

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present: Thiru.D. Ramganes M.A.,B.L.,
District Munsif.

Monday 11th day of November 2019

...

I.A.No. 521/2019

in

O.S.No.282/2008

T. Jegatheesan : Petitioner/Plaintiff

//Versus//

1. Periyasami (died)
2. Pandiyammal
3. P. Dharmaraj
4. P. Siva
5. P. Ganesh
6. Piramila
7. Sathya

: Respondents/Defendants

This petition is filed before this court and it was taken on 07.09.2019 and Advocate Thiru. G. Ramapandian appeared for the Petitioner/Plaintiff and the Advocate Thiru. R. Ganesan appeared for the Respondents/Defendants. This petition came before me for final hearing on 05.11.2019, upon perusing the available material records and having stood over for consideration till this day, today this court delivered the following...

ORDER

The petitioner have filed this petition for U/S 35 of Indian Stamp Act 1899 & Section 151 of CPC to order permitting the petitioner to pay the required stamp duty for the unregistered document dated 16.02.1994 which was produced by PW3 in this court.

1) The Gist of Petition is follows:

The petitioner filed this suit for declaration and injunction against the respondents/defendants. One S. Shankar is the elder brother's son of the 1st defendant Periasamy was examined as PW3. During his evidence, he produced the unregistered

family arrangement dated 16.02.1994 entered into to between S. Seruvakonar the father of PW3 and his brothers Kuppaiyah Konar and Periasamy konar, 1st defendant herein. Since it is an unregistered document, this Hon'ble Court passed an order on 09.08.2019 to received the said unregistered document on payment of deficit stamp fee with a direction to take necessary steps for paying the deficit stamp duty for the above said unregistered document dated 16.02.1994. Accordingly this application is filed for an order permitting to pay the required stamp duty for the said unregistered document produced by PW3. The respondents/defendants have not any objection for the same. Hence this petition is filed.

2) 2. COUNTER AFFIDAVIT OF RESPONDENTS/DEFENDANTS

It is false to state that Servuvakonar, Kuppayakonar and the Periasamy executed and unregistered family arrangement deed on 16.02.1994. The Periasamy did not execute any such unregistered family arrangement deed dated 16.02.1994. The alleged deed is a created one and is not relating to the suit property and not relating to the dispute in this suit. It is the settled position of law that if any unregistered deed which requires to be registered is produced, it is to be impounded by the court and to send it to the Deputy Collector (Stamps) to collect stamp duty. Without admitting the execution of alleged deed dated 16.02.1994, the respondents have no objection to send the deed for collection of stamp duty penalty. It is just and necessary that this court graciously to pass an order to send the alleged deed dated 16.02.1994 to the Deputy Collector (Stamps) for collection of stamp duty penalty.

3) Now the points for consideration is whether this petition has to be allowed or not?

4) Heard Both sides. Perused records. On perusal of records this petition has been filed by the petitioner/plaintiff to permitting the petitioner to pay the required stamp duty for the unregistered document dated 16.02.1994. The learned counsel for the petitioner stated that the above said document dated 16.02.1994 had been entered between the S.

Seruvakonar the father of the PW3 and his brothers Kuppaiah Konar and Periyasamy Konar, 1st defendant herein. Further on the basis of direction given by this court this petition was filed. Hence this petition liable to be allowed. Per contra the learned counsel for the respondent stated that the above such document was created one and is not relating to the suit property and not relating to the dispute in this suit. Further the respondent stated in his counter affidavit such as "It is the settled position of law that if any unregistered deed which requires to be registered is produced, it is to be impounded by the court and to sent it to the Deputy Collector (Stamps) to collect stamp duty without admitting the execution of alleged deed dated 16.02.1994, the respondent have no objection to send the deed for collection of stamp duty penalty"

5) Further in Fausiza S. Kabir (vs) The Secretary, Madurai Hosiery Industries Association, Madurai case, the Hon'ble High Court of Madras at Madurai bench held that regarding the marking of unregistered document, which was reported in 2017(1) TNCJ 473 (Mad) (MB) such as.

Section 35 and 36 Stamp Act, Document – Admissibility

Rental agreement is not properly stamped and it is not registered as it is for more than 11 months. Documents produced for marking by a party cannot be rejected without marking when other side object to same documents has to be marked subject to objection and said objection has to be considered after conclusion of trail and at time of delivery of Judgment. No illegality or irregularity in impugned order – Civil revision dismissed.

Hence in view of the above such facts and circumstances and settled legal position this petition is allowed and the petitioner is permitted to send the unregistered document dated 16.02.1994 for collection of stamp duty penalty.

Accordingly this petition is allowed. No cost.

Dictated to the Steno Typist typed by her directly on the computer, corrected and pronounced by me in the open court this the 11th day of November 2019.

(Sd.D. Ramganesb)
District Munsif,
Vadipatti.

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