

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.

District Munsif, Devakottai

Tuesday, the 01st day of February, 2022

I.A. 5/2021

in

O.S. No. 96/2017

Karupaiah
S/o Kaalipayal

Petitioners/Plaintiff

Vs

1. Subramaniyan
2. Shanmugam
3. Kaliammal

Respondents/Defendants

This petition having been finally heard virtually on 01.02.2022 after providing due opportunities to both the sides during the suspension of physical hearing owing to spurt in Omicron Variant of Covid 19 cases by the Hon'ble High Court of Madras Vide R.O.C. No. 23991-C/2020/C3 dated 02/01/2022. The Petitioner was given sufficient opportunities, the Counsel on record Mr. Sekar have expressed his unwillingness to join the virtual hearing when contacted and in the presence of Mr. B. Siva, the learned counsel for the Respondents and upon hearing the arguments of the Respondent Counsel, and after perusal of the entire available material records, and having stood over for my consideration till this day, this Court delivers the following:

ORDER

The petition was filed by the Petitioner/Plaintiff under Sections 23, 31 and 32 r/w Section 151 of CPC.

2. The averments set out in the petition/affidavit filed by the petitioner is as follows:

2.1 This petitioner states that he belongs to sithanur Village and engaged in cultivation of paddy and has properties including ancestral properties. The petitioner states that his brother Muthiah had instituted a partition suit before this Court in O.S. No. 105/1988 and it was disposed on 26/03/1991. The decision of the Court is that the petitioner's brothers Mr. Muthaiah and Mr. Poosaidurai were entitled for 1/3rd share over the suit property. The Plaintiff states that one of the brothers Mr. Poosaidurai had executed his share of property in favor of the plaintiff and in the presence of a Notary Public on 11/11/2003, which is said to be an unregistered document. The Petitioner states that he is willing to pay the stamp duty penalty on the file of Sub-Registrar Devakottai for the said unregistered document. The petitioner prays for allowing this petition, otherwise it may lead to irreparable loss and allowing of this petition will not cause any prejudice to the Defendants.

3. The averments set out in the counter filed by Respondents are as follows:

3.1 The Respondents/Defendants denies all the contention of the Petitioner/Plaintiff. The defendants states that the petitioner and the defendants

were relatives. The respondents contend that a preliminary decree was passed in O.S. No. 105/1988 on 26/03/1991 and in the decree the Court has stated that the whereabouts of Poosaidurai was not known to anybody since his 10 years of age as he had left the village. The respondent's further states that the Final Decree was also passed by the Court on 03/02/2000 in I.A. No. 117/1996 and affirmed that the whereabouts of the Poosaidurai was unknown and his share have to be divided into two equal halves amongst the plaintiff and defendants. The Respondents deny that Poosaidurai had executed an unregistered sale deed for which the plaintiff is willing to pay the stamp duty. The defendants states that the document is a forged one. The defendants further contend that when Poosaidurai was not available for over 30 years in the village, it is unbelievable that he had executed a sale deed.

The respondents have relied upon the following citations:

1. *Duraisamy Naidu and Others Vs Ramakrishnan and Others (2007) 1 MLJ 424.*
2. *Arumugam @ Babu Vs A. Durairaj and others 2019 (1) CCC 385 (Mad)*
3. *2017 (1) TNLJ 215*
4. *2017 (1) MWN 74*
5. *2017 (4) TLNJ 353*

The respondent states that **Section 17 of the Registration Act** deals with documents, the *registration* of which is compulsory and The effect of non-*registration* is that such a document shall not affect any immovable property covered by it.

4. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

5. No oral or documentary evidences were adduced on the side of the Petitioner/Plaintiff.

6. No oral or documentary evidences were adduced on the side of the Respondents/Defendants.

7. Arguments heard from the respondents. Adequate Opportunities were provided to the Petitioner, but didn't turn up. The Counsel for defendants have contended by reiterating the averments made in the petition, affidavit and counter.

8. This Court is of the considered view that the main difference between the provisions of The Indian Stamp Act, 1899 and The Registration Act, 1908 from effect of not duly stamped and not registered are while considering the effect of not duly stamping an instrument, the effect of non-registration mentioned in Sec 49 The Registration Act is not relevant. It is because there is no total bar for admitting unregistered document if duly stamped, since it can be used for collateral purpose or other purposes specified in Sec 49, though u/s.49 an unregistered document (when compulsory to register) is inadmissible for main purpose to affect any rights in immovable property and the terms and conditions in the instrument. Whereas an unstamped document is not at all admissible (even for collateral purpose) unless it is duly stamped since, there is a total bar to admit any part of the instrument in evidence.

9. This Court reads the provisions of the Indian Stamp Act under which the present petition has been filed:

Section 23: Instruments reserving interest - Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had not mention of interest been made therein.

Section 31: Adjudication as to proper stamp - (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than [fifty naye paise]) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

Section 32: Certificate by Collector - (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and (a) the Collector determines that it is already fully stamped, or (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

Section 151 of CPC: Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

10. This Court considers that Section 151 is not a substantive provision which creates or confers any power or jurisdiction on Courts. It merely recognizes the discretionary power inherent in every Court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

11. Moreover, it is pertinent to state that the Petitioner has filed this present petition under Sections 23, 31 and 32 which seems to be improper with respect to his prayer.

12. Section 35. Instruments not duly stamped inadmissible in evidence, etc.
- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

13. This Court is of the opinion that the petitioner has not shown any bonafide reason to substantiate his claim of permitting to pay stamp duty penalty as the suit is pending since 2017 and the petition was filed with incorrect provision of the Indian Stamp Act and there is no merit in this application.

14. This Court relies on the following citations:

***In Sanjeeva Reddi v. Johanputra Reddi AIR 1972 AP 373 it has been held:
(AIR p. 375, para 9)***

(i) While considering the scope of Section 35 of the Stamp Act we cannot bring in the effect of non-registration of a document under Section 49 of the Registration Act. Section 17 of the Registration Act deals with documents, the registration of which is compulsory 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 the 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 under Section 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.

(ii) No instrument chargeable with duty is admitted in evidence for any purpose or can be acted upon, registered or authenticated unless such instrument is duly stamped.

15. Whether stamp duty is payable on draft sale deed?

T.Jai Singh Vs Mrs. Pyaro Kaur And Others (AIR 2014 Hyderabad 19)

Now comes the question of application of Section 35 of the Stamp Act: The purpose underlying the provision is to ensure that no document, which is executed with on an improper or deficit stamp, is received in evidence. Here again, one has to keep in view, the fact that the question as to whether a document was executed on a proper stamp paper, can be verified, if only the execution part of it, has already taken place. If the document, irrespective of its description is yet to be

executed, the question of its being subjected to any stamp duty, or levying deficit stamp duty much less penalty, does not arise. The true test would be as to whether on payment of the deficit stamp duty, the document can fit into the description of a document, under the relevant entry in Schedule I-A of the Stamp Act. A draft sale deed does not figure anywhere in Schedule I-A. Therefore, its being subjected to stamp duty and penalty, at this stage, is a step, beyond the scope of the Stamp Act.

Hence, this Court is inclined to dismiss this petition in the interest of Justice. No order as to costs.

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 1st day of February 2022.

**District Munsif,
Devakottai**

Annexures:

List of witnesses on the side of the Petitioner/Plaintiff

NIL

List of documents on the side of the Petitioner/Plaintiff

NIL

List of witnesses on the side of the Respondents/Defendants

NIL

List of documents on the side of the Respondents/Defendants

NIL

**District Munsif,
Devakottai**