

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 2660 OF 2016

IN

SUIT (L) NO. 631 OF 2016

Janardan Sambha Manjrekar

... Applicant
(Orig. Deft. No.2)

In the matter between:

B.L. Chandrashekhar

... Plaintiff

vs.

Vyankatesh Sambha Manjrekar and others

... Defendants

*Mr. Nilesh C. Ojha along with Mr. Suresh Ghamre for the Applicant-Orig.
Defendant No.2*

Mr. Shahed Ali Ansari for the Plaintiff.

CORAM: S.J. KATHAWALLA, J.

DATE: 15th November, 2016

P.C.:

1. The above Notice of Motion is taken out by Defendant No. 2 under Oder 7 Rule 11 of the Code of Civil Procedure, 1908 on the ground that the agreement dated 11th June, 2012 which needs to be compulsorily registered under the Registration Act, 1908 ("the Act"), is admittedly not registered. It is submitted that Section 49 of the Act makes it clear that a document which is compulsorily registrable, if not registered, will not affect the immovable property comprised therein in any manner and it will also not be received as evidence of any

transaction affecting such property, except for two limited purposes i.e. (i) as evidence of a contract in a suit for specific performance and (ii) as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. The suit therefore appears from the statement in the plaint to be barred under the Act and the plaint deserves to be rejected.

2. It is the case of the Plaintiff in the suit that he had entered into an agreement dated 11th June, 2012, with Defendant No. 2 whereunder the Plaintiff and Defendant No. 2 agreed to jointly develop the suit property and share the profit in the ratio mentioned therein. It is categorically stated in paragraph 5 of the Plaint that "*The Plaintiff states that he has under the above referred Agreement obtained a legitimate right, title and interest in the said suit property as a sub-developer*". In paragraph 25 of the Plaint the Plaintiff has also stated that "*The Plaintiff states that he obtained lawful right, title and interest in the suit property under agreement dated 11/06/2012 in respect of the suit property by paying a consideration of sum of Rs. 1,00,000/- (Rupees One lakhs only).*"

3. According to the Plaintiff, Defendant No. 2, who had represented to the Plaintiff that he is the owner of the suit property, in collusion with his brother, the Defendant No.1, filed a Suit in the City Civil Court, being S.C. Suit No. 334 of 2015 whereunder Defendant No. 1 (the Plaintiff therein) claimed to be in adverse possession of the suit property since 7th February, 1999 and contended that Defendant No. 2 herein (Defendant No. 1 therein) and/or the other Defendants

have no right, title and/or interest in the suit property. The Agreement dated 11th January, 2012, executed with the Plaintiff was suppressed. Defendant No. 2 for self and on behalf of other Defendants filed consent terms dated 11th February, 2015, in the said suit before the City Civil Court wherein Defendant No. 2 surrendered/released/relinquished all his claims, right, title and interest in the suit property in favour of his brother, thereby depriving the plaintiff of his rights under the agreement dated 11th June, 2012. In the present suit, the Plaintiff has therefore sought a declaration that the Plaintiff has a joint development right to develop the suit property jointly with Defendant No. 2 and for setting aside the judgment and decree dated 13th February, 2015 passed in terms of the Consent terms dated 11th February, 2015 by the City Civil Court, Dindoshi Branch in S.C. Suit No. 334 of 2015.

4. Section 17 (1) (b) of the Act provides that *"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 immovable property"* are compulsorily registrable. Section 49 of the Act sets out the effect of non-registration of documents required to be registered. The said section is extracted below :

"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 (4 of 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 (4 of 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 (3 of 1877) as evidence of any collateral transaction not required to be effected by registered instrument."

5. The Hon'ble Supreme Court has in the decision in the case of *M/s. SMS Tea Estates Pvt. Ltd. vs. M/s.Chandmari Tea Co. Pvt. Ltd.*¹ after reproducing Section 49 of the Act observed as under:

" Section 49 makes it clear that a document which is compulsorily registrable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily

1 (2011) 14 SCC 66

registrable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to section 49 of the Registration Act.

6. In the instant case, as stated hereinabove, the Plaintiff's cause of action is based exclusively on the Agreement dated 11th June, 2012, under which he claims to have obtained a legitimate right, title and interest in the suit property. Under the Agreement, he has agreed to jointly develop the suit property and share the profit in the ratio mentioned therein. He has also parted with lawful consideration of an amount of Rs. 1,00,000/- as and by way refundable security deposit to acquire the rights in the property under the Joint Venture Agreement dated 11th June, 2012. According to the Plaintiff, in view of this Agreement in his favour, Defendant Nos. 1 and 2 were not entitled to file consent terms or obtain a consent decree from the City Civil Court, Mumbai. The Plaintiff has in view of the agreement dated 11th June, 2012, prayed in the above Suit that it be declared that he has a joint development right to develop the suit property with Defendant No. 2 and that the judgment and decree dated 13th February, 2015 passed by the City Civil Court in Suit No. 334 of 2015 be declared null and void and not binding upon the Plaintiff.

7. Admittedly, the plaint is founded on the Agreement dated 11th June, 2012, which is compulsorily registrable but is admittedly not registered. The Plaintiff's case is of right, title and interest in immovable property arising under the

Agreement of 11th June, 2012. In other words, the only case in the suit is on the Agreement as a document of title. The document obviously cannot affect the property and also cannot be received as evidence of any transaction affecting such property due to its non-registration as mandated by Section 49 of the Act. Such non-registration is not covered by any of the two exceptions set out in the proviso to Section 49 of the Act. The suit therefore cannot be proceeded with in any manner whatsoever. It is not possible to consider grant of any relief in the suit at any stage, in view of the mandate prescribed in Section 49 of the Act. Such Suit therefore needs to be treated as barred under the Registration Act, 1908 and the plaint needs to be rejected. The Plaintiff has not filed any reply to the above Notice of Motion and also not made any submission save and except a single sentence that the Plaint need not be rejected. The Notice of Motion is therefore allowed and the plaint is rejected under Order 7 Rule 11 of the Code of Civil Procedure.

(S.J. KATHAWALLA, J.)