



C.R.P.(MD) No.1671 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.1671 of 2022

and

C.M.P.(MD) No.7343 of 2022

C.Chelladurai

... Petitioner

Vs.

Karuppanan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.92 of 2022 in O.S.No.51 of 2019 dated 07.07.2022 on the file of the District Munsif Court, Vadipatti.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondent : Mr.K.Guhan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 07.07.2022 passed by the District Munsif Court, Vadipatti in I.A.No.92 of 2022 in O.S.No.51 of 2019.



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WEB COPY 2. By the impugned order dated 07.07.2022, the District Munsif Court has dismissed the I.A.No.92 of 2022 filed by the petitioner who was sole defendant in O.S.No.51 of 2019 to introduce a copy of the unregistered Sale Agreement dated 13.06.1990 which is said to have entered into between the mothers of the respective parties. The said Sale Agreement dated 13.06.1990 is an unregistered document on Two Rupees Stamp Paper.

3. The Court below has dismissed the I.A. by referring to Sections 17(1)(b) and 49 of the Indian Registration Act, 1908 and Section 35 of the Indian Stamp Act, 1899 with the following observations:-

8) மனுதாரர்/பிரதிவாதியால் குறியீடு செய்திட வேண்டி தாக்கல் செய்யப்பட்ட இம்மனுவில் கடந்த 13.06.1990ம் தேதியிட்ட பதிவு செய்யப்படாத ஆவணத்தை பொறுத்தவரை இந்திய பதிவு சட்டம் 1908 சட்டப்பிரிவு 17(1) உட்பிரிவு (b)ன்படி ரூ.100/- மற்றும் அதற்கு மேற்பட்ட மதிப்பு உடைய சொத்து தொடர்பான உரிமை மாற்ற ஆவணங்கள் கட்டாயமாக பதிவு செய்யப்பட வேண்டும் என்பது நிலைநிறுத்தப்பட்ட சட்டக்கோட்பாடு ஆகும்.

மேற்படி சட்டப்பிரிவிலும் அடியிற்கண்டவாறு குறிப்பிட்டுள்ளது.

17. Documents of which registration is



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compulsory.— (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

9. மேலும் பதிவு செய்யப்படாத ஆவணங்களின் செயலுறுத்தப்படும் தன்மை குறித்து இந்திய பதிவு சட்டம் பிரிவு 49ல் அடியிற்கண்டவாறு குறிப்பிடப்பட்டுள்ளது.

49. Effect of non-registration of documents required to be registered.— No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall

(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, '[***]' or as evidence of any collateral transaction not required to be effected by registered instrument. எனக்குறிப்பிடப்பட்டுள்ளது.

10) மேலும் மேற்படி பதிவு செய்யப்படாத



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கிரையப்பத்திரத்தின் அடிப்படையில்
மனுதாரர்/பிரதிவாதிகள் தவா சொத்தினை அனுபவம்
செய்து வருவதற்கு ஆதரவாக வருவாய்துறை
ஆவணங்கள் எதுவும் தாக்கல் செய்யப்படவில்லை.
மேலும் இந்திய முத்திரை கட்டணச்சட்டம் பிரிவு
35ன்படி சரியான முத்திரை கட்டணம் செலுத்தி பதிவு
செய்யப்படாத ஆவணம் சட்டப்படி சாட்சியமாக ஏற்க
இயலாது என்பதும் சட்ட நிலைப்பாடு ஆகும்.
எனவே மேற்கண்ட சட்ட நிலைப்பாட்டின்படி மனுவுடன்
தாக்கல் செய்யப்பட்ட ஆவணம் செல்லும் தன்மை
அற்ற நிலையில், அதனடிப்படையில்
மனுதாரர்/பிரதிவாதி எவ்வித பரிகாரமும்
கோர இயலாது என்றே சமூக நீதிமன்றம் தீர்வு
காண்கிறது.

11) எனவே, மேற்படி பதிவு சட்டத்தின்படி
கடந்த 13.06.1990 தேதியிட்ட ஆவணமானது பதிவு
செய்யப்படவில்லை என்பதினாலும், முத்திரை
கட்டணச்சட்டம் பிரிவு 35ன்படி முத்திரைக்கட்டணம்
செலுத்தப்படாத காரணத்தினாலும்
மனுதாரர்/பிரதிவாதியால் தாக்கல் செய்யப்பட்ட இந்த
ஆவணம் குறியீடு செய்ய இயலாது என சமூக
நீதிமன்றத்தால் அறிந்து கொள்ளப்பட்டு, முடிவு
காணப்படுகிறது.

இறுதியாக,

மனுதாரர்/பிரதிவாதியால் தாக்கல் செய்யப்பட்ட
இம்மனுவில் இந்திய பதிவு சட்டம் பிரிவு 17 மற்றும்
49ன்படியும், மற்றும் இந்திய முத்திரை
கட்டணச்சட்டம் பிரிவு 35ன்படியும் நிபந்தனைகள் ப
ூர்த்தி செய்யப்படாத காரணத்தினால் இம்மனு
தள்ளுபடி செய்யப்பட்டு உத்தரவு பகிரப்படுகிறது.

4.The learned counsel for the petitioner submits that Section 17 of
the Indian Registration Act, 1908 was amended *vide* Tamil Nadu



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Government Gazette, dated the 30th November, 2012 only with effect from

01.12.2012, whereby, it was mandatory for a person to register the Sale Agreement and therefore, bar under Section 17 of the Indian Registration Act, 1908 will not apply as above Sale Agreement precedes the above amendment.

5. That apart, it is submitted that there is no impediment under Section 49 of the Indian Registration Act. The learned counsel for the petitioner submits that the Sale Agreement was sufficiently stamped as per the stamp duty rates prevailing then for execution of Sale Agreement and hence the impugned order declining the prayer for marking of the aforesaid Sale Agreement dated 13.06.1990 is liable to be interfered with.

6. Per contra, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference and therefore, the present Civil Revision Petition is liable to be dismissed. That apart, it is submitted that the suit has been filed for declaration and for permanent injunction in the year 2019, the introduction of alleged Sale Agreement dated 13.06.1990 at the time of trial after the closure of plaintiff's side witness was hopelessly time barred and therefore, on this



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count also, the impugned order does not call for interference and this Civil

Revision Petition is liable to be dismissed.

7. The learned counsel for the respondent relied on the decision of this Court in **Thangamuthu and others Vs. A.Jeyaraj**, 2020 (1) CTC 47. A reference is made to paragraph No.14, wherein, the Court has held that where an instrument is improperly not stamped, such instrument cannot be admitted in evidence in terms of Section 35 of the Indian Stamp Act, 1899. Paragraph No.14 from the above Judgment reads as under:-

14. The Judgments that have been cited by the learned Counsel for the Respondent may not come to his aid, since the Hon'ble Supreme Court in those Judgments has categorically held that in view of Section 35 of the Stamp Act, 1899, the document, which falls under the said provision, shall not be admitted for any purpose whatsoever. This would also include for collateral purpose.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

9. The impugned order cannot be sustained as without allowing the



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petitioner for marking the additional document namely, Sale Agreement dated 13.06.1990, the Court cannot determine the exclusive rights of the petitioner and the respondent, as the case may be.

10. That apart, in the Written Statement filed in O.S.No.51 of 2019, the petitioner has categorically stated that the Sale Agreement dated 13.06.1990 was executed between the petitioner's mother and the respondent's mother. The relevant portion from the Written Statement reads as under:-

2. That as far as the other allegations set forth in para 4 of the suit plaint by alleging that the plaintiff's mother had possessed and enjoyed the suit property from the date of her purchase untill the date of death of her and further alleged that the plaintiff's mother had died on 10.09.2016 leaving the plaintiff and his sisters namely one Pitchar, Veerammal Selvi and Manimegalai as her sole legal heirs to be agreement of sale of the suit property on 13.06.1990. The sale price has been fixed as Rs.5,500/- to the present suit property and the mother of the plaintiff herein, received a sum of Rs.5000/- as advance amount, in token to the said sale agreement as on 13.06.1990. The time for sale has been fixed as 6 months from 13.06.1990 for completion of sale infavour of the mother of this defendant. The terms of the sale agreement had been reduced into writing and both the mother of the plaintiff and the mother of the defendant had signed in it in presence of witness for purpose of using it as cattle shed of the defendant's family.



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WEB COPY 11. The only mistake the petitioner committed was in not filing the copy of the said Sale Agreement dated 13.06.1990 along with the Written Statement as is required under Order VIII Rule 1-A of the Code of Civil Procedure, 1908 which reads as under:-

Order VIII Rule 1-A

(a) 1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him -

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-



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(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.

12. The mistake in not filing the aforesaid Sale Agreement can be condoned. Whether the aforesaid document is relevant document or admissible can be decided at the time of final arguments subject to admissibility, proof and relevancy. In my view that the Court ought to have allowed the I.A. as a specific reference/averment is made in the Written Statement as extracted above.

13. In the light of the above, this Civil Revision Petition deserves to be allowed and consequently, the said Sale Agreement dated 13.06.1990 is allowed to be marked before the Court. Considering the fact that the suit is of the year 2019, the District Munsif Court, Vadipatti is directed to proceed with the trial and complete the proceedings in the above suit as expeditiously as possible and pass a Judgment and Decree within a period of 9 months from the date of receipt of a copy of this order.



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14. All the issues relating to the merits of the case including the limitation are left open for the respondent to canvass at the time of final arguments. It may be marked subject to admissibility, proof and relevancy.

C.SARAVANAN, J.

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15. This Civil Revision Petition stands allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Internet: Yes/No
Index: Yes/ No
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To

The District Munsif Court, Vadipatti.



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