

D.Ramasamy vs C.Thangavel on 2 February, 2024

C.R.P. (MD)N

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2023

Pronounced on : 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD)No.1634 of 2022

and

C.M.P. (MD)No.7143 of 2022

1. D.Ramasamy

2. D.Bharathan

... Pe
Re

Vs.

1. C.Thangavel

2. T.Renugadevi

... Res
Pet

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the order passed in R.C.O.P.No.1 of 2019 on 15.03.2022 on the file of the District Munsif, Palani.

For Petitioners : Mr.V.K.Vijaya Raghavan

For Respondents : Mr.T.Dhandapani

1/22

<https://www.mhc.tn.gov.in/judis>

C.R.P. (MD)N

ORDER

The Civil Revision Petition is directed against the order of the Rent Controller/District Munsif, Palani, dated 15.03.2022 refusing to admit two rental agreements dated 10.02.1995 and 17.06.2005.

2. The respondents, who are the landlords of the petition mentioned building, have filed a Rent Control Original Petition in R.C.O.P.No.1 of 2019 against the revision petitioners for eviction on the ground of wilful default in payment of rent, denial of title and demolition and reconstruction.

3. Admittedly, the petition mentioned building was previously owned by one Somasundaram, who is none other than the brother of the first respondent and that the revision petitioners have become tenants under the said Somasundaram.

4. The case of the respondents is that the said Somasundaram has sold the petition mentioned building on 03.08.2005 in favour of the respondents and consequently tenancy was attorned in favour of the <https://www.mhc.tn.gov.in/judis> respondents, that the revision petitioners have failed to pay any rent from August 2005, that they have also denied the title of the respondents, which is mala fide, that the respondents have also planned to demolish the petition mentioned building and other buildings and to construct a marriage hall and that since the revision petitioners have not complied with the demand of the respondents to vacate the building, the respondents were constrained to file the above eviction petition.

5. The defence of the revision petitioners is that the alleged sale deed dated 03.08.2005 in favour of the respondents is a sham and nominal document, that the previous owner Somasundaram had obtained debts from various persons, that a creditor insolvency petition in I.P.No.11 of 2007 has already been filed to declare that the sale deed dated 03.08.2005 is invalid and the same is pending, that the legal representatives of the deceased Somasundaram have filed a suit against the respondents challenging the sale deed dated 03.08.2005 and the same is pending in O.S.No.219 of 2010 on the file of the Sub Court, Palani, that several proceedings are pending with respect to the petition mentioned buildings, that the revision petitioners have become tenants under the said <https://www.mhc.tn.gov.in/judis> Somasundaram by executing a rental agreement dated 10.02.1995 by paying advance amount of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only), that subsequently they have entered into another rental agreement on 17.06.2005 recording that a sum of Rs.9,55,000/- (Rupees Nine Lakhs and Fifty Five Thousand only) was paid as advance, that since the respondents are not the owners of the petition mentioned building, they have no locus standi to file the above eviction petition and that therefore, the original petition is liable to be dismissed.

6. It is evident from the records that trial has already been commenced and after the closure of the respondents' side evidence, the revision petitioners have commenced their side evidence by examining the first revision petitioner Ramasamy as R.W.1 and after recording of his chief examination affidavit and 23 documents produced by them as Ex.R.1 to Ex.R.23, they have filed an application in I.A.No.4 of 2021 under Order 8 Rule 1A C.P.C. to receive two rental agreements and that since the respondents have not filed any counter to the said petition in I.A.No.4 of 2021, the learned Rent Controller has allowed the petition by observing "subject to marking and relevancy of documents, this petition is allowed". <https://www.mhc.tn.gov.in/judis> When the revision petitioners have attempted to mark the said two documents, the same was objected to by the respondents on the ground that the two documents are unstamped and unregistered. The learned Rent Controller, in the deposition itself, by recording the objections raised by the respondents' side, has sustained the same and thereby refused to mark the said documents. Aggrieved by the said

order, the present civil revision came to be filed.

7. At the outset, it is pertinent to note that the learned Rent Controller, after recording the objections of the respondents, has not passed any speaking order, assigning the reasons for accepting the objections raised by the respondents and thereby refusing to admit the documents in evidence.

8. Admittedly, the two rental agreements dated 10.02.1995 and 17.06.2005 are written in a twenty rupees stamp paper but without proper stamp duty and remain unregistered. Section 107 of the Transfer of Property Act mandates that a lease of immovable property from year to year, or for any term exceeding one year can be made only by a registered <https://www.mhc.tn.gov.in/judis> instrument. In the case on hand, the first rental agreement dated 10.02.1995 is for 5 years lease period and the second rental agreement dated 17.06.2005 is for 15 years lease period. Section 17(1)(b) of the Registration Act contemplates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered. Section 49 of the said Act imposes a bar on the admissibility of an unregistered document and the proviso to the said Section provides two exceptions and the second exception permits the admissibility of an unregistered document for proving any collateral transactions.

9. The learned counsel appearing for the respondents would submit that both the rental agreements are forged and fabricated documents, that both the rental agreements are with respect to lease for a period more than one year, that the said documents contain terms recording payment of advance amount of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) and Rs.9,55,000/- (Rupees Nine Lakhs and Fifty Five Thousand only) respectively, that since both the agreements are unregistered and unstamped, the same cannot be admitted in evidence and that therefore, the learned Rent Controller has rightly refused to admit the same. <https://www.mhc.tn.gov.in/judis>

10. The learned counsel appearing for the revision petitioners would submit that their application to receive the said documents in I.A.No.4 of 2021 has been allowed as there was no objection raised by the other side and that therefore, the respondents are not entitled to raise objections for marking the said documents.

11. The learned counsel appearing for the revision petitioners would contend that they have attempted to mark the said documents only for the collateral purpose and that they are ready and willing to pay the stamp duty with penalty. He would also contend that the learned Rent Controller has failed to consider the legal position that the disputed documents can be received in evidence subject to the objections raised by the other side and its probative value could be considered at the time of arguments in the main petition and that the documents cannot be prevented from being marked as exhibits at the threshold.

12. Regarding the first objection of the revision petitioners, no doubt, since no counter has been filed, the petition in I.A.No.4 of 2021 filed under Order 8 Rule 1A C.P.C. was allowed by the trial Court. Order 8 Rule 1A imposes a duty on the defendant to produce documents upon <https://www.mhc.tn.gov.in/judis> which relief is claimed or relied upon by him at the time of filing

the written statement and in case, if documents are not filed, then the defendant is not entitled to produce the documents, without the leave of the Court. The revision petitioners, by invoking Order 8 Rule 1A C.P.C., have only sought for the leave of the Court to produce the documents by condoning their failure to produce at the earlier point of time and the learned Rent Controller, taking note of the fact that the respondents have not raised objections, has allowed the petition, but at the same time, subject to proof and relevancy. Just because the documents are ordered to be received under Order 8 Rule 1A C.P.C., it cannot be stated that those documents are to be admitted in evidence automatically. Hence, the above objection, which is absolutely devoid of substance, is liable to be rejected.

13. Now turning to the other objection of the revision petitioners that the learned Rent Controller ought to have marked the documents subject to the objections of the other side and the same can be considered at the time of arguments in the main petition. The learned counsel appearing for the revision petitioners has relied on the judgment of this Court in Solai Vs. Periyakaruppan and others reported in 2015 1 L.W. 134, <https://www.mhc.tn.gov.in/judis> “10.From the various Judgments relied on by the parties, an unregistered, unstamped document can be marked and relied on by the party for collateral purpose. It is also well settled that the Courts must mark an unregistered, unstamped document subject to the objection by the opposite party. The Courts should not shut down the evidence at the threshold itself. At the time of final decision only, the Courts must consider the evidence based on the document and objections by the opposite party. If the Courts come to the conclusion that the objection with regard to document is sustainable, then the said document and evidence based on the said document must be rejected. The learned Judge committed irregularity by rejecting the marking of documents at the threshold itself. The learned Judge ought to have marked the documents subject to the objections as per well settled law....”

14. As rightly contended by the learned counsel appearing for the respondents, in the above said judgment itself, the learned Judge has also referred the judgment of the Hon'ble Apex Court in Bipin Shantilal Panchal Vs. State of Gujarat and another reported in AIR 2001 SC 1158, wherein, the Hon'ble Supreme Court has made it clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide <https://www.mhc.tn.gov.in/judis> the objection before proceeding further and the relevant passage is extracted hereunder;

“14. When so recast, the practice which can be a better substitute is this: 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 document 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 all other objections the procedure suggested above can be followed.)”

15. In the present case also, the documents under dispute are unstamped and even according to the revision petitioners, they have expressed their readiness and willingness to pay the stamp duty with penalty. Since the objections of the respondents also relates to deficiency <https://www.mhc.tn.gov.in/judis> of the stamp duty, the trial Court cannot postpone its decision and as per the above legal dictum laid down by the Hon'ble Supreme Court, is duty bound to decide then and there.

16. Now turning to the main contention of the revision petitioners that the documents in question can be received for collateral purpose, on payment of stamp duty with penalty. The learned counsel appearing for the revision petitioners has relied on the following decisions in support of his contention;

(i) 1997 3 L.W. 27

(M.K.Varappan

Vs.

Sri

Lakshminarayana

Venugopalaswamy Temple by its Executive Office, Big Bazaar Street, Coimbatore):

“4. It is by now well settled that though a document, particularly a document of the nature under consideration, the unregistered rent deed, has not been registered under the law of registration, there is no impediment for referring to the same or relying upon the recitals therein for collateral purposes ”

(ii) 1997 (2) CTC 517 (Kousalya Ammal Vs. Valliammai Ammal and another):

“9. The contention of the counsel for the respondent that the <https://www.mhc.tn.gov.in/judis> document which is required to be registered is not admissible in evidence at all cannot be accepted. Such a contention in my opinion is against the express provision of Section 49 of the Registration Act. In this case, the document is inevitably referred to in the plaint, for, in the absence of such reference, no evidence at all could be possible to speak even for a collateral purpose. The purpose of marking the document, whether main purpose or collateral purpose will have to be decided on the purpose for which it is sought to be used in evidence. In this case, the plaintiff wants to use it only for the purpose of proving his character of possession and not for proving any of the terms of the lease deed. Such a proof will have to be made without reference to the document.

....

12. As already noticed, the document is sought to be relied on by plaintiff only for the purpose of proving his character of possession and not to be used to determine the rights of the parties and also not for proving any of the terms of the lease deed. Therefore, even in the above judgment, the court had held that an unregistered agreement by itself could be used only for collateral purpose to find out who is in possession.

.....

16. Therefore on consideration of the entire materials placed before me and of the arguments advanced by both <https://www.mhc.tn.gov.in/judis> sides, I am of the view that the document in question can certainly be looked into for collateral purposes, namely, for the purpose of proving the plaintiff's character of possession. No prejudice should be caused to the respondent by marking the document. Mere marking the document does not prove any of the recitals of the document itself. The truth of the document had to be independently proved. It is always open to the respondent to contend that he did not execute the documents at all and that even for a collateral purpose, it cannot be relied on. The revision therefore succeeds.

however there will be no order as to costs.”

(iii) (2003) 4 SCC 161 (Bondar Singh and others Vs. Nihal Singh and others):

“5. 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. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land.”

17. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of Anthony Vs. K.C.Ittoop & Sons and <https://www.mhc.tn.gov.in/judis> others reported in (2000) 6 SCC 394, wherein, also an unregistered lease deed for a period of 5 years was produced and the Hon'ble Apex Court has held as follows;

“11.The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that appellant is a lessee by virtue of the said instrument. The court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Smt.Shantabai vs. State of Bombay: AIR 1958 SC 532; Satish Chand Makhan vs. Govardhan Das Byas, (1984) 1 SCC 369 and Bajaj Auto Limited vs. Behari Lal Kohli: AIR 1989 SC 1806).”

18. In the case of M/s.Paul Rubber Industries Private Limited Vs. Amit Chand Mitra and another reported in CDJ 2023 SC 877, wherein, also an unregistered lease deed for 5 years was produced and the Hon'ble Supreme Court has specifically observed that ex-facie the said lease deed becomes a document that requires compulsory registration and that is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act and the relevant passage is extracted hereunder;

“10. But here, the agreement itself provides a five year duration, and hence ex-facie becomes a document that <https://www.mhc.tn.gov.in/judis> requires compulsory registration. That is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act. The Court cannot admit it in evidence, as per the judgment in the case of Anthony. A coordinate Bench in the case of

Shyam Narayan Prasad -vs- V. Krishna Prasad and Ors. [(2018) 7 SCC 646] has re-affirmed this view, referring to Section 49 of the Registration Act. This is a prohibition for the Court to implement and even if the Trial Court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage. The parties cannot by implied consent confer upon such document its admissibility. ...”

19. It is also necessary to refer the judgment of the Hon'ble Supreme Court in K.B. Saha & Sons Private Limited Vs. Development Consultant Limited reported in (2008) 5 CTC 260 (SC), “Registration Act, 1908 (16 of 1908) Sections 17 & 49 – Transfer of Property Act, 1882 (4 of 1882), Section 107 – Admissibility of unregistered lease deed in evidence – Document which requires to be registered is not admissible in evidence but can be used as evidence of collateral purpose as provided in Proviso to Section 49 of Registration Act – Collateral transaction must be independent of, divisible from, transaction which requires registration – Collateral transaction should be one which does not create, extinguish title, interest, right or interest, etc. in immovable property – Once document cannot be admitted in evidence for want of registration any important clause in such document cannot be collateral purpose – Clause in lease deed enabling only named officer or his family members of Lessee occupying leased premises is important clause and could not be looked into as lease deed was not registered.

...

21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that :

1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

<https://www.mhc.tn.gov.in/judis>

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

20. In the above decision case, an unregistered lease deed was attempted to be marked to prove the collateral purpose and the Hon'ble Apex Court has held that attempting to rely on a material clause of the lease agreement cannot be considered as a collateral purpose.

21. A learned Judge of this Court, in the case of Thangamuthu Vs. A.Jeyaraj reported in (2020) 1 CTC 47 (Mad), has held that if a document is bad for non-registration, it cannot be cured by paying stamp duty and penalty and that such documents cannot be looked into even for collateral purposes and the relevant passage is extracted hereunder;

“12. It is clear from the Judgments that have been cited on the side of the Petitioners that a document, which is compulsorily registrable under the Registration Act, cannot be admitted in evidence, unless, it is registered. If a document is inherently bad for non-registration, it cannot be cured by paying deficit Stamp Duty and Penalty. It is even a settled <https://www.mhc.tn.gov.in/judis> position of law that such documents cannot be looked into even for collateral purposes.”

22. In Thangamuthu's case referred above, Hon'ble Mr.Justice N.Anand Venkatesh, after referring to three judgments of the Hon'ble Supreme Court in S.Kaladevi Vs. V.R.Somasundaram and others reported in 2009 (2) MLJ 361, Sita Ram Bhama Vs. Ramvatar reported in 2018 (3) MWN (Civil) 206 and Avinash Kumar Chauhan Vs. Vijay Krishna Mishra reported in (2009) 3 MLJ 409, opined that such unregistered documents cannot be looked into even for collateral purposes.

23. The learned counsel appearing for the respondents has relied on my decision in Abdul Khader Vs. Saravana Sankar reported in 2021 3 L.W. 382, wherein, also an unregistered agreement allegedly extending the tenancy for a further period of 9 years was attempted to be marked and it has been held as follows;

“12.As rightly contended by the learned counsel for the landlord, the tenant is attempting to mark the said document to show that the tenancy has been extended for a further period of 9 years and even if the tenant is permitted to pay the stamp duty with penalty, he is not entitled to rely on that <https://www.mhc.tn.gov.in/judis> document to prove the alleged extension of tenancy for further period of 9 years, as the said aspect cannot be considered as collateral purpose.”

24. Considering the above, the legal position is well settled that even an unregistered and unstamped document can be received in evidence to prove a collateral purpose, provided stamp duty is paid with penalty. In Thangamuthu's case referred above, the proviso to Section 49 of the Registration Act was not taken note of and in view of the legal position settled by the Hon'ble Supreme Court in the decisions referred therein, the decisions in Solai's case and Thangamuthu's case, above referred can only be treated as per incuriam.

25. In the case on hand, though the revision petitioners have been alleging that they wanted to mark the documents for proving the collateral purpose, they have nowhere whispered as to what was the collateral purpose. As rightly contended by the learned counsel appearing for the respondents, it can easily be inferred that they wanted to show that the lease was extended for a period of 15 years and

to show the advance amount paid by them. Admittedly, it is not for showing the character of <https://www.mhc.tn.gov.in/judis> possession, as the revision petitioners have themselves admitted that they have become tenants under the previous owner Somasundaram and that the respondents, by admitting the tenancy, have claimed eviction. As rightly contended by the learned counsel appearing for the respondents, the period of tenancy is a main clause of the tenancy agreements and as such, by no stretch of imagination, can be considered as a collateral purpose. Even if stamp duty is paid with penalty, in the absence of any collateral purpose, the same cannot be received in evidence.

26. Admittedly, eviction petition is pending from 2019 onwards. As already pointed out, the case is in part-heard stage and is pending for revision petitioners' side evidence. As rightly contended by the learned counsel appearing for the respondents, the revision petitioners, by filing the present revision, have been attempting to protract the proceedings.

27. Considering the entire facts and circumstances, the impugned decision of the learned Rent Controller refusing to admit the documents in evidence cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed. <https://www.mhc.tn.gov.in/judis>

28. In the result, this Civil Revision Petition is dismissed. The learned Rent Controller/District Munsif, Palani, is hereby directed to dispose of the case in R.C.O.P.No.1 of 2019 within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

02.02.2024 NCC :yes/No Index :yes/No Internet:yes/No csm To

1. The Rent Controller/District Munsif, Palani.

2.The Section Officer, VR Section, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> K.MURALI SHANKAR,J.

csm Pre-Delivery Order made in and Dated :02.02.2024 <https://www.mhc.tn.gov.in/judis>