

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2009

COMM:

THE HONOURABLE Mr. JUSTICE R.S.RAMANATHAN

C.R.P.(MED)(MD)No.1849 of 2009 & M.P(MD)No.1 of 2009

T.Tamiliselvi .. Petitioner/Petitioner/
Respondent No.44

V.Veeranan Ambalam .. Respondent/Respondents/Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India setting aside the order and decretal order dated 27-10-2009 made in I.A.No.834 of 2009 in I.A.No.739 of 1997 in O.S.No.572 of 1997 on the file of the Additional District Munsif Court, Madurai.

For Petitioner : Ms.Vijayakumari Natarajan

For Respondent : Ms.V.Jahararamulu for Caveator

One V.Veeranan Ambalam filed O.S.No.153 of 2003 along with his minor son for partition of his share in the suit properties and the suit was decreed in respect of first item and the plaintiffs filed I.A.No.739 of 1997 for passing final decree and in that application, the revision petitioner's husband, late Dhursipandi was the sixth respondent. After the death of her husband, the revision petitioner and her children were added as the Respondents No. 44 to 46 and the revision petitioner is the forty fourth respondent in the final decree application. The sixth respondent, namely husband of the revision petitioner, filed an un-registered partition deed to be marked on his side and that was refused to be marked by the lower Court. Therefore, he filed I.A.No.943 of 2003 in I.A.No.739 of 1997 in O.S.No.572 of 1997 and that was rejected and against the same, he filed C.R.P.No.2842 of 2003 and that was disposed of by this Court with a direction, directing the Court below to receive the document, upon the petitioner paying necessary stamp duty and penalty and if the respondent has objected to the same, the document may be marked subject to the objection regarding the admissibility. Thereafter, it is submitted by Ms.Vijayakumari Natarajan the learned counsel for the petitioner, that without giving an opportunity to the petitioner the lower Court suo-moto sent the document to the Revenue Divisional Officer for impounding the same without following the procedure contemplated under the Stamp Act, and the Revenue Divisional Officer, without conducting any enquiry and without giving an opportunity to the petitioner, levied penalty of Rs.37,02,408/- to be payable by the petitioner. Therefore, the petitioner filed the present application in I.A.No.834 of 2009 to direct the

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Court to evaluate the stamp duty and penalty payable to the document, dated 23-03-1998, in accordance with law, without adopting the value fixed by the Revenue Divisional Officer. That application was dismissed by the lower Court and against the said order, this revision petition is filed.

2. Ms. Vijayakumari Natarajan, learned counsel for the revision petitioner submitted that the lower Court without properly appreciating the provisions under Sections 33, 35 and 38 of the Stamp Act sent the instrument directly to the Revenue Divisional Officer for the evaluation of stamp duty and penalty and hence, the procedure adopted by the lower Court in demanding the stamp duty assessed by the Revenue Divisional Officer, is illegal and the lower Court ought to have assessed the stamp duty and penalty by itself and ought not to have dismissed the application. The learned counsel further submitted that the lower Court without properly appreciating the judgment of the Honourable Supreme Court in *Chilakuri Gangulappa -vs- Revenue Divisional Officer, Madanapalle* and another reported in (2001) 4 SCC 197, erred in holding that as per the said Honourable Supreme Court judgment, assessing the stamp duty by Revenue Divisional Officer is justified.

3. Ms. Radhavyathi, learned counsel for the respondent submitted that once the Revenue Divisional Officer has assessed the stamp duty and penalty, the remedy available to the petitioner is to challenge the same and he cannot approach the lower Court to evaluate the stamp duty by itself. She further stated that despite the orders passed by this Court directing the lower Court to dispose of the final decree application, the petitioner is not co-operating with the lower Court in the disposal of the final decree application and her intention is only to drag on the proceedings and therefore, this petition is liable to be dismissed.

4. I have given my anxious consideration to the submissions made by both the Counsel.

5. To appreciate the contentions of both the Counsel, this Court has to analyse the provisions of Sections 33, 35 and 38 of the Stamp Act. According to Section 33 of the Indian Stamp Act, 1899, when a instrument, chargeable with duty is produced and if it appears to the authority, before whom it is produced, that such instrument is not duly stamped, shall impound the same. Section 35 of the Act, prescribes that no document shall be admitted in evidence unless such document is duly stamped. The proviso(a) to section 35 of the Act, further provides that any such document which is not duly stamped shall be admitted in evidence, on payment of the duty, with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required, is to make up such duty, together with a penalty of Rs.5/- or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty. As per Section 38 of the Act, the procedure for impounding the document has been dealt with. According to Section 38 of the Act, when the person impounding an instrument under Section 33, admits such instrument in evidence upon payment of the duty as

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provided by Section 35 of duty as provided under Section 37 shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating that the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf. Sub-clause (2) of the Section 38 of the Act, says that in every other case, the person so impounding an instrument shall send it in original to the Collector.

6. Therefore, a careful reading of Section 38 of the Act, reveals that when an instrument is brought before the authority who by law or consent of parties, to receive evidence, such authority can admit such instrument in evidence upon the payment of penalty as provided by Section 38 of the Act, and thereafter, send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty. Therefore, whenever a document is produced which is not duly stamped or insufficiently stamped, a duty is cast upon the Court to assess the penalty and the stamp duty provided as per Section 35 of the Act and to call upon the person to pay the same, and in the event of failure of payment of the amount, the Court, can send the instruments to the authority for evaluation of proper stamp duty. This has been clearly stated by the Honourable Supreme Court in *Chilakuri Gangulappa -vs- Revenue Divisional Officer, Madanapalle* and another reported in (2001) 4 SCC 197. In paragraph 12 of the judgment it has been clearly stated as follows:

It is clear from the first sub-section 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 send 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.

7. Therefore, it is clear from the aforesaid judgment of the Honourable Supreme Court, that a duty is cast upon the Lower Court to evaluate the stamp duty and penalty as per Section 35 of the Stamp Act, by itself and call upon the party to pay the

same and after the amount is paid, the lower Court shall send the certificate stating the stamp duty and penalty paid by the party to the Revenue Divisional Officer and only in the case of failure on the part of the party to pay the amount assessed by the lower Court or when the party objects to the stamp duty and penalty assessed by the lower Court, the Court can send the instrument for assessment by the Revenue Divisional Officer. This aspect of the provisions of Section 38 of the Act and explained by the Honourable Supreme Court has not been properly appreciated by the lower Court and the lower Court relied upon the paragraph 13 in that judgment dismissed the application. As a matter of fact, in paragraph 13 of the said judgment, it has been made clear that a duty is cast upon the Court to assess the stamp duty and penalty. Hence, the order of the lower Court is not in accordance with the provisions of Section 38 of the Stamp Act and also in accordance with the judgment of the Honourable Supreme Court reported in *Chilakuri Gangulappa vs- Revenue Divisional Officer, Madanapalle and another reported in (2001) 4 SCC 197*. Hence, the order of the lower Court is set aside and the revision petition is allowed. The lower Court is directed to evaluate the proper stamp duty payable on the instrument and also the penalty as per the proviso under Section 35 of the Stamp Act, without being influenced, by the order of the Revenue Divisional Officer after giving an opportunity to the parties concerned and if the petitioner is not prepared to accept the value assessed by the lower Court, thereafter, the lower Court can direct the party to pay the stamp duty as assessed by the Revenue Divisional Officer and the lower Court can complete the exercise within a period of (*) four months from the date of receipt of a copy of this order. No costs. Consequently connected M.P(MD)No.1 of 2009 is closed.

Sd/-
Assistant Registrar(P&A)

(*) Amended as per order dated 07.12.2009 on Being Mentioned made in CRP (NPD) (MD) 1849/2009 and M.P (MD) 1 of 2009

True Copy
S. G. ...
Sub-Assistant Registrar

To
[To be substituted for the order already despatched on 24.11.09]
The Additional District Munsif, Madurai.
+1 CC to Mr.V.Janakiramulu, Advocate, SR.No.38302
+1 CC to Mr.S.Natarajan, Advocate, SR.No.41172
+1 LR Copy

C.R.P(NPD) (MD) No.1849 of 2009
& M.P(MD) No.1 of 2009
19.11.2009

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