

TNRM160003802022



IN THE COURT OF DISTRICT MUNSIF, THIRUVADANAI.

PRESENT: Thiru.D.Manishkumar, B.Sc., B.L(Hons).,
District Munsif,
ThiruvadanaI.

Friday, the 29th day of July 2022

IA.No.65/2021
in
OS No.112/2017

Jesuraj

... Petitioner

Vs

1.Mickel
2.Arul

... Respondents

This petition is coming up before this court on 29.07.2022, in the presence of Mr.S.B.Kannan advocate for the Petitioner, and the presence of Mr.K.Sasikumar advocate for the Respondents, upon perusing the case records and having stood over for consideration till this day, this court hereby delivered the following...

ORDER

This petition has been filed under section 151 of civil procedure code seeking permission to mark unstamped and unregistered documents as evidence after paying sufficient stamp duty.

1. The Averments of the Petitioners:-

The suit is at the stage of continuation of the PW1 chief examination. Documents 3 and 4 which were filed along with the plaint are photocopies. Further the original of the

same was objected to by the defendants since it is unregistered. Those documents are vital to this suit. Petitioner is ready to mark those documents by paying adequate stamp duty. The petitioner will suffer irreparable loss if this petition is not allowed. Hence prayed for permission to mark the original documents by paying sufficient stamp duty.

2. The Averments of Respondent:-

The Respondent has denied that the 3, 4 documents are vital to this suit. This petition is not maintainable in law. The said 3 and 4 documents are not valid as per sec 17 of the Registration Act. Further, the petitioner suppressed with the bad intention that for what purpose do those documents have to be marked. The Said documents cannot be marked with sufficient stamp duty since the Respondent has not admitted it. The 4th document was not executed in stamp paper and was unregistered and the same should not be marked. The petitioner has not mentioned how those documents will be useful for this suit. This petition has been filed with a bad intention to delay this suit and to cause irreparable loss to the Respondents. Hence prayed to dismiss the petition.

3. I have heard the arguments at length from both sides.

4. Point for the determination

Whether the unregistered deed of family arrangement and sale deed can be permitted to mark as documentary evidence on the side of Plaintiff after rectifying the stamp duty as per law?

5. On perusal of the case bundle, it reveals that the petitioner has filed a suit for declaration and consequential injunction against the respondents. Now this petition has been filed under section 151 of CPC seeking permission to mark the original family arrangement deed and sale deed as evidence by paying sufficient stamp duty. In light of the perusal of said documents, it is clear to this court that those are not stamped and unregistered.

6. Here, the learned counsel for the respondents strongly objected to the admissibility of those documents since it is not registered as required by the registration act, and the same is also barred in section 49 of the act, hence should not be marked as evidence. To support his argument, relied on the following decisions from the Hon'ble high court of madras vide

2020(1)MWN(civil)152 and 2019(3)MWN(civil)504.

7. Per contra, counsel for the petitioner argued that those documents are crucial to this suit, hence the petitioner is ready to mark those documents by paying the stamp duty with penalty.

8. In order to decide this petition, it is indispensable to look into relevant provisions vide Section 17(1)(b) of the Registration Act which mandates that any document which has the effect of creating and taking away the rights in respect of immovable property must be registered. Section 49 of the said Act imposes a **bar on the admissibility** of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Registration Act.

9. **Collateral purpose**

- a) According to the provision discussed above, it is clear that document such as sale deed and family arrangement needs to be compulsorily registered since it has the effect of creating and taking away the rights in respect of immovable property and the same cannot be taken as evidence since it is barred by section 49 of registration act. However, there is an exception to the bar, that for **collateral purposes** the said unregistered documents can be received as evidence.
- b) It is well settled in law that unregistered and unstamped documents cannot be marked as evidence. However, once the stamp duty is paid with the penalty for those documents, it will cure the status of unstamped documents into stamped documents and it will not cure the status of non-registration of those documents which are still inadmissible in evidence except for collateral transactions. It is also well settled in law that the Collateral transaction must be independent and divisible from transaction, which requires registration and it should be one, which does not create or extinguish title or interest in immovable property.

10. On perusal of the petition, the petitioner has mentioned in the petition merely that those documents are important in this suit, hence need to be marked. The same is ambiguous

since it is not yet clarified before this court how those unregistered documents are important to this suit while the same is relied on by the petitioner for claiming title over suit property which is entirely barred by the law. Further, there is no clear explanation as to the use of those documents for collateral purposes as well.

11. In view of the reasons stated above, and considering the bare reading of the law, that the unregistered family arrangement and unregistered sale deed can never be the basis for seeking right, title, and interest except for a collateral purpose which is also not explained and Petitioner rely on those documents in his pleadings for claiming title over the suit property, this court is not inclined to allow this petition in the interest of justice.

As a result, the petition is dismissed. No cost.

Dictated to the typist, transcribed by her, corrected, and pronounced by me in open Court, this the 29th day of July 2022.

(Sd.Tr.D.Manishkumar)
District Munsif,
Thiruvadanai.

