

(2009) 11 MAD CK 0162

Madras High Court (Madurai Bench)

Case No: CRP (PD) No. 135 of 2009 and MP No. 1 of 2009

A. Pathrakali

APPELLANT

Vs

R. Senthilkumaran

RESPONDENT

Date of Decision: Nov. 20, 2009

Acts Referred:

- Registration Act, 1908 - Section 17, 49
- Stamp Act, 1899 - Section 2(15), 35
- Transfer of Property Act, 1882 - Section 17

Citation: (2010) 1 LW 177

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: V. Sitharanjandas, for the Appellant; M. Ponniah, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

This Civil Revision Petition is filed against the order dated 9.7.2008 passed in IA. No. 408/2008 in OS. No. 266/2006 by the learned Principal Sub Judge, Madurai.

2. The brief facts, which are essential for the disposal of this Civil Revision Petition, are as follows:

a. The Petitioner/Plaintiff had filed the above said suit for declaration of her title and permanent injunction restraining the Respondent from interfering with her possession and enjoyment of the suit property. The Respondent herein had also filed a suit in OS. No. 441/2006 for declaration that he is the absolute owner of the suit property and for the consequential relief of permanent injunction restraining the Petitioner from claiming any right under her and also from interfering with his possession. An Additional relief to declare the sale deed dated 4.10.1991 registered

in favour of the Petitioner as null and void and unenforceable in law had also been prayed for.

b. In the suit pending in OS. No. 266/2006, the Respondent had filed an application in IA. No. 408/2008 for reception of a document which is stated as "Deed of Delivery of possession" said to have been executed by one M. Chandra Mohan in favour of Alamelu, the mother of the Respondent. It is an unregistered document and the marking of the said document was objected to by the Petitioner, but the court below allowed the said application on the ground that it does not require to be registered. Aggrieved over the same, the Petitioner has filed this Civil Revision Petition.

3. Mr. V. Sitharanjandas, the learned Counsel for the Petitioner submitted that the document produced by the Respondent is not only mere an endorsement evidencing receipt for payment of money, but also it is coupled with delivery of possession of immovable property and therefore, without ascertaining the nature of the document, its admissibility and relevancy, simply admitting the document, which is required to be compulsorily registered is unsustainable and the same is liable to be set aside.

4. To countenance his argument, the learned Counsel for the Petitioner placed reliance on the decision of this Court rendered in the case of [Dinakaran Vs. Venkaesan, Chandrasekaran, Mohan and Banumathi](#), wherein this Court after making a reference to various decisions held that no document shall be admitted in evidence, if it is not properly stamped and if it is already not stamped, then stamp duty should be paid with penalty as prescribed by the Authority. It further held that the court below should call upon the Defendant who want to rely on the document to pay the stamp duty and penalty and then admit the said document in evidence, whether it is for collateral purpose or otherwise after framing necessary issues at the later stage as guided by the Honourable Supreme Court in the case of [Dr. Bipin Shantilal Panchal Vs. State of Gujarat](#).

5. The learned Counsel for the Petitioner also placed reliance on the decision of the Division Bench of this Court rendered in the case of [A.C. Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others](#), wherein it is held that an unregistered and unstamped document of family arrangement cannot be looked into by the court for any purpose.

6. On the other hand, Mr. M. Ponniah, the learned Counsel for the Respondent submitted that even though a document, which is not properly stamped or registered is not admissible in evidence, the same can be looked into for collateral purpose to see the nature of possession of the party who relies upon the said document. He placed reliance on the decisions of the Honourable Supreme Court rendered in the cases of [K.A. Abdul Jaleel Vs. T.A. Shahida](#), and Verendra Nath by P.A. Holder RR. Gupta v. Mohd. Jamil and Ors. 2004 (20) AIC 28 SC in support of his contentions.

7. The rival submissions made on either side are actively considered.

8. It is now well settled that there is no prohibition u/s 49 of the Registration Act to receive an unregistered document in evidence for collateral purpose. But, the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act. Therefore, it is clear that no document shall be admitted in evidence even for collateral purpose, if it is not properly stamped and if already not stamped then stamp duty should be paid with penalty as prescribed by the Authority.

9. The above position of law is well settled in a recent decision of the Honourable Supreme Court reported in the case of Avinash Kumar Chauhan v. Vijay Krishna Mishra 2009 (3) MLJ 409 SC. In paragraphs 18, 21 and 22, it is held as follows:

18. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The Court, therefore, was empowered to pass an order in terms of Section 35 of the Act.

19. ...

20. ...

21. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.

22. The view we have taken finds support from the decision of the Privy Council in AIR 1946 51 (Privy Council) , wherein it was held:

"That the words "for any purpose" in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms.

The said decision has been followed in a large number of decisions by the said Court. In Bhaskarabhotla Padmanabhaiah and Ors. v.B. Lakshminarayana and Ors. AIR-1962-AP-132, it has been held:

9. In this case, the learned Subordinate Judge has observed that what the Plaintiff was trying to prove was not the division in status but to show that the property was divided under the partition deed. In any case, the fact that the document is inadmissible due to want of being stamped is clear. For in AIR 1946 51 (Privy Council) their Lordships of the Privy Council held that the words "for any purpose" in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed

cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms.

It was furthermore held:

10. In the result, I agree with the learned Munsif Magistrate that the document is "an instrument of partition" u/s 2(15) of the Indian Stamp Act and it is not admissible in evidence because it is not stamped. But, I further held that if the document becomes duly stamped, then it would be admissible to evidence to prove the division in status but not the terms of the partition.

In [Sanjeeva Reddi Vs. Johanputra Reddi](#), it has been held:

9. While considering the scope of Section 35 of the Indian Stamp Act we cannot bring in the effect of non Registration of a document u/s 49 of the Indian Registration Act. Section 17 of the Indian Registration Act deals with documents, the registration of which is compulsorily and Section 49 is concerned only with the effect of such non registration of the documents which require to be registered by Section 17 or by any provision of Transfer of Property Act. The effect of non registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But, there is no prohibition u/s 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purpose. It would amount to receiving such a document in evidence for a purpose which Section 35 prohibits. There is nothing in the case of B. Rangaiah v. B. Rangaswamy 1970-2-Andh-WR-181 which supports the contention of the Petitioner. That was a case as pointed out by Kuppaswami, J. where there were two instruments though contained in one document one a settlement in favour of the 4th Defendant therein and other a will. It was therefore held that part of the instrument which constitutes a will did not require any stamp and will be admissible in evidence for proving the bequest contained therein. It was for that reason that the learned Judge said that Section 35 of the Stamp Act has no application to a conviction and sentence where one of the separate instruments relating to one such matters would not at all be chargeable under the Act as in the case before him.

In [T. Bhaskar Rao Vs. T. Gabriel and Others](#), it has been held:

5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on

payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of a instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence.

It was further held:

7. It is now well settled that there is no prohibition u/s 49 of the Registration Act to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid u/s 35 of the Stamp Act.

10. As far as the present case is concerned, the impugned document pressed into service by the Respondent is titled as and it is admittedly an unstamped and unregistered document. It reads thus:

11. Indisputably, the impugned document not only evidences the receipt of entire lease amount by one Chandra Mohan, but also reads that the lease period got expired and the possession of the land had been entrusted over to Alamelu Ammal, the mother of the Respondent. So, not only the receipt of lease amount had been acknowledged but possession of the property had also been transferred. If the Respondent seeks to bring the said document in evidence for the collateral purpose of proving his possession, then it is not admissible in evidence because it is not duly stamped.

12. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose unless the requirements of Proviso (A) the Section 35 of the Stamp Act are complied with.

13. Therefore, I am of the considered view that the Trial Court has committed an error in admitting the document and the said order of the Trial Court is liable to be modified.

14. In the result, this Civil Revision Petition is allowed in part and the impugned order of the Trial Court is modified to the extent that the Trial Court is directed to

ascertain the stamp duty and penalty payable upon the impugned document, then call upon the Respondent to pay the stamp duty and penalty and then admit the document in evidence whether it is for collateral purpose or otherwise and reliability of the said document can be decided at the later stage. No costs. Consequently, the connected MP is closed.