
(2013) 03 MAD CK 0015

In the Madras High Court

Case No : C.R.P. (PD) No. 3309 of 2012 and M.P. No. 1 of 2012

D. Balachandran, Prop. of Balu Tex

APPELLANT

Vs

T.C. Shanmugam

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4

Registration Act, 1908 — Section 17, 49

Stamp Act, 1899 — Section 33, 35, 36, 38

Citation : (2013) 2 CTC 832 : (2013) 3 LW 99 : (2013) 3 MLJ 644

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Guruprasad, for the Appellant; S. Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Defendant is the Revision Petitioner. The Respondent/Plaintiff filed a Suit in O.S. No. 894 of 2007 on the file of

the I Additional District Munsif Court, Erode, for recovery of possession and for arrears of rent and during the examination of PW1, he marked

Ex.A2, Lease Deed, which is admittedly not registered and therefore, an Application was filed by the Petitioner in I.A. No. 1169 of 2011 to reject

Ex.A2 on the ground that the said document was not duly stamped and not registered and that Application was dismissed and aggrieved by the

same, this Revision filed. Mr. M. Guruprasad, the learned Counsel for the Petitioner submitted that admittedly, Ex.A2, Lease Deed was for a

period of more than one year and it was not duly stamped and unregistered and therefore, the Court below ought not to have marked the

document as Ex.A2 and therefore, an Application was filed to reject the

document and the Court below having held that Ex.A2 has to be rejected on the ground that it was not duly stamped and unregistered one, erred in holding that having regard to the fact that the period mentioned in the Lease Deed was for a period of five years and that the period expired even before the filing of the Suit and therefore, the document need not be rejected and the rejection of the Petition by the Court below on that ground is erroneous and is liable to be set aside. He also relied upon the following judgments in support of his contention:

1. In the case of Smt. Dayamathi Bai Vs. Sri K.M. Shaffi,
2. In the case of Anthony Vs. K.C. Ittoop and Sons and Others,
3. In the case of Dr. Bipin Shantilal Panchal Vs. State of Gujarat,
4. In the case of Duraisami Naidu and Others Vs. C. Ramakrishnan and Others,
5. In the case of Ammamuthu Ammal (Died) and Others Vs. Devaraj and Others, and
6. In the case of Vasantha Ammal v. Gunasekaran, 2011 (2) MWN (Civil) 594.

2. On the other hand, Mr. S. Chandrasekaran, the learned Counsel for the Respondent submitted that if any document is not registered, the same can be received for collateral purpose and therefore, even assuming that Ex.A2 was an unregistered, the same can be received in evidence for

collateral purpose as per Section 49 of the Registration Act and therefore, the document cannot be rejected. He farther submitted that the

document Ex.A2 cannot also be rejected on the ground that it was not duly stamped as no objection was raised by the Revision Petitioner when

the document was marked and therefore, u/s 36 of the Stamp Act, objection cannot be raised after the document was allowed to be marked. He

also relied upon the following decisions in support of his contention:

1. In the case of Kousalya Ammal Vs. Valliammai Ammal and Another,
2. Order made in K. Munirathinam Naidu v. G. Balaraman, CRP (PD) No. 4035 of 2007, dated 28.09.2010; and
3. Order made in Nithyanandam Vs. Poornachandran, Dr. V. Seshia, Dr. V. Balaji and Dr. Madurai Balaji, dated 18.01.2010

3. Admittedly, Ex.A2 is a Lease Deed for a period of five years and therefore, as per Section 17 of the Registration Act, the said document is

compulsorily registrable. Therefore, when a document, which is compulsorily

registrable is not registered, that document cannot be looked into to

prove the contents of the lease and as per Section 49 of the Registration Act, such document can be received in evidence for collateral purpose.

Therefore, even though, the document was marked as Ex.A2, having regard to the provision of Sections 17 & 49 of the Registration Act, the said

document can be looked into only for collateral purpose as the document is not a registered document.

4. However, the position under the Stamp Act is entirely different. u/s 35 of the Stamp Act, 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, unless such

instrument is duly stamped. Therefore, as per Section 35 of the Stamp Act, there is a total prohibition to receive in evidence the unstamped

document.

5. In the judgment reported in the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, the

Hon"ble Supreme Court referred to the judgment reported in the case of The Roman Catholic Mission Vs. State of Madras and Another, , and

held as follows:

19. Order 13, Rule 4, C.P.C. provides for every document admitted in evidence in the Suit being endorsed by or on behalf of the Court, which

endorsement signed or initialled by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document

should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the

same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may

be returned by the Court to the person from whose custody it was produced.

20. The learned Counsel for the Defendant-Respondent has relied on The Roman Catholic Mission Vs. State of Madras and Another, in support

of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have

any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position

of law being made precise. Ordinarily, an objection to the admissibility of

evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in Appeal or Revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an Exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior Court.

6. In *Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle and Another*, Section 38 of the Stamp Act was incorporated and held as follows:

In this context Section 38 is to be looked into. It is clear from the first subsection extracted above that the Court has the 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 with 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. But if the party refuses to pay the amount aforesaid the Court has no other option except to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the Stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped "he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof.

Therefore, having regard to the law laid down by the Hon"ble Supreme Court in the judgment reported in *R.V.E. Venkatachala Gounder Vs.*

Arulmigu Viswesaraswami and V.P. Temple and Another, the objection regarding the admissibility can be raised at any time and merely because a document was admitted in evidence, the other party is not deprived of his right to challenge the admissibility of the document at a later point of time stating that the document ought not to have been admitted in evidence having regard to the legal provisions and the document is inadmissible in evidence.

7. As a matter of fact, in the judgment reported in the case of *Smt. Dayamathi Bai Vs. Sri K.M. Shaffi*, the Hon"ble Supreme Court approved the judgment reported in *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, .

8. Further, Section 33 of the Stamp Act, casts a duty upon the person, who is in-charge to receive evidence before whom the instrument is

produced, if it appears to him that the same is not duly stamped, impound the same and sub-section (2) of Section 33 laid down the procedure for invoking the process of impounding.

9. Further, a reading of Section 35 also makes it clear that an instrument, which is not duly stamped shall not be acted upon. u/s 36 of the Stamp

Act, admission of an instrument in evidence, shall not be called in question at any stage of the same Suit or proceeding on the ground that the

instrument has not been duly stamped. Therefore, u/s 36 of the Stamp Act, once a document, which has not duly stamped, has been admitted in

evidence without any objection, later the admissibility of that document cannot be challenged on the ground that it has not been duly stamped. But,

Section 36 does not lay down any prohibition that such document, which has not been duly stamped and admitted in evidence can be acted upon.

Therefore, a combined reading of Sections 35 & 36 of the Stamp Act, makes it clear that even though a document was admitted in evidence,

which was not duly stamped, the admission cannot be questioned later by virtue of Section 36 on the ground that the document was not duly

stamped. But as per Section 35, the Court shall not act upon that document, unless such document is duly stamped. Therefore, relying upon a

document, which is not duly stamped, though admitted in evidence is prohibited u/s 35. Further, as per the judgment reported in R.V.E.

Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, , an objection that the document, which is sought to be

proved is itself inadmissible in evidence can be raised at any stage of the case. Therefore, the Court below committed serious error in dismissing

the Petition filed by the Petitioner. Further, the reasoning of the Court below that the document need not be rejected on the ground that the period

of lease expired much before the filing of the Suit cannot be accepted and irrespective of the expiry of the period, an unregistered document cannot

be looked into for any purpose, except for collateral purpose and a document, which is not duly stamped cannot be acted upon and the

admissibility can also be challenged at any point of time. Hence, the order of the Court below is set aside and the Revision is allowed.

Consequently, connected Miscellaneous Petition is closed. No costs.