



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18/2/2015

WEB COPY

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD (MD) No.247 of 2015

and

MP (MD) .No.1 of 2015

1. T.A.Mariappan

2. T.A.M.Thirupathirajan ... Petitioners

 V_S

A.G.Loganath ... Respondent

Petition filed under Article 227 of the Constitution of India against the fair order and decreetal order passed in I.A.No.955 of 2014 in O.S.No.389 of 2011 dated 25/11/2014 on the file of the Principal Sub-Judge, Madurai.

For petitioners ... Mr.J.Ashok

For respondent ... Mr.C.Vakeeswaran

ORDER

The defendants in a suit for specific performance has filed the above revision, aggrieved by the order, allowing the document dated 4/2/2004 to be marked in evidence.

2. The plaintiff has filed the suit for specific performance based on the agreement dated 4/1/2004. According to the plaintiff, he had paid the entire sale consideration through Demand Draft. The defendants had also assured that they would execute and register the sale deed in favour of the plaintiff, after getting the sale deed executed and registered in their names from the Tamil Nadu Housing Board. Pursuant to the agreement, the defendants also had handed over possession of the suit property on the very same day. At the time of marking of the unregistered sale deeds, the defendants had raised objections that they are not admissible in evidence as they are hit by Section 49 of the Registration Act. The very suit is laid only based on the said agreements. Therefore, the plaintiff had filed I.A.No.955 of 2014 to receive and mark the said documents in evidence.



3. The application was resisted by the defendants contending that the unregistered documents cannot be marked in evidence as they are insufficiently stamped and will not have any evidentiary value. It was further contended that as the possession was also handed over to the plaintiff on the date of agreement itself, it amounts to conveyance and passing of title. Hence as per Section 17 (1) (b) of the Registration Act, the said documents have to be registered. Otherwise they are inadmissible in evidence, as per Section 49 of the Registration Act.

4. After hearing both sides, the learned Principal Sub-Judge, Madurai allowed the application. Aggrieved by the same, the above Civil Revision Petition has been filed by the defendants.

5. Heard the learned counsel appearing for the petitioners and the respondent.

6. The only question that has to be decided is whether the unregistered agreements dated 4/1/2004 can be marked and received as document.

7. The contention of the learned counsel appearing for the petitioners is that as per Section 49 of the Registration Act, any document which require to be registered shall not be received in evidence if not registered. However, the proviso would go to show that any unregistered document affecting immovable property which required registration may be received in evidence to prove the contract in a suit for specific performance or as evidence in any collateral transaction not required to be effected as a registered instrument. By virtue of the said proviso, even an unregistered sale deed which is above the value of Rs.100/- can be admitted in evidence only for the purpose of proving the contract in a suit for specific performance. The unregistered sale deed may not be an evidence of a complete sale but it can be treated as an agreement to sell and the suit for specific performance can be filed based on the same. The said principle is set out in 2010 (5) SCC - 401 (S.KALADEVI Vs. V.R.SOMASUNDARAM AND OTHERS). In the above said decision, it is very clearly held that the document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

8. The suit for specific performance being one for enforcing a contract, the unregistered sale deed will operate as agreement between the parties. It is not in dispute that a suit for specific performance can be laid even on a oral agreement. While <https://www.sevices.ecom.gov.in/ncgicis> unregistered sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer of property. Therefore, the



trial Court was justified in admitting the unregistered sale agreement dated 4/1/2004 which is tendered by the plaintiff in evidence. By admitting the above document, no prejudice would be caused to the defendants.

WEB COPY

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub Assistant Registrar

To

The Principal Sub-Judge, Madurai

+1cc to Mr.C.Vakeeswaran, Advocate Sr.No.7645

+1cc to Mr.J.Ashok, Advocate Sr.No. 7968

mvs

AA/25.02.2015/3p- 4c/

C.R.P.PD (MD) No.247 of 2015
18/2/2015