IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: **Tmt. V. Devapriya, B.Sc., M.L.**
District Munsif, Madurantakam

Monday, the 17th day of July, 2023

I.A.No. 7/2023

in

O.S. No. 165/2017

1. Devadoss @ Dhaveedhu (Died)
2. Devasagayam

...Petitioners/Defendants

-vs-

Pradeep Kumar

...Respondent/Plaintiff

This petition coming up before me on 28.06.2023 for final hearing in the presence of, Thiru.R.E.Charles, Counsel for the Petitioners/Defendants and Thiru.N.Ganapathy, Counsel for the Respondent/Plaintiff and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/Defendants under Order XIII Rule 3 read with section 151 of Code of Civil Procedure, praying to reject the Exhibit A-4 and Exhibit A-5, marked on the side of the Respondent/Plaintiff, as inadmissible in evidence.

2.The averments stated in the petition in brief:

The Respondent/Plaintiff had filed I.A.No. 6 of 2022 and the same was allowed in respect of documents No. 4 to 13 and dismissed in respect of documents

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No. 1 to 3, mentioned in the said petition. Thereafter, the PW-1 was recalled and the documents No.4 to 13 were marked as Exhibits 4 to 13 on 14.12.2022. The documents No. 4 and 5 are unregistered documents. At the time of enquiry, the counsel for the Respondent/ Plaintiff had stated that he is ready to pay the stamp duty penalty for the unregistered documents. But the documents are marked as Exhibit A-4 and Exhibit A-5, without disclosing the said fact. Those documents require registration and they are unregistered. Hence the stamp duty and the penalty for 10 times of the stamp duty to be levied, before marking it. The duty is cast upon the court to verify the same before marking the documents. If the stamp duty is not paid, the court can reject those documents, which are inadmissible in evidence.The Exhibit A-4 and Exhibit A-5 are inadmissible documents. Hence this petition.

3. The averments stated in the Counter, in brief:

This petition is not maintainable under law and on facts. There is no necessity to pay the stamp duty penalty for the Exhibit A-4 and Exhibit A-5. The documents are duly stamped and are admissible in evidence. The said documents does not require stamp duty penalty. The above case is posted for cross examination of PW-1 and hence this petition is not maintainable at this stage. This petition was filed to drag on the proceedings. The provision of law in incorrect. There is no merits in the petition. Hence this petition is to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?

5. No witnesses were examined and no Exhibits were marked on both sides.

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6. Heard both side and perused the records.

7. The Petitioners/Defendants had filed the above petition to reject the Exhibit A-4 and Exhibit A-5, on the ground that those documents are inadmissible in evidence, for want of registration. The Respondent/Plaintiff resisted the petition stating that there is no necessity to pay the stamp duty penalty for the Exhibit A-4 and Exhibit A-5. The Petitioners/Defendants had stated that the documents require registration. But had not stated any facts as to why the said documents require registration.

8. According to section 17 (1) (b) of the Registration Act, the non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, shall be registered.

9. The learned counsel for the Petitioners/Defendants relied on the judgement of the Hon'ble High Court, in the case of *A.C.Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others, [2001(1) CTC 112]*, wherein the Hon'ble High Court had held in para 42 as follows:

> " *42 ...III. If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.*
>
> *IV. Whether the terms have been reduced to the form of a document is a question of fact in each case to be determined upon a consideration of the*

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nature of phraseology of the writing and the circumstances in which and the purpose with which it was written.

V. However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazynotions in future, it need not be stamped or registered..."

10. In the judgement relied upon by the learned counsel for the Petitioners/ Defendants in the case of *R.Deivanai Ammal (Died) and another Vs. G.Meenakshi Ammal and others [2004 (4) CTC 208]*, following the above principles, the Hon'ble High Court had come to a conclusion that the family arrangement which was marked as Exhibit B-28, was executed to relinqish the rights and thus had held that the said document has to be duly stamped and registered.

11. In the present case, perusal of the Exhibit A-4 and Exhibit A-5 shows that the recitals in the said documents are with regard to the facts that has been already happened and it does not purports to create, declare, assign or extinguish any present or future rights of the parties, on the date of execution of those documents. The executor of the Exhibit A-4 and Exhibit A-5 had stated in the said document that they are admitting the fact that had been already happened. Therefore this court is of the opinion that as per the guidelines laid down by the Hon'ble High Court, in the case of *A.V.Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and five others, [2001(1) CTC 112],* cited above, the Exhibit A-4 and Exhibit A-5 are in the nature of memorandum evidencing a fact that had been already agreed and acted upon.

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Therefore, in view of the same, this court concludes that the said documents does not require registration.

12. In the judgment relied upon by the learned counsel of Petitioners/Defendants in the case of *Tmt. Indirani Vs. Seetharaman, [2005(4) MLJ 337],* both parties therein had admitted that the disputed document is in the nature of mortgage deed and therefore it requires stamp duty as well as registration and therefore the Hon'ble High Court had directed the trial court to ascertain stampy duty and penalty and collect the same. Therefore the above judgment is not applicable to the present case.

13. The judgment relied upon by the learned counsel for Petitioners/Defendants in the case of, *Hindustan Steel Ltd vs M/s. Dalip Construction Company [1969 AIR 1241],* is with regard to the award and the judgement relied upon by the learned counsel for Petitioners/Defendants in the case of, *Ram Rattan(Dead) By Legal Representatives Vs. Bajrang Lal & Ors [1978 AIR 1393],* is with regard to the Gift Deed and therefore the said judgements are not applicable to the present case.

14. Relying upon the judgments of the Hon'ble Supreme Court, in the case of *Bondar Singh & Ors Vs. Nihal Singh [2004-1-L.W. 706]* and the judgment of Hon'ble Andhra High Court, in the case of *P.M. Anand Babu and Ors. vs. Mir Akbar Alikhan and another [AIR 2004 AP 243],* the learned counsel for the Respondent/Plaintiff submitted that the unregistered documents can be looked into for collateral purpose. In view of the above discussion, since this court concluded that the disputed documents does not requires registration, this court opines that the above judgments are not applicable to the present case.

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15. In the result, this petition is dismissed. No costs.

Typed by me in my laptop, corrected and pronounced by me in open court on this the 17th day of July, 2023

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<u>Petitioners/Defendants side witnesses and documents:</u>

- Nil -

<u>Respondent/Plaintiff side witnesses and documents:</u>

- Nil-

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