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Court : Chennai

Decided On : Jan-05-2007

Reported in : AIR2007Mad334

Judge : S. Ashok Kumar, J.

Acts : Registration Act - Sections 17, 32, 35, 36 and 49; Indian Stamp Act, 1899 - Sections 35, 38, 38(1) and 57; Evidence Act.

Appeal No. : CRP(PD) No. 1752 of 2006 and MP. No. 2 of 2006

Appellant : Jagadeesh

Respondent : B.M. Billan

Advocate for Pet/Ap. : Srinath Sridevan, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

S. Ashok Kumar, J.

1. As against the docket order passed in I.A.No:428 of 2005 made in O.S. No. 137 of 2005 passed by the District Munsif Court, Ootacamund, directing the plaintiff to pay the stamp duty with penalty to receive the unstamped and unregistered

document in evidence, this revision has been filed by the revision petitioner/plaintiff.

2. The mortgage deed dated 5.3.2001 is a document which has to be compulsorily registered under Section 17 of the Registration Act. Yet, the said deed could be admitted in evidence to establish possession only if the same is properly stamped. In that case it has to be valued as per Article 40 of the Schedule-I of the Stamp Act. If it is calculated on that basis, it should have been stamped with Rs. 18,800/= x 11 times of penalty which would comes to Rs. 2,06,800/=. Inspite of time given by the learned Trial Judge the plaintiff/revision petitioner has not chosen to pay the stamp duty with penalty, but has preferred this revision.

3. Learned Counsel for the revision petitioner pressed into service a decision of the Punjab High Court in wherein it has been held that the executant of a document ought not to be subjected tot eh maximum penalty even if the document is found to be under stamped, unless an attempt has been made to evade the payment of the property stamp duty by trying to disguise the true nature of the document by drafting it in misleading terms. But the said decision has arisen out of a four references made under Section 57 of the Indian Stamp Act by the Chief Controlling Revenue Authority, Delhi in the Income-tax proceedings. This decision is on different footing and on different context and therefore has no applicability to the facts of the present case, where the unstamped and unregistered mortgage deed is intended to be marked in evidence.

4. 4. In : AIR1938 Mad75 (Penatapati Nageswara Rao v. Moka Narayanamurthiand Anr.) a Division Bench of this Court held that the improperly stamped document could not be used to prove a collateral purpose, namely the acknowledgment of liability on previous notes.

5. In (Ram Rattan v. Parma Nand) 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.

6. In : [1971]3SCR590 (Jupudi v. Pulavarthi) the Hon'ble Supreme Court held that in view of Sections 35 and 36, secondary evidence by way of oral evidence or copy of document insufficiently stamped is not admissible in a suit even though objection to its admissibility cannot be taken under the Evidence Act.

7. In 2001 (1) CTC 112 (AC.Lakshmipathy and Anr. v. A.M.Chakrapani Reddiar and 6 Ors.), a Division Bench of this Court held that unstamped documents if required to be stamped but not so stamped cannot be looked into for any purpose including collateral purpose.

8. However, in 2005 (4) MLJ 337 (Tmt.Indirani v. Seetharaman), which is the latest among the cited decisions, this Court held as follows:

14. In Bondar Singhans Ors. v. Nihal Singh and others (2004) I L.W. 706 the Apex Court has observed:

Under the law, a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes.15. This observation guided the learned trial judge to admit the documents, in question, in evidence, though they are unstamped. In the case involved in the above decision also, the documents ought to be relied on was an unregistered and unstamped sale deed. But, the same was admitted, in evidence, for collateral purposes. Though such an observation has been made, the Hon'ble Apex Court has not considered the effect of Section 35 of the Stamp Act. If Section 35 of the Stamp Act was considered and the wording stated therein, vi., 'for any purpose', is ignored, then, if it is said, it can be taken as the law declared by the Apex Court, which is binding upon the Courts below throughout the breadth and length of this country. As seen from the above decision, nowhere it is discussed about the effect of Section 35 of the Stamp Act, though in the head note, the publishers have stated, Stamp Act Sections 35, 32, 36 Registration Act, 49, etc., In the absence of any discussion about the payment of stamp duty and penalty, mere observation that the document could be looked into, for collateral purposes, alone, is not sufficient to allow all the documents un stamped, which required stamp duty, should be admitted in evidence, thereby offending the statute viz., in this case Section 35 of the Stamp Act. In this context, it is useful to refer to the decision of the Apex court in Bipin Shantilal Panchal v. State of Gujaratand Anr. (2001) 3 SCC 1 and Chilakuri Gangulappa v. revenue Divisional Officer, Madanapalleand Anr. (2001) 2 MLJ 33(SC).

16. In the first decision, the objection raised regarding the admissibility of a document came before the Apex Court, for consideration. The Apex Court in a way, criticised the archaic practice and prescribed guidelines as to how the documents should be admitted in evidence, despite the objection raised by the other side. It is observed that,

Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection and mark the objected documents tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. For al other objections, the procedure suggested above can be followed. 17. The last portion of the above observation makes it clear that if the objection relates to deficiency of stamp duty of a document, the court has to decide the objection before proceeding further.' Therefore, in this case, the trial court should have considered, whether the documents require stamp duty and penalty or not, before allowing the documents to be admitted, in evidence, for collateral purposes, which was not followed. Therefore, I am unable to affix my seal of approval, as such, to the order passed by the trial Court, which requires modification.

18. In the second case viz., Chilakuri Gangulappa v. Revenue Divisional officer, Madanpalleand Anr. 2000 2 MLJ 33 the Apex Court considering Section 38 of the

Indian Stamp Act, 1899, and the fact under what circumstances, as insufficiently stamped document could be admitted in evidence, has observed that it is the duty of the Court, at the first instance, that if the Court finds that the instrument is insufficiently stamped, it should call upon the party, as to whether he would remit the deficient portion of the stamp duty together with a penalty, amounting to ten times the deficiency, and in the case if the party agrees to remit the said amount, the Court has to proceed with trial, after admitting the document in evidence. The, it contemplates what are the further proceedings to be initiated under Section 38 of the Stamp Act etc. In the case involved in the above decision also, an insufficiently stamped document came to the consideration of the Apex Court. If the Apex Court was of the view that un-stamped or unregistered documents are, automatically, to be admitted in evidence, without reference to Section 35 of the Indian Stamp At, then the Apex Court would not have observed that the Court should call upon the party to remit the deficient portion of the stamp duty together with a penalty, amounting to ten times the deficient or even the lesser penalty. Since the Apex Court was conscious about Section 35 of the Stamp Act, while considering Section 38, it is observed on the basis of Section 38(1) of the Stamp Act:

It is clear from the first sub section extracted above that the court has a power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. When the court chooses to admit the document on compliance of such condition, the court need forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps.

Thus, showing, if the party fails to pay the stamp duty and penalty, the document is not to be admitted in evidence, in view of the embargo contemplated under Section 35 of the Stamp Act. This ruling also, supports Section 35 of the Stamp Act, that no document shall be admitted in evidence for any purpose, unless it is properly stamped, and in case, if it is not properly stamped, without payment of stamp duty and penalty and that is the reason, we find the words in Section 38(1) of the Stamp Act that 'when the person impounding an instrument in evidence, upon payment of a penalty, as provided by Section 35 or of duty as provided by

Section 37...'thereby confirming, without payment of stamp duty and penalty, no document shall be admitted in evidence.

Xx xx xx xx xx20. There cannot be any dispute, as long as Section 35 of the Stamp Act is available in the Statute, that the same is to be applied for all the instruments, which require stamp duty. This being the position, unless a finding is given as observed by the three Judges Bench of the Apex Court, in Bipin Shantilal Panchal v. State of Gujarat (2001) 3 SCC 1 regarding the stamp duty and penalty, the document cannot be admitted in evidence, as if it can be looked into for collateral purpose. No doubt, it is true, a document, which is unregistered or unstamped can be looked into for collateral purpose, provided, provisos to Section 35 of the Stamp Act are complied with, and not otherwise. The above position of law was not considered properly by the trial court and therefore, the order of the trial Court requires modification, in my considered opinion, in view of the admitted position that the documents in question, require stamp duty and penalty.

9. I am in agreement with the views expressed by my Learned Brother M.Thanickachalam,J., which is supported by several decisions of the Apex Court as relied on by the learned Single Judge in the said decision, has to be followed, which judgment discusses the point in issue directly involved in the particular case elaborately and accurately namely as to the admission of the unstamped and unregistered documents by paying deficit stamp duty with penalty.

10. Therefore it is clear no document shall be admitted in evidence if it is not properly stamped, and if already not stamped, then stamp duty should be paid with penalty as prescribed by the authority. In the absence of payment of the deficit stamp duty with penalty, the trial court is perfectly right in directing the plaintiff to pay the same by giving sufficient time.

11. In the result, this CRP is dismissed with a direction to the revision petitioner/plaintiff to pay the stamp duty and penalty within two weeks from the date of receipt of a copy of this order, if he so desires, to file the mortgage deed along with the case. Consequently, connected Miscellaneous Petition is also dismissed.