State of Gujarat [AIR 2001 SC 1158]*** that,

"it is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection'. And the Court directed as under: "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."

9. In yet another judgment in ***S. Kaladevi Vs. V.R. Somasundaram [(2010) 5 SCC 401]*** the Hon'ble Apex Court held as under:

"11. The main provision in Section 49 provides that any document which is required to be registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908, Act.

12. Recently in the case of ***K.B. Sahaand Sons Private Limited v. Development Consultant Limited ,(2008) 8 SCC 564,*** this Court noticed the following statement of Mulla in his Indian Registration Act, 7th Edition, at page 189:

"……The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it……"

The Hon'ble Apex Court then culled out the following principles: (K.B. Saha case, SCC p.577, para 334)

"1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

*To the principles above, one more principle may be added, namely that a document required to be registered, if unregistered, can be admitted in evidence, as evidence of a contract in a suit for specific performance.**[Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar, 2018 (7) SCC 639 and S.Kaladevi v. V.R.Somasundaram (2010 5 SCC 401]."***

10. In the decision in ***Kalaivani @ Devasena v. J. Ramu 2010(1) CTC 27,*** it was held that an opportunity should be given to the party who produces the document with insufficient stamp, to pay the deficit stamp duty and penalty so that the document could be exhibited; and that if penalty is not paid, the document should be impounded. It is held as under:

"24. .. It is well settled that even an unregistered document is admissible in evidence for collateral purpose provided it is adequately

> stamped under the Stamp act. If the document is both unstamped and unregistered, as the document in question here, it is no doubt true that it cannot be looked into for collateral purpose also. But such a document should not be thrown out at the threshold itself and an opportunity must be extended to the party who wants to mark the document on his side by directing him to pay the deficit stamp duty along with the penalty upto date, then the document could be admitted in evidence for collateral purpose. If the person does not pay the Court, then the document is to be impounded and sent to the Collector for taking action under the law."

11. In the light of the principles laid down in the aforesited decisions, this Court finds no reason to interfere with the order of the Court below to impound the document for the purpose of paying the stamp duty, as the would not amount to filling up the lacuna and the same will not affect the rights of the defendants / revision petitioners. There is no merit in this petition.

12. In the result, this Civil Revision Petition stands dismissed, confirming the order dated 18.06.2025 made in I.A.No.4 of 2024 in O.S.No.57 of 2022 passed by the District Munsif Court, Nagapattinam. It is always open to the revision petitioners/defendants to raise their legal objections while marking the documents.

No costs. Consequently, connected miscellaneous petition is also dismissed.

08.10.2025

Intex : Yes/No
Internet : Yes/No
Jvm

To
District Munsif Court,
Nagapattinam.

M.JOTHIRAMAN, J.

Jvm

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