

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.861 of 2016

K.Sathishkumar
S/o.Late. S.Kathirvelu Mudaliar .. Petitioner
Vs

1.A.S.Manickkam
S/o.Subbaraya Gounder

2.M.Vijaya
W/o.A.S.Manickam

3.V.Baggiyalakshmi
W/o.A.M.Venkatesan

4.G.Jayakumar

5.J.Thangam
W/o.G.Jayakumar

6.J.Chitra
W/o.J.Jayamanickam

7.S.Radhakrishanan
S/o. Subramani Nadar

8.S.Parvathimuthu
D/o.M.Soundararajan .. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition and to set aside the order passed on 13.07.2015 in O.S.No.Nil of 2015 on the file of the Court of the Principal District Judge, Vellore.

For Petitioner

:Mr.M.V.Krishnan

ORDER

This Civil Revision Petition has been filed challenging the rejection of plaint by the Court below. The plaintiff/revision petitioner has filed the suit for specific performance based upon the unregistered sale agreement. The lower Court has chosen to reject the plaint.

2. It is true that the agreement is unregistered. Whether the unregistered agreement is totally and completely irrelevant and inadmissible at all circumstances is the issue, which ought to have been considered by the Trial Court.

3.It is the contention of the learned counsel for the revision petitioner that the unregistered sale agreement is admissible as (a) evidence of a contract in a suit for specific performance and (b) evidence of any collateral transaction which is not required to be effected through registered instruments. In support of the same, the provisions of Section 49 of the Registration Act and the decision reported in (2014) 8 MLJ 562 [*Minor Ravi Bharathi, S/o.Late Rajeswaran v. P.Balasubramani and Another*], is relied upon, wherein the circumstances under which an unregistered document can be relied upon is dealt with.

3.1. Section 49 of the Registration Act, 1908, reads as follows:

"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 (I of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

4. The relevant observation in the judgment cited *supra* which again refers the decision of the Hon'ble Supreme Court reported in *AIR (2003) SC 1905 [Bondar Singh and Others Vs. Nihar Singh]* reads as under :

"Legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case, the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized."

5. It is appropriate to quote that the decisions reported in *2014 (5) LW 59 [R.Munusamy Vs. G.Krishttapillai]* wherein it has been held that in a suit for specific performance, the unregistered agreement is admissible as an evidence of contract. The relevant observation reads as under :

"8. A careful perusal of the abovesaid provision of law would indicate that a document required to be registered under Section 17 of the Registration Act, 1908, if not registered, it shall not be received as evidence of any transaction affecting such property or conferring such power. Though such an embargo is put under Section 49 (C) of the said Act, the proviso made to the said Section however contemplates that such unregistered document affecting immovable property may be received as evidence either in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. Thus, it is evident that the proviso to Section 49 permits receipt of such unregistered document as evidence of any collateral transaction."

6. When such is the legal position, the rejection of the plaint at the threshold preventing/blocking access to justice is unwarranted.

7. Even assuming the extreme that the document is inadmissible, the defendant may admit the suit claim and there can be a judgment based on admission.

Code of Civil Procedure Order XII, Rule 6 on admission reads as follows :

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

8. The decision of the Hon'ble Delhi High Court reported in *AIR 2000 Delhi 349 (DB)*, explaining the scope of admission is relevant.

"9. Bare perusal of the above rule shows, that it confers very wide powers on the court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis. Any plea raised against the contents of the documents only for delaying trial being barred by the Section 91 and 92 of Evidence Act or other statutory provisions, can be ignored. These principles are well settled by catena of decisions. Reference in this regard be made to the decisions in *Dudh Nath Pandey (dead by L.R's) Vs. Suresh Chandra Bhattasali (dead by*

L.R's) ; Atma Ram Properties Pvt. Ltd. Vs. Air India ; Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd. 1997 II AD (Delhi) 518; Abdul Hamid Vs. Charanjit Lal & Ors. 1998 Vol.2 DLT 476 and Lakshmikant Shreekant Vs. M N Dastur & Co.”

9. From the basic principles of pleading and from the dicta laid down in various decisions cited supra, it is clear that rejection of plaint is unjustified, when the plaint discloses a cause of action. The matters to be considered at the time of enquiry/trial is different from the matters to be considered at the time of admission of the plaint. Without understanding this distinction, the plaint has been rejected. Therefore, the order rejecting the plaint which is per se illegal is set aside.

10. The lower Court is directed to take the plaint on file and decide the matter on merits after the appearance of the defendants and after hearing both parties.

In the result, this Civil Revision Petition stands allowed.
No costs.

18.03.2016

ds

To:
The Principal District Judge,
Vellore.

S.VIMALA,J.

ds

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