



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2016

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.429 of 2016 (PD)
and
C.M.P. (MD) .No.1849 of 2016

AL.Alagappan @ Keerthivasan

... Petitioner

Vs.

1.K.Ramasamy
2.AL.Alagappan

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to revise the order dated 03.02.2016 passed in I.A.No.321 of 2015 in O.S.No.90 of 2015 on the file of the Principal District Judge, Virudhunagar District at Srivilliputhur, allow the civil revision petition dismissing the plaint as sought for with cost throughout.

For Petitioner :Mr.R.A.Mohanram
For R1 :Mr.S.Meenakshisundaram

ORDER

This Civil Revision Petition has been filed to revise the order dated 03.02.2016 passed in I.A.No.321 of 2015 in O.S.No.90 of 2015 by the Principal District Judge, Virudhunagar District at Srivilliputhur and allow the civil revision petition and dismiss the plaint as sought for with cost throughout.

2.The petitioner is the first defendant. The first respondent is the plaintiff and the second respondent is the second defendant in the suit. The first respondent filed a suit in O.S.No.90 of 2015 for declaration that the settlement deed dated 29.12.2010 executed by the petitioner in favour of the second respondent as null and void and for relief of specific performance and also for permanent injunction. The petitioner and the second respondent filed written statement and are contesting the suit. The petitioner also filed I.A.No.321 of 2015 to reject the plaint under Order 7 Rule 11, Section 151 of C.P.C and Section 17(1-A) of Indian Registration Act.

3.According to the petitioner, the first respondent is claiming specific performance of agreement of sale dated 25.10.2010. In the said agreement, it has been stated that the possession has been handed over to the first respondent, which amounts to sale of property. In the circumstances, agreement of sale cannot be relied on by the first respondent, as it is not sufficiently stamped and registered. For these reasons, he sought for rejection of plaint.



4.The first respondent filed counter affidavit denying the averments made by the petitioner. According to the first respondent, he was examined as P.W.1 and Ex.A1 to Ex.A6 were marked and suit was adjourned to 16.12.2015, 18.12.2015 and 08.01.2016 for his cross-examination. At that time, the petitioner filed the above application for rejection of plaint. The petitioner has not objected to mark the sale agreement as Ex.A.2. In the circumstances, the petitioner is not entitled to question the admissibility of Ex.A.2. The first respondent is not enforcing his right of possession under sale agreement Ex.A.2. Therefore, Section 17(1-A) of Registration Act and Section 35 of the Stamp Act are not applicable. The admissibility of document can be decided only after trial and at the time of delivery of judgment.

5.The learned Judge considered all the facts and materials on record and dismissed the application filed by the petitioner to reject the plaint. Against the said order of dismissal, the present civil revision petition is filed.

6.The learned counsel for the petitioner contended that the learned Judge failed to consider the clause 5 of agreement of sale dated 25.10.2010 which clearly shows that the property was sold as per Section 2(10) of the Stamp Act. In the circumstances, the said agreement of sale ought to have been stamped as a sale deed. It is insufficiently stamped and therefore, cannot be looked into for any purpose including for collateral purpose and cannot give any cause of action. The sale agreement is not valid document as per Sections 33, 35 and 38 of the Stamp Act and the same is barred by provisions of Indian Stamp Act. The learned Judge failed to see that the first respondent deliberately did not file counter affidavit in the application to reject the plaint filed in the year 2014 and suppressing the same, has filed proof affidavit.

7.The learned counsel appearing for the petitioner placed reliance on the following Judgments:

(i) In **OMPRAKASH V. LAXMINARAYAN & ORS.** reported in **2014-1-L.W.78**, wherein in paragraph Nos.8, 10 and 13, it is held as follows:

"8.In view of the rival submission, the question which falls for our determination is as to whether the admissibility of a document produced by the party would depend upon the recital in the document or the plea of the adversary in the suit and whether the document in question is 'conveyance' as defined under the Act and is duly stamped.

10.From a plain reading of the aforesaid provision, it is evident that an instrument by which movable or immovable property is transferred, comes within the expression 'conveyance'. In the present case, an immovable property is transferred on payment of part of the consideration and handing over the possession of the property. It is relevant here to state that by the Indian Stamp (Madhya Pradesh Second Amendment) Act, 1990 (Act No.22 of 1990) few Articles including Articles 23 of Schedule 1-A has been substituted. The Explanation and Explanation has been added to Article 23. The Explanation appended to Article 23 of Schedule 1-A of the Stamp Act as substituted by Section (6) of Act 22 of



1990 reads as follows:

"Explanation.-For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of Section 47-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section :

Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance, subject to a minimum of Rs.10."

13.To put the record straight, the correctness of the impugned judgment (Laxminarayan & Ors. v. Omprakash & Ors., 2008(2)MPLJ 416) came up for consideration before a Division Bench of the High Court itself in Writ Petition No.6464 of 2008 (Man Singh (deceased) through Legal Representatives Smt.Sumranbai & Ors. v. Rameshwar) and same has been over ruled by judgment dated January 22, 2010. The High Court observed as follows:

"8.A document would be admissible on basis of the recitals made in the document and not on basis of the pleadings raised by the parties. In the matter of Laxminarayan (supra), the learned Single Judge with due respect to his authority we dont think that he did look into the legal position but it appears that he was simply swayed away by the argument that as the defendant was denying the delivery of possession, the endorsement/recital in the document lost all its effect and efficacy.

9.It would be trite to say that if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we dont think that the Court would be entitled to admit the document because simply the parties say so. The jurisdiction of the Court flows from Sections 33, 35 and 38 of the Indian Stamp Act and the Court has to decide the question of admissibility. With all humility at our command we over-rule the judgment in the matter of Laxminarayan (supra)."



"22.As per Section 33 of the Indian Stamp Act, a duty is cast upon the authority before whom, insufficiently stamped document is produced, to impound the same. In the light of the judgments of the Honourable Apex Court and this Court, cited supra, the document not duly stamped cannot be looked into for any purpose, including for collateral purpose. In the case on hand, the petitioners had raised objection well before the document was permitted to be marked."

8.The learned counsel also relied on the judgment of the Apex Court in **PADMAKUMARI & ORS. V. DASAYYAN & ORS.** Reported in **2016-1-L.W.97** and **FATEHJI & COMPANY AND ANOTHER V. L.M.NAGPAL AND OTHERS** reported in **(2015) 4 MLJ 495 (SC)** and the judgment of the Principal Seat of this Court in **G.SUBRAMANI V. V.RAJASEKARAN & ANOTHER** reported in **2013(4) CTC 468**.

9.The learned counsel for the caveator filed counter affidavit and submitted that the plaint can be rejected only by applying provisions of Order 7 Rule 11 of C.P.C. The Court has to consider only the averments made in the plaint and decide the application to reject the plaint. In the present case, the agreement of sale was marked as Ex.A.2, and the petitioner did not object to marking of the same. The first respondent is not seeking to enforce his possession as per agreement of sale. The first respondent is praying for declaration that the settlement executed by the petitioner in favour of his son/second respondent is null and void and in respect of the relief of specific performance. The first respondent is seeking alternative prayer of return of advance amount of Rs.9 lakhs together with interest. In view of the same, the application filed by the petitioner to reject the plaint is devoid of merits and also submitted that the learned Judge has given valid reasons for dismissing the application.

10.The learned counsel for the respondents placed reliance on the following judgments:

(i) In **PALANIAMMAL AND OTHERS V. K.R.C.ANBALAGAN AND OTHERS** reported in **2013 (3) CTC 477**, wherein in paragraph Nos.23, 24 and 28, it is held as follows:

"23.As per Section 17(1-A) of the Registration Act, an agreement for Sale relating to any immovable property, for reaping the benefits of Section 53-A of Transfer of Property Act, 1882, shall be registered. An intending purchaser, who enters into an Agreement for sale with the owner of the property and got delivery of possession of the property, cannot claim the benefits under Section 53-A of the Transfer of Property Act unless the Deed of Agreement for sale, which contemplates such delivery of possession is registered. But the said provision shall not affect the right of a transferee for consideration who has no notice of the contract or of the part performance thereof. It is not as if all the Agreements for Sale referring to instance of delivery of possession shall be compulsorily registered under Section 17(1-A) of the Registration Act. Only when the Agreement for sale which speaks about delivery of possession is filed to claim benefit



of part performance as contemplated under Section 53-A of the Transfer of Property Act, Court will have to find out whether the document was registered or not. If such document was not registered then the benefit of Section 53-A of Transfer of Property Act cannot be claimed by the prospective purchaser of the property.

24. In the case on hand, the 1st Plaintiff claimed benefit under Section 53-A of the Transfer of Property Act. The Plaintiffs have sought for the Relief of permanent injunction restraining the Defendants from interfering with the 1st Plaintiff's peaceful possession and enjoyment of the properties which he got under Exs.A1 and A3 documents. When the 1st Plaintiff sought for protection claiming benefits under Section 53-A of the Transfer of Property Act, under Section 17(1-A) of the Indian Registration Act, Exs.A1 and A3 documents must have been registered. Since both the documents viz., Exs.A1 and A3 were not registered, the Plaintiffs cannot rely upon these documents. If the Plaintiffs had not claimed benefits under Section 53-A of the Transfer of Property Act seeking for protection with regard to possession which they got under Exs.A1 and A3 documents, in that case, the registration is not mandatory. But in the case on hand, since the 1st Plaintiff had sought for a prayer for permanent injunction restraining the Defendants from interfering with his possession and enjoyment of the suit property based on Exs.A1 and A3 documents. Therefore, the documents must have been registered under Section 17(1-A) of the Registration Act. Since Ex.A1 was not registered, the Plaintiffs cannot rely upon the said document. Similarly, in the case of Ex.A3-Assignment Deed, it was alleged that possession was handed over to the first Plaintiff by the second Plaintiff under the said document. As already stated, since the first plaintiff had sought for the relief of permanent injunction, in respect of his possession based on Ex.A.3-Assignment Deed, the document must have been registered under Section 17(1-A) of the Registration Act. Since the document was not registered, the first plaintiff cannot rely upon the said document and file the suit for Specific Performance based on the said document. Therefore, even if Exs.A1 and A3 are true and genuine documents, the said documents cannot be relied upon by the plaintiffs for the reason that they were not registered under Section 17(1-A) of the Indian Registration Act. Therefore, the provision of Section 49 of the Registration Act are not applicable to the present case.

28. In the present case, the 2nd plaintiff executed Ex.A3-Assignment Deed in favour of the 1st Plaintiff assigning Ex.A.1 Agreement of Sale in his favour. Therefore, Ex.A3-Assignment Deed dated 03.06.2002 executed by the 2nd Plaintiff in favour of the 1st plaintiff is otherwise binding on the 1st Defendant but for the reason since the document was not registered under the provisions of Section 17(1-A) of the Registration Act, the said document cannot be relied upon by the plaintiffs."



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(ii) In **MINOR RAVI BHARATHI V. P. BALASUBRAMANI AND ANOTHER** reported in **(2014) 8 MLJ 562**, wherein in paragraph No.10, it is held as follows:

"10. In view of the specific provision made under the Proviso to Section 49 of the Registration Act, 1980, allowing the unregistered document affecting immovable property, to be received as evidence of a contract in a suit for specific performance, the contentions raised by the learned counsel for the petitioner cannot be sustained and the same is liable to be rejected. The trial Court has rightly rejected the application filed by the petitioner seeking to discard the unregistered agreement of sale, dated 31.08.2005, with which I find no infirmity or illegality."

11. I have heard Mr. R. A. Mohanram, learned counsel appearing for the petitioner and Mr. S. Meenakshisundaram, learned counsel appearing for the first respondent and carefully perused the entire materials on record.

12. The first respondent has prayed for declaration that settlement dated 25.10.2010 executed by the petitioner in favour of the second respondent as null and void and also for relief of specific performance or in the alternative refund of advance amount of Rs.9 lakhs. Trial commenced. The agreement of sale was marked as Ex.A.2. According to the first respondent, the petitioner did not object to marking of the same. The petitioner is seeking rejection of plaint only on the ground that the first respondent is claiming possession as per clause 5 of agreement of sale. In view of possession being given to first respondent, the sale agreement Ex.A.2, amounts to sale and it must be stamped as conveyance and registered.

13. According to the petitioner, plaint is barred as per provisions of the Registration Act and the Stamp Act. This contention relates to marking of the document and relying on the said document to substantiate the case of the first respondent. This issue can be decided only based on the evidence let in by the parties both oral and documentary evidence. The issue whether the suit is barred by provisions of Stamp Act and Registration Act cannot be decided in an application to reject the plaint. A plaint can be rejected only when the defendant projects that as per Order VII Rule 11 C.P.C., the plaint has to be rejected.

14. Further, it is well settled that the Court can reject the plaint only based on the averments made in the plaint. The averments in the written statement or the contention of the defendants cannot be taken into account for rejection of the plaint. In the present case, the agreement of sale dated 25.10.2010 is already marked as Ex.A.2. In the circumstances, it is for the petitioner to raise all these contentions in the trial and the learned Judge will decide the same on merits only at the time of delivering the judgment by considering oral and documentary evidence and arguments of learned counsel for parties.

15. In view of the well settled legal position that the suit can be rejected as per provisions of Order 7 Rule 11 of C.P.C., considering the averments made in the plaint only various judgments relied on by the petitioner are not applicable to the facts of the case. The learned Judge considered all these points in a proper perspective and dismissed the application. There is no reason warranting



interference by this Court.

16. In the result, the civil revision petition is dismissed. No costs. Consequently the connected C.M.P is also closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar

To

The Principal District Judge,
Virudhunagar District,
Srivilliputhur.

+1 CC to Mr.RA.MOHANRAM, Advocate, SR No.16608

+1 CC to Mr.S.MEENAKSHI SUNDARAM, Advocate, SR No.16595

C.R.P. (MD) .No.429 of 2016 (PD)
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