

B. Thippeswamy Vs. Goramma

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Court : Karnataka

Decided On : Apr-04-2008

Reported in : ILR2008KAR3716

Judge : A.N. Venugopala Gowda, J.

Acts : [Registration Act, 1908](#) - Sections 17, 34 and 49; [Karnataka Stamp Act, 1957](#) - Sections 34; [Indian Stamp Act, 1899](#) - Sections 34 and 35; Indian Stamp Act, 1879; Transfer of Property Act - Sections 53A

Appeal No. : Writ Petition No. 22988 of 2005

Appellant : B. Thippeswamy

Respondent : Goramma

Advocate for Def. : C. Shivakumar, Adv.

Advocate for Pet/Ap. : B.M. Siddappa, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.N. Venugopala Gowda, J.

1. Petitioner is the plaintiff in O.S. 123/2004 pending on the file of the Civil Judge (Sr.Divn.), Challakere, filed against the respondent, to pass a judgment and decree directing the defendant to redeem the mortgage property by paying loan amount of Rs. 77,800/- with future interest, failing which, to sell the suit schedule property in public auction for realising the amount. Respondent has contested the suit. Based on the pleadings, trial Court has framed issues on 28.06.2005. During the course of trial of the suit question arose, as to whether the mortgage deed produced by plaintiff should be received in evidence. Since it was noticed that, the deed was an unregistered deed. After hearing learned Counsel on both sides about admissibility of the mortgage deed in evidence, trial Court has held that the deed is inadmissible in evidence. Questioning the said order, this writ petition has been filed.

2. Sri B.M. Siddappa, learned Counsel appearing for the petitioner had on 17.10.2005, submitted before this Court, that the petitioner proposes to confine his relief in the plaint, only for recovery of money and not for redemption of mortgage. On 24.10.2005, after receiving the memo filed restricting the prayer only for recovery of money and not for redemption of mortgage, emergent notice of the writ petition was ordered to be issued to the respondent.

3. I heard Sri B.M. Siddappa, learned Counsel appearing for petitioner and Sri C. Shivakumar, learned Counsel appearing for respondent and perused the record of writ petition.

4. Sri B.M. Siddappa, learned Counsel for petitioner, after inviting my attention to the orders passed on 17.10.2007 and 24.10.2007, restricting the relief for recovery of money, contended that the trial Court has committed jurisdictional error and illegality in passing the impugned order. He contended that, since the relief now is only for recovery of money, marking of the document in question, would be only for 'collateral purpose' and hence is permissible. He contended that, since the document in question is required to be looked into only for the collateral purpose, payment of stamp duty and penalty or its non registration, does not arise and are not of material consequence. He cited the following decisions.

1. (Dronamraju) Rama Rao and Ors. v. Kessapragada Vedayya and Ors. 1923 Madras 447.

2. Kanju and Moolji Brothers v. T. Shunmugam Pillai AIR 1932 Madras 734

3. Harendra Nath Chaudhury v. Dwijendra Nath Banerji and Ors. : AIR1933 Cal786

5. Sri C. Shivakumar, learned Counsel appearing for respondent, by inviting my attention to the averments made in the plaint, issues framed in the suit, copy of the document in question dated 30.10.1988 and the impugned order passed by the trial Court, contended that the suit is entirely based on deed of mortgage, which has not been drawn on the stipulated stamp paper; it is also not a registered document-and hence the trial Court is justified in holding the deed is inadmissible in evidence.

6. Considering the rival contentions and the writ petition, the point that arises for my consideration is:

Whether the trial Court has committed any jurisdictional error and illegality, in holding the mortgage deed dated 30.10.1988, as inadmissible in evidence?

7. A perusal of the averments made in the plaint shows that, plaintiff and defendant are brother and sister; defendant is the owner of property shown in the schedule thereof; defendant has mortgaged suit schedule property for borrowing loan of Rs. 39,000/- and has executed mortgage deed in the presence of witnesses on 30.10.1988 and as such plaintiff is the mortgagee and defendant is the mortgagor. It has been specifically averred in the plaint that, the defendant has handed over the title deed and also possession in his favour on the date of execution of mortgage deed. It has been further averred that as per the mortgage deed, the relief noticed supra, has been prayed. Issue No. 1 framed by trial Court is to the effect, 'Whether the plaintiff proves that the defendant has taken loan of Rs. 39,000/- by executing a mortgage deed on 31.10.1998?'. Considering the objection raised to the admissibility of the mortgage deed in evidence, noticing that, the same is not a registered deed and finding that the deed being a mortgage

deed, required to be compulsorily registered under Section 17 of the [Registration Act, 1908](#), impugned order has been passed. Contention of Sri B.M. Siddappa, learned Counsel for the petitioner is that, in view of the claim being restricted for recovery of money and not for redemption of mortgage, the documents can be looked into for collateral purpose is unacceptable, in view of the fact that, averments made in the plaint are clear and lucid, that the transaction between the parties is a mortgage, the jural relationship is that of mortgagor and mortgagee and the prayer in the suit is to direct the defendant to redeem the mortgage property by paying loan amount of Rs. 77,800/- with interest and to sell the property for realisation of the amount. Merely because the document is now sought to be looked into for collateral purpose, does not however necessarily mean that it can be let in for that purpose, even though the deed is not duly stamped.

8. Section 34 of the [Karnataka Stamp Act, 1957](#), deals with instruments not duly stamped and inter alia provides that no instrument which is chargeable to duty shall be admissible in evidence for any purpose or shall be acted upon, registered or authenticated by any person or by public officer unless such instrument is duly stamped. The expression that 'for any purpose' used in Section 34 of the Act, is wide enough to include use of the document for a collateral purpose or transaction. In the case of Mahadeva v. The Commissioner, Mysore City Corporation and Ors. : AIR2003 Kant217 while considering the contention that unregistered document, which was compulsorily registerable under Section 17 of the [Registration Act, 1908](#) could be relied upon and admitted in evidence to prove a collateral transaction as envisaged by proviso to Section 49 of the [Registration Act, 1908](#) has held as follows:

7. That a document is being admitted for a collateral purpose does not however necessarily mean that it can be let in for that purpose even when it is not duly stamped. Section 34 of the [Karnataka Stamp Act, 1957](#), deals with instruments not duly stamped and inter alia provides that no instrument which is chargeable to duty shall be admissible in evidence for any purpose or shall be acted upon, registered or authenticated by any person or by any public officer unless such instrument is duly stamped. The expression 'for any purpose' used in Section 34 of

[Karnataka Stamp Act, 1957](#), is wide enough to include use of any document for a collateral purpose or transaction. In *Ram Rattan v. Parmanand*, their Lordships held that the words 'for any purpose' used in Section 34 of the [Karnataka Stamp Act, 1957](#), had to be given their natural meaning and would include even a collateral purpose for which the party relying upon the document like the same to be admitted. The following passage in this regard is apposite:

the words 'for any purpose' in Section 35, Stamp Act, should be given their natural meaning and effect and would include a collateral purpose. Where an unstamped document is admitted in proof of some collateral matter it is certainly admitted in evidence for that purpose which the Statute has prohibited. Consequently an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms.

8. It is therefore difficult to accept the submission made by Mr. Shetty that just because an unregistered document can be admitted in evidence for proving a collateral transaction, any such use would entitle the document to be marked as an exhibit dehors the provisions of Section 34 of the [Karnataka Stamp Act, 1957](#). The provisions of Section 49 of the Act remain limited to the consequences of non-registration of compulsorily registrable documents. The said provisions does not deal with or stipulate the consequence that follow if an instrument sought to be proved is not duly stamped. That part is provided for separately by provisions of Section 34 of the [Karnataka Stamp Act, 1957](#), which does not make any exception in favour of documents sought to be admitted in evidence for proving a collateral transaction. So long as an instrument is chargeable with duty, the provisions of Section 34 would render it inadmissible in evidence for any purpose unless the same is duly stamped.

9. The proviso to Section 34 prescribes the conditions subject to which a document which is not duly stamped can be admitted in evidence. It inter alia provides for payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, the amount which is required to make up such duty - together with the prescribed penalty. Suffice it to say that there is no conflict between what is permitted by the proviso to Section 49 of the Registration

Act on the one hand and Section 34 of [Karnataka Stamp Act, 1957](#), on the other. The demand of duty and penalty in terms of the proviso to Section 34 before the document could be marked in token of its having been admitted in evidence did not therefore suffer from any error of law to warrant interference. As a matter of fact, whenever an objection regarding the admissibility of an instrument on the ground of its being unstamped or insufficiently stamped is raised, the Court is required to determine the objection before proceeding any further, unlike other cases where an objection to the admissibility of a document on any other ground may be examined at a later stage and the document tentatively marked to avoid delay in recording of the evidence. The decisions of the Supreme Court in *Ramratan v. Bhajrang Lal* : [1978]3SCR963 , and *Bipin Shantilal Panchal v. State of Gujarat* 2001 Cri.L.J. 1254, and that of a Single Bench of this Court in *Riyaz Khan and Ors. v. Modi Mohammed Ismail and Ors.* : AIR2003 Kant3 , clearly settled the legal position in this regard.

(Italic's is by me for emphasis)

9. In the case of *Doddabasappa v. Gurubasappa* (Deceased by L.Rs) and Ors. AIR 2001 Kar. 149, considering the contention that the document can be looked into for collateral purpose and could be admitted in evidence for collateral purpose even if it was not duly stamped, has held as follows:

12. Section 34 of the Act, as has been quoted above, mandates, no document shall be admitted in evidence for any purpose, unless it is duly stamped. Section puts a complete embargo and bar against admissibility of such a document which is not stamped, or which is not duly stamped, and it cannot be made use of for any purpose, it means for all the purposes. When I so, observe, I find support for my view from the decision of their Lordships of the Privy Council in the case of *Ram Rattan v. Parmanand* , where their Lordships observe at page 53, Column 3:

With this latter opinion their Lordships are not in agreement. As already noted, Section 35, Indian Stamp Act, enacts that no instrument chargeable with duty shall be admitted in evidence for any purpose. Mr. Reweastle as part of his argument for the respondent adopted the note on the words 'for any purpose' in Section 35 contained in Edn. 4, of Sir Dinshah Mulla's book on the [Indian Stamp Act, 1899](#).

He pointed out that the words 'for any purpose' first appeared in India in the Stamp Act of 1879, and in England in the Stamp Act of 1891, and that under the earlier Acts there were decisions in both countries that an unstamped document might be admitted in evidence for a collateral purpose, that is, to prove some matter other than the transaction recorded in the instrument, and he submitted that these cases applied even under the later Acts. Their Lordships do not take this view. A document admitted in proof of some collateral matter is admitted in evidence for that purpose, and the statute enacts that it shall not be admitted in evidence for any purpose. Their Lordships see no reason why the words 'for any purpose' in the Indian Stamp Act of 1879 should not be given their natural meaning and effect. Such words may well have been inserted by the Legislature in order to get rid of the difficulties surrounding the question of what amounted to a collateral purpose.

In this view of the matter, the trial Court was justified in rejecting the contention that document could be admitted for collateral purposes.

13. Even this Court in the case of K. Amarnath v. Smt. Puttamma (2000) 4 Kant LJ 55, has expressed the same view, as just above, and in this decision Hon'ble Raveendran, J., considered the distinction between the language used in Section 34 and Section 49 of the Registration Act, and opined that under Section 34, bar is absolute and document cannot be admitted for any purpose in evidence.

10. In case of Jayalakshmi Reddy v. Thippanna and Ors. : ILR 2002 KAR5163 , considering a similar contention, it has been held as follows:

No doubt, it was sought to be argued by the learned Counsel for the petitioner that the said document though insufficiently stamped, may be admitted for collateral purpose. But, I am afraid that the document that, which is insufficiently stamped, cannot permitted to be used for collateral purpose in view of Section 34 of the Karnataka Stamp Act which clearly prescribes that no instrument chargeable with duty shall be admitted in evidence for any purpose.

11. In the case of Hanumanumul Baid v. Ananthapadmanabha : ILR 1992 KAR1133 , considering a similar contention, it has been held as follows:

6. The learned Counsel for the petitioner, contended that the said deed can be looked into for collateral purpose and could be relied upon to show the nature of the respondent's possession of the premises. The principle relied upon by the learned Counsel, is actually based on the proviso to Section 49 of Registration Act, according to which, a registerable document, if not registered, may be received in evidence of any collateral transaction not required to be effected by registered instrument.

7. Here, we are concerned with Section 34 of the Karnataka Stamp Act under which instruments not duly stamped are not admissible in evidence for any purpose. There is no exception similar to the proviso to Section 49 of the Registration Act. On this aspect of the question, the authoritative Decision of the Privy Council in *Ram Rattan v. Parma Nand* is quite clear. Section 35 of the Indian Stamp Act is similar to Section 34 of the Karnataka Stamp Act. The Privy Council held that the words 'for any purpose' in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose. Where an unstamped document is admitted in proof of some collateral matter it is certainly admitted in evidence for that purpose which the statute has prohibited. Consequently an unstamped partition deed cannot be used to corroborate the oral evidence for the purposes of determining even the factum of partition as distinct from its terms. There is no scope to induct an exception for collateral purposes, under Section 34 of the Stamp Act.

12. In the case of *C.K. Raviprasanna v. T.K. Gowramma* 2007 (4) Kar 509, considering the plea with regard to the admissibility of an unregistered and unstamped document in evidence for collateral purpose, has held as follows:

7. Section 34 of the Karnataka Stamp Act mandates that no document shall be admitted in evidence for any purpose, unless it is duly stamped. Section 34 of the Act puts a complete embargo and bar against admissibility of such a document which is not stamped or which is not duly stamped and the same cannot be used for any purpose. In the instant case, under the agreement of sale dated 27.11.2004, the petitioner's possession and enjoyment of the schedule property is in part performance of the agreement. Therefore, the agreement of sale in

question falls under Article 5E. Therefore, the stamp duty is payable as per the conveyance specified in Article 20. Admittedly, the agreement of sale dated 27.1.2004 is insufficiently stamped. Therefore, the agreement of sale cannot be admitted in evidence unless duty and penalty is paid. Hence the impugned order passed by the Trial court is in accordance with law.

8. The contention of the learned Counsel for the petitioner is that under Section 49 of the Registration Act an unregistered and insufficiently stamped document could be received in evidence to prove any collateral purpose. This question came up for consideration before this Court in *K. Amarnath v. Smt. Puttamma* : ILR 1999 KAR4634 , wherein the scope of Section 34 of Karnataka Stamp Act and Section 49 of the Registration Act came up for consideration. The Court held as under:

The difference between Section 34 of the Karnataka Stamp Act and Section 49 of the Registration Act should also be borne in mind. Section 34 says 'no instrument chargeable with duty shall be admitted in evidence for any purpose, or shall be acted upon, registered or authenticated by...unless such instrument is duly stamped'. Subject to the provision enabling the Court to collect the deficit Stamp duty, the bar under Section 34 is absolute and an instrument which is not duly stamped cannot be admitted at all in evidence for any purpose. On the other hand, Section 49 of the Registration Act which deals with the effect of non-registration of documents provides that if a document which is required to be registered under law is not registered, then such document shall not affect any immovable property comprised therein, nor can it confer any power to adopt nor can it be received as evidence of any transaction affecting such property or conferring such power. But the proviso to Section 49 provides that an unregistered instrument may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purpose of Section 53A of Transfer of Property Act or as evidence of any collateral transaction not required to be effected by registered instrument. For example, if a sale deed is executed on a white paper and is not stamped, it can neither be admitted in evidence nor be used for any purpose. But if a sale deed is executed on requisite Stamp paper but is not registered and the executant refuses to admit registration, then the purchaser has a right to file a suit for specific

performance, and rely on the sale deed, even though it was not registered, as evidence of the contract for sale. Thus, though both Section 34 of the Stamp Act (corresponding to Section 35 of the Indian Stamp Act) and Section 49 of the Registration Act, both bar the document being received as evidence, the bar is absolute under Stamp Act (unless deficit duty and penalty is paid) and the bar is not absolute under Registration Act.

Therefore under Section 34 of the Karnataka Stamp Act there is a bar for a document being received in evidence and the same is absolute unless deficit duty and penalty is paid. Therefore, for any purpose, the document which is not duly stamped is inadmissible in evidence. I decline to accept the contention of the learned Counsel for the petitioner. The impugned order passed by the trial Court is in accordance with law and I find no justifiable grounds to interfere with the same.

13. It is not in dispute that the mortgage deed in question has not been drawn on the stipulated stamp paper and has not been registered. The averments made in the plaint shows that the document in question is mortgage deed, relationship between the parties is that of mortgagor and mortgagee. The relief in the suit has been claimed only on the basis of the recitals/covenants contained in the deed in question. The document in question has not been sought to be made use for any other collateral purpose other than to prove the suit transaction. Issue No. 1, is based on the document in question only. Since the suit claim is based entirely on the document in question, the same cannot be admitted and marked in evidence for the collateral purpose as alleged. There is no collateral purpose to be achieved in the matter. In the circumstances, the argument advanced by the learned Counsel appearing for the petitioner is devoid of merit. The trial Court is thus justified in passing the impugned order holding that the deed is inadmissible in evidence.

In view of the law laid down by this Court, in the above mentioned decisions, with regard to the admissibility of the document even for collateral purpose and also in view the provisions of Karnataka Stamp Act, the decisions (*supra*) cited by learned Counsel for the petitioner, have no application.

14. For the foregoing discussion and reasons, I do not find any jurisdictional error or material illegality, having been committed by the trial Court, in passing the impugned order.

Writ petition is devoid of merit, fails and is hereby dismissed. No cost.

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