**IN THE COURT OF DISTRICT MUNSIF, BODINAYAKANUR.**

**PRESENT: Thiru.A.Mohamed Hashim, B.A., B.L.,**
District Munsif,
Bodinayakanur.

**Tuesday, the 05th day of August 2025**

**IA.No.6/2025**
**in**
**OS No.25/2019**

Suriya Narayanan ... Petitioner/ 1st Defendant

-Vs-

1. Karuppaiah … 1st Respondent / Plaintiff
2. Jeyaram …2nd Respondent / 2nd Defendant

This petition is coming up before this court on 18.07.2025, in the presence of Mrs.R.Priya, Learned Advocate for the Petitioner, and presence of Mr.K.S.N.Shivamani, Learned Advocate for the 1st Respondent, upon perusing the case records and having stood over for consideration till this day, this court hereby delivered the following…

**ORDER**

1. The petitioner herein is the 1st defendant in the main suit. He has filed this petition under Sections 35 of Indian Stamp Act and Sec.151 of CPC seeking permission to pay the deficit stamp duty and penalty amount in respect of the

unregistered sale deed dated 20-12-2000.

2. For the sake of convenience, the parties are addressed as per their litigative status in the main suit.

3. The plaintiff has filed the main suit seeking a declaration to declare the sale deed dated 03-08-2011 executed by the 1st defendant in favour of the 2nd defendant as null and void, and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession of the suit property. According to the plaintiff, the suit property originally belonged to his father, Mr. Angathevar, by virtue of two registered sale deeds dated 06-11-1981. During his lifetime, Mr. Angathevar executed a registered Power of Attorney deed on 20-12-2000. Subsequently, Mr. Angathevar died on 12-09-2000, and hence the agency under the Power of Attorney stood terminated. Suppressing the same, the 1st defendant executed a sale deed in favour of the 2nd defendant on 03-08-2011 based on the said Power of Attorney. Hence the present suit.

4. The 1st and 2nd defendants are contesting the suit on the ground that the 1st defendant had purchased the entire suit property by virtue of an unregistered sale deed dated 20-12-2000 from the plaintiff's father, Mr. Angathevar, and that possession of the property was handed over to the 1st defendant. It is further contended that the plaintiff had also signed the said unregistered sale deed. The father of the plaintiff is stated to have executed an irrevocable registered Power of

Attorney on 20-12-2000. As the 1st defendant was not able to obtain permission from the competent authorities for formation of a layout, he sold the suit property to the 2nd defendant by way of a registered sale deed dated 03-08-2011. The 2nd defendant further contends that after purchasing the suit property, one Mr. Chelladurai, the adjacent landowner, filed a suit in O.S. No.58/2012 before this Court against him claiming easementary rights over the suit property. Therefore, the 2nd defendant claims to be the absolute owner of the suit property.

5. Trial in the main suit has commenced and the plaintiff's evidence is over. The 1st defendant was examined as DW1. The 2nd defendant sought permission of this Court to cross-examine DW1, which was permitted. During the cross-examination of DW1, the 2nd defendant attempted to mark the unregistered sale deed dated 20-12-2000 through DW1. Learned counsel for the plaintiff objected to the marking of the said document. This Court, by detailed order dated 28-02-2025, dealt with the said objection as follows:-

> " *On 03.12.2024, during the cross examination of DW1, the D2 side made cross examination and questioned about the unregistered sale deed which was submitted on the side of D1. The same was objected by the plaintiff side for marking of unregistered sale deed and also submitted that such document is a fraudulent document. In such circumstances, D1 side had submitted that he is ready to pay the*

*deficit stamp duty and penalty.*

*After hearing both the sides this court has posted this suit for orders. Entire suit records are perused. The unregistered sale deed was submitted on the side of the D1. But the same was not marked on the side of the D1 and D1 side has not taken any steps for payment of deficit stamp duty and penalty. Since the value of the above sale deed dated 20.12.2000 is Rs.60,000/-, that document should be registered. Since the sale deed is a compulsory registerable document and the same was not registered, it cannot be marked as an exhibit.*

*In such circumstances, the D1 side has not submitted any explanation for not having any steps for the payment of deficit stamp duty and penalty and marking of the sale deed as exhibit. Hence this court considers that since the sale deed was submitted on the side of the D1, D1 cannot be compelled to proceed with the payment of deficit stamp duty and penalty during cross examination of DW1 on the requisition of the D2. Hence this court decides that 2$^{nd}$ Defendant cannot be permitted to mark the document, during the cross examination of DW1. If the 1$^{st}$ Defendant wants to pay the deficit stamp duty and penalty and take steps for marking of such document, D1 alone can take steps as necessary for the same. Considering the*

> *above facts and circumstances D2 cannot be permitted to mark the unregistered sale deed, which is submitted on the side of the D1. Accordingly, for further cross of DW1 by D2 side call on 06.03.2025.*"

6. Under such circumstances, the 1st defendant has filed this petition under Sections 35 and 151 of CPC seeking permission to pay the deficit stamp duty and penalty in respect of the unregistered sale deed dated 20-12-2000. It is the contention of the 1st defendant that the said unregistered sale deed can be admitted in evidence for the collateral purpose of proving that possession of the suit property was handed over to him by the plaintiff's father. It is further contended that once the deficit stamp duty is paid, the document can very well be admitted in evidence.

7. Conversely, the plaintiff has filed a counter statement denying all the averments in the affidavit filed in support of the petition. According to the plaintiff, the 1st defendant had already filed I.A. No.4/2021 seeking the very same relief, which came to be dismissed as "Not Pressed" on 24-06-2022. The present petition has been filed suppressing the said fact. It is further contended that the unregistered sale deed dated 20-12-2000 is a forged and fraudulent document.

8. Heard both sides. Perused the materials available on record. The point for determination in this petition is whether this petition is deserves to be allowed or not?

9. The learned counsel for the 1st defendant reiterated the averments set out in the supporting affidavit and submitted that the unregistered sale deed can very well be admitted in evidence for the collateral purpose of proving possession. In support of his contention, he relied on the judgment of the Hon'ble Madras High Court in ***Chellammal v. Meenakshi* [2002 (3) CTC 739],** wherein it was held as follows:-

*6. It is well settled in law that when a document is tendered in evidence by either party and objection is raised against the same on the ground that the document is not duly stamped under Section 35 of the Indian Stamp Act or for want of registration as contemplated under Section 17 read with Section 49 of the Registration Act, 1908, it is obligatory on the part of the Court to apply its mind to the objections raised and to decide the objection in accordance with law. In other words, no document could be admitted on its face value irrespective of the fact whether it is duly stamped or otherwise; nor it could be rejected as inadmissible for the same reason or otherwise for want of registration automatically.*

*7. It is also well settled in law that there is no impediment for admitting a document which is merely unregistered even for collateral purposes, as the unregistered documents can be looked into for collateral purposes and thereafter could be admitted by the trial Court, as repeatedly* *held in:*

*(i) Krishnaswami Naidu v. Secretary Of State, AIR 1953 Mad. 15 (DB); (ii) Kovilpatti Sri Dhandayuthapani Trust v. Tilakaraj 1993 (1) MLJ 552; (iii) Kousalya Ammal v. Valliammai Ammal 1997 (2) CTC 517; and (iv) M.K. Varappan v. Sri Lakshminarayana Venugopalaswami Temple by its Executive Officer, 1997 (3) LW 27.*

*Following the said decision, it is held in Ayyavu and others v. Shanti Bibi and others, 2001 (1) LW 466 that admissibility of documents for collateral purpose is permissible in law."*

10. Per contra, the learned Counsel for the plaintiff reiterated all the contentions in the counter affidavit and submitted that even if the defect of insufficient stamp duty is cured, the document would still be inadmissible. Hence he prayed for dismissal of this petition.

11. The main issue in the suit is whether the registered sale deed dated 03-08-2011 executed by the 1st defendant in favour of the 2nd defendant can be sustained in law. It is not in dispute that the said sale deed was executed on the strength of a registered power of attorney deed dated 20-12-2000. The case projected by the 1st defendant is that, in order to evade the payment of proper stamp duty, both an unregistered sale deed and a registered power of attorney were brought into existence on the same date. The 1st defendant now seeks to rely upon

the unregistered sale deed as the foundation of his title, contending that possession and ownership had already passed to him thereunder, and that the subsequent registered power of attorney and sale deed are only consequential. In substance, therefore, the 1st defendant attempts to establish acquisition of title through the unregistered sale deed.

12. As regards the contention of the plaintiff that the present petition is barred in view of I.A. No.4 of 2021 already dismissed , this Court finds no merit. It is not in dispute that the 2nd defendant had earlier filed I.A. No.2 of 2019 seeking rejection of the plaint, and in those proceedings also moved I.A. No.4 of 2021 under Section 35 of the Indian Stamp Act with reference to the very same document was filed. Both those interlocutory applications were subsequently dismissed as “Not Pressed” on 24-06-2022. A dismissal as “Not Pressed” is not a decision on merits and therefore does not operate as res judicata.

13. The core issue before this Court in this petition is whether the unregistered sale deed dated 20-12-2000 can be admitted in evidence on payment of deficit stamp duty and penalty, as prayed for by the 1st defendant. At the outset, it is to be noted that under Section 17(1)(b) of the Registration Act read with Section 54 of the Transfer of Property Act, a sale deed relating to immovable property of value exceeding one hundred rupees is a compulsorily registrable instrument. Section 49 of the Registration Act further creates an express bar

against receiving such unregistered documents in evidence of any transaction affecting immovable property, except for the limited purposes carved out in the proviso, namely (i) as evidence of a contract in a suit for specific performance, or (ii) as evidence of any collateral transaction not required to be effected by a registered instrument. Sec. 49 of the Registration Act deals with effect of non-registration and the same is extracted hereunder:-

> *"**49. Effect of non-registration of documents required to be registered.—***
>
> *No document required by section 17(1) or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall —*
>
> *(a) affect any immovable property comprised therein, or*
>
> *(b) confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.*
>
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral*

*transaction not required to be effected by registered instrument."*

14. From reading of the above provision, there is a clear bar u/s.49(c) of the Registration Act for receiving unregistered documents in evidence. Though there are some decisions of the Hon'ble Apex Court and the Hon'ble Madras High Court to the effect that unregistered documents can be admitted into evidence for the collateral purpose of proving possession, the present case will not fit into that category as the plaintiff is claiming title based on an unregistered sale deed, and hence it cannot be admitted into evidence.

15. The present petition is filed by invoking the 1st proviso of Sec.35 of the Stamp Act. Sec. 35 of the Indian Stamp Act would read as follows:-

*"**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 :*

*Provided that—*

*(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount*

> *required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*

16. The above provision declares that no instrument chargeable with duty shall be admitted in evidence unless it is duly stamped. The proviso, however, enables admission of an instrument on payment of the deficit duty together with penalty. This statutory mechanism ensures that revenue loss to the State is made good. At the same time, it is equally settled that Section 35 only cures the defect of insufficiency of stamp duty and it does not and cannot confer validity on an instrument which the substantive law requires to be registered. Thus, the payment of deficit duty may render an instrument admissible in terms of the Stamp Act, but such admissibility cannot override the embargo created by Section 49 of the Registration Act. A collateral purpose defined in the proviso of Sec.49 of the Registration Act is the one which is independent of the main transaction. When the very foundation of the 1st defendant's title is the unregistered sale deed, the document is sought to be used not for a collateral purpose but for its primary operative effect. Hence, even if the deficit stamp duty is paid, the bar under Section 49 of the Registration Act remains absolute

17. Therefore even if the 1st defendant pays the deficit stamp duty and the

penalty thereof, the sale deed in question cannot be received in evidence in view of the clear bar u/s. 49 of the Registration Act. It is useful refer to the Judgment of the Hon'ble Madras High Court in **Bakkiyam Vs Narayanan [ 2025(4) CTC 119]** wherein the Hon'ble High Court after referring to various decisions of Hon'ble Apex Court, has held as follows:-

> *"29. In the case on hand, though an argument is advanced that the unregistered document is sought to be marked only for the purpose of proving possession, however, considering the fact that the suit is one for declaration of title and the plaintiff claims right to the property on the basis of this very unregistered document, it cannot be stated that the document is sought to be produced only for proving the collateral purpose and possession.*
>
> *30. Therefore, from the reading of the above judgements, it is clear that where a document is sought to be produced in evidence is one that under law is compulsorily registrable (Section 17(1)(b) of the Registration Act) then such a document cannot be received in evidence as set out in Section 49 of the Registration Act. The proviso to Section 49 of the Registration Act will not also come to the rescue of the plaintiff since it clearly states that the exemption is only where it is a contract for a specific performance or where it is sought to be*

*produced for a collateral purpose. Even when it is sought to be produced for a collateral purpose, it can be received in evidence only when it is duly stamped as contemplated under Section 35 of the Indian Stamp Act. If the document is sought to prove the primary purpose which in the instant case is title then the document cannot be received in evidence even if it is duly stamped under Section 35 of the Indian Stamp Act."*

18. The above judgment squarely applies to the present facts and circumstances of the case. Even if the deficit stamp duty and the penalty amount is paid, the document cannot be admitted in evidence. Therefore this Court in not inclined to allow this petition.

**In the result,** this petition is dismissed. No cost.

*Dictated to the typist, transcribed by her, corrected, and pronounced by me in open Court, this the 05th day of August 2025.*

MOHAMED HASHIM A

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District Munsif,
Bodinayakanur.