
(2012) 07 MAD CK 0035
In the Madras High Court
Case No : C.R.P. (PD) No. 364 of 2012

Michael Irwin Francis

APPELLANT

Vs

Trevor Chatter

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Registration Act, 1908 — Section 17(1)(b), 33

Citation : (2012) 5 LW 114

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : J. Franklin, for the Appellant;

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—Challenging the order dated 04.11.2011 made in I.A. No. 213 of 2011 in O.S. No. 26 of 2010 passed by the learned

District Judge. The Nilgris at Udhagamandalam, this Civil Revision Petition has been filed. The Revision petitioner is the defendant in the suit. The

respondent/plaintiff has filed a suit in O.S. No. 26 of 2010 for (a) possession of the premises described in the Schedule, (b) payment of Rs.

1,08,000/- with interest thereon at 12% per annum from the date of suit till payment and (c) payment of future damages at the rate of Rs. 150/-

per day from the date of suit till date of delivery of possession.

2. The petitioner/defendant has filed written statement and contested the matter. Evidence was let in and it was concluded. At that stage, the

petitioner made an application in I.A. No. 213 of 2011 praying to record his objections in respect of the petition mentioned documents marked as

Ex. A5, Ex. A6, Ex. A7 and Ex. A8 filed by the respondent/plaintiff.

3. The Trial Court, on consideration of the case of the parties, came to the conclusion that as far as Exs. A5, A6 and A8 are concerned, the

petitioner had stated that such documents are insufficiently stamped and hence, these kind of objections have to be recorded only when the

evidence is tendered, but, not after the documents had been admitted in evidence and marked as exhibits and thereby, dismissed the petition,

against which, the present Civil Revision Petition is filed.

4. Mr. J. Franklin, learned counsel for the petitioner/defendant consistently pleaded before this court that the objections raised by the

petitioner/defendant are valid and sustainable and therefore they have to be recorded and considered at the time of trial and if the objections are

not recorded, it would cause immense injustice to the petitioner in defending the suit. He would further submit that the Trial Court failed to take

note of the objections of the petitioner/defendant in respect of the documents Ex. A5 to Ex. A7 and Ex. A8.

5. Admittedly, the revision petitioner is the defendant in the suit. The respondent/plaintiff filed a suit for possession and for damages and the

petitioner/defendant filed written statement and contested the matter. Further, the petitioner/defendant made an application in I.A. No. 213 of

2011 to record his objections in respect of documents in Ex. A5, dated 30.11.2006 Notarized Power of Attorney; Ex. A6, dated 30.11.2006 -

Notarized Power of Attorney; Ex. A7, dated 25.07.2007 Registered Gift Settlement Deed and Ex. A8, dated 30.06.2009 - Notarized Power of

Attorney, in the interest of justice.

6. According to the petitioner/defendant, the respondent/plaintiff derives his right over the suit schedule property, on behalf of Mr. Trevor Chatlier,

in the capacity of holder of Power of Attorney vide Notarized Power of Attorney Deed marked as Ex. A6. On the strength of Notarized Power of

Attorney Deed marked as Ex. A6, the Settlement Deed was registered as Document No. 1455 of 2007 in the office of the Sub-Registrar,

Coonoor, marked as Ex. A7. Similarly, the Settlor of the respondent/plaintiff one Mr. Prabhu, derived his right over the suit schedule property, on

behalf of B.W. Chatelier in the capacity of holder of Power of Attorney vide Notarized Power of Attorney Deed Ex. A5. Since both the Power of

Attorney deeds marked as Ex. A5 and Ex. A6, respectively are invalid in law, no

right can be acquired by the respondent/plaintiff over the suit

schedule property on the basis of Notarized Power of Attorney Deed marked as Ex. A6 and therefore, there is no cause of action for the present suit.

7. It is the further case of the petitioner/defendant that by virtue of Section 17(1) (b) of the Indian Registration Act, the Notarized Power of

Attorney deeds marked as Ex. A5 and Ex. A6 have to be compulsorily registered u/s 33 of the Indian Registration Act, as the deeds purport or

operate to create right, title or interest. Therefore, he would plead that the objection has to be recorded.

8. Resisting the same, the respondent/plaintiff filed counter stating that Exs. A5 to A8 are admissible in evidence and the allegations of the

petitioner/defendant are only self-serving and devoid of any substance and merits. The Powers of Attorney have been properly and validly

stamped and duly notarized by a Notary Public in the place where they have been executed. Under law, these documents are not required to be

registered at all. The Powers of Attorney Exs. A5, A6 and A8 have been drawn up on the necessary stamp papers as prescribed under the Stamp

Act prevailing in the State of Tamil Nadu and notarised by a Notary at the place where the same have been executed. Therefore, according to him,

there is no need to record the objections.

9. The Trial Court, on a perusal of Exs. A5, A6 and A8, Notarized Power of Attorney documents, clearly held that they have been duly stamped

and they do not require any registration under the Registration Act. It went on to hold further that the Power of Attorneys need not be registered,

but an option is given to register those documents, whenever they are tendered by the parties for registration and it is not mandatory. Since these

documents are validly stamped and duly notarized by a Notary in the place where they have been executed, these documents do not require

registration under law. Under the Registration Act, only the Power of Attorneys which were not properly stamped and not paid proper stamp duty,

have to be submitted for proper adjudication by the Registrar for levying proper stamp duty. But, the Power of Attorneys which were marked as

Exs. A5, A6 and A8 have been drawn up on necessary stamp papers as prescribed under the Stamp Act prevailing in the State of Tamil Nadu

and duly notarized by a Notary at the place where the same have been executed. Hence, these documents do not require any stamp duty penalty.

Since the petitioner has pleaded in his objection only regarding insufficiency of stamp duty, these kind of objections are classified as second

category of objections as per the ruling in R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, . Hence,

the Trial Court held that as far as Exs. A5, A6 and Ex. A8 are concerned, the petitioner had stated that these documents are insufficiently stamped

and hence, these kind of objections have to be recorded only when the evidence is tendered, but, not after the documents had been admitted in

evidence and marked as exhibits and dismissed the petition. The finding of the Trial Court, in my considered opinion, does not warrant interference

by this Court, as legal principles are laid down and considered by the Trial Judge. Therefore, the Civil Revision Petition fails and stands dismissed.

However, it is open to the petitioner to contest the matter and put forth his grievance, if any, at the time of further proceedings of the matter, in the

manner known to law. No costs. Consequently, connected M.P. No. 1 of 2012 is closed.