

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.3799 of 2016

K.Rangasamy

.. Petitioner/Plaintiff

Vs.

1.A.Shanmugam

2.Durai Dhandapani

3.M.D.Thangavel

.. Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed on 27.04.2016 in O.S.No.Nil of 2016 on the file of the District Sessions Court, Tiruppur and direct the trial Court to number the plaint.

For Petitioner : Mr.S.Vinoth Kumar

ORDER

Civil Revision Petition is filed to set aside the order passed on 27.04.2016 in O.S.No.Nil of 2016 on the file of the District Sessions Court, Tiruppur and direct the trial Court to number the plaint.

2.Learned counsel for the petitioner would submit that the petitioner herein as a plaintiff filed a suit for specific performance. But the plaint was rejected on the ground that the suit for specific performance has been filed on the basis of unregistered sale agreement. He would further submit that it is true, as per Section 17 of the Registration Act, sale agreement has to be registered. But as per Section 49 of the Registration Act, unregistered sale agreement is admissible in evidence. Admissibility and relevancy of the document have to be decided only at the time of trial. To substantiate his argument, he has relied upon the decision of this Court in **CRP(NPD) No.861 of 2016, dated 18.03.2016**, wherein in an identical situation, this Court has allowed the civil revision petition and directed the trial Court to take the plaint on file. Therefore, he prays for allowing this petition.

3.Considering the submission made by the learned counsel for the petitioner, since the plaint has been rejected before numbering the plaint, notice to the respondents is dispensed with.

4.On perusing the typed set of papers, it reveals that the suit is filed for specific performance on the basis of unregistered sale agreement dated 21.01.2014. As per Section 17 of the Registration

Act, registration of document is compulsory, but as per Section 49 of the Registration Act, unregistered sale agreement is admissible in evidence. So it is appropriate to extract Sections 17 and 49 of the Registration Act, which read as follows:

"17. Documents of which registration is 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 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,-

(a) Instruments of gift of immovable property;

(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;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right,

title or interest; and

(d) Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

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[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates 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:]

Provided that the 18[State Government] may, by order published in the 19[Official Gazette], exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

20[(I-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered

on or after such commencement then, they shall have no effect for the purposes of the said section 53-A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to---

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) 21[any document other than the documents specified in sub-section (I-A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in

immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court 22[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by the 23[Government]; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists' Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

24[(x-a) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for

payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

25[*Explanation.*-A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.

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 (IV 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 (IV 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, or as evidence of any collateral transaction not required to be effected by registered instrument."

5.This Court by order dated **18.03.2016 made in CRP(NPD) No.861 of 2016**, allowed the civil revision, after considering the decision reported in 2014 (8) MLJ 562 (Minor Ravi Bharathi v. P.Balasubramani and another), AIR (2003) SC 1905 (Bondar Singh and Others v. Nihar Singh) and 2014 (5) LW page 59 (R.Munusamy v. G.Krishttapillai).

6. Considering the basic principles of pleadings and the dictum laid down in various citations as cited supra, it is clear that rejection of plaint is illegal and hence, the impugned order dated 27.04.2016, is hereby set aside.

7.Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order dated 27.04.2016, passed by the District Sessions Court, Tiruppur. The District Sessions Court, Tiruppur, is

directed to number the plaint and take the same on file in accordance with law, if otherwise in order. No costs.

05.12.2016

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Index:Yes/No
To

The District Sessions Court, Tiruppur.

R.MALA,J.

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