



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2016

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.693 of 2016 (PD)

and

C.M.P(MD)No.3244 of 2016

1.K.Anandaraman
2.K.Sooriyaramalingam
3.V.Pazhanivinayagam
4.V.Anandaraman
5.V.Karthikeyan
6.K.Meenakshisundaram

... Petitioners/Petitioners/
Plaintiff

Vs.

1.S.Sankaran
2.S.Arasappan

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 11.01.2016 passed in I.A.No.140 of 2015 in O.S.No.21 of 2014 on the file of the IV Additional District Court, Tirunelveli and to allow the present Civil Revision Petition.

For Petitioners : Mr.S.P.Maharajan
For Respondents : Mr.S.Meenakshi Sundaram

ORDER

This petition has been filed by the petitioners to set aside the Fair and Decreetal Order, dated 11.01.2016 passed in I.A.No.140 of 2015 in O.S.No.21 of 2014, by the learned IV Additional District Judge, Tirunelveli.

2.The petitioners are the plaintiffs. The respondents are the defendants. The petitioners filed the suit in O.S.No.21 of 2014, on the file of the IV Additinal District Court, Tirunelveli, for permanent injunction. The respondents filed written statement and resisted the same, on the ground that they are in possession of the property. During the trial, various documents were marked on behalf of the respondents. Therefore, the petitioners filed I.A.No.140 of 2015 in O.S.No.21 of 2014 for rejecting the



Exhibits-B5,B9,B16, B17 and B8.

3. According to the petitioners, Ex.B8 is unregistered sale deed and cannot be marked and looked into even for collateral purpose and those documents are to be rejected. Exhibits B5,B9,B16 and B17 are issued by the Village Administrative Officer and therefore, cannot be marked. The respondents contended before the trial Court that they are in possession of the property and Ex.B8, an un-registered sale deed can be looked into for collateral purpose. Exhibits B5,9,16 and 17 are the chitta and Adangal and copies of the revenue records and the same can be marked as exhibits. The learned Judge considering the facts and evidence on record, dismissed the application. Against the said order of dismissal, the petitioners have filed the present Civil Revision Petition is filed.

4. The learned counsel for the petitioners contended that the learned Judge failed to appreciate the contention of the petitioners in proper perspective. The learned Judge failed to consider the scope of order 13 Rule 3 r/w 151 CPC, Sections 17 and 49 of the Registration Act and Section 35 of the Indian Stamp Act. The learned Judge ought to have seen that it is repeatedly held by this Court and Hon'ble Supreme Court that an un-registered document cannot be looked into even for collateral purpose. The learned Judge has predetermined the issue, when the learned Judge held that the respondents are in possession and to prove the same Ex.B8 un-registered sale deed can be looked into for collateral purpose.

5. The learned counsel for the petitioner relied on the following judgements:-

2014 (3) TNCJ 619 N.A.K.Gopalakrishnaraja v. P.Elangovan

"20. The learned counsel for the petitioner vehemently argued that Courts below erred in rejecting Ex.A7. The contention of the learned counsel for the petitioner is the said exhibit can be relied on for collateral purposes. From the judgment relied on by the counsel for the petitioner and respondent, it is seen that a document required to be registered is not admissible into evidence under Section 49 of the Registration Act. An unregistered document can be used as an evidence on Collateral purposes as prescribed in the proviso to Section 49 of the Registration Act. To use an unregistered document for collateral purpose, the collateral transaction must be independent or divisible from the transaction to effect which law required registration. Any transaction creating any right, title or interest in



immovable property of the value Rs.100/- and upwards cannot be termed as collateral purpose. In the instance case, Ex.A27 is pressed into service to prove that property let out to the respondent is land and building and not vacant land. As per Ex.27, an interest in immovable property is created to the value more than Rs.100/-. Further, the issue whether the property let out is land and building or only vacant land is the main issue which goes to the root of the matter. This transaction cannot be held as collateral purpose. For the above reasons, I hold that the contention of the learned counsel for the petitioner that Ex.A27 is put into service for collateral purpose is untenable. The Courts below have rightly rejected Ex.A27. There is no reason warranting interference of this Court."

ii)2009(2) MLJ 361 S.Kaladevi vs. V.R.Somasundaram and others

"7.At this stage, this Court points out that in the decision K.B.Saha & Sons Private Limited v. Development Consultant Limited (2008) CTC 260 wherein the Hon'ble Supreme Court has inter alia observed that 'a Collateral transaction should be one which does not create, extinguish title, interest, right or interest etc., in immovable property and once the document cannot be admitted in evidence for want of registration any important clause in such document cannot be used for collateral purpose etc., Moreover, if a document is inadmissible evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause will not be using it as a collateral purpose, in the considered opinion of this Court.' Inasmuch as the unregistered sale deed dated 27.02.2006 cannot be admitted in evidence for want of registration the contents of the said document cannot be employed for any collateral purpose and in that view of the matter, the order passed by the trial Court in refusing to mark the aforesaid document as exhibit is perfectly valid in law and viewed in that perspective, the civil revision petition fails and the same is hereby dismissed."

iii)2014(3) CCJD- 46 S.N. Udaya Kumar @ Kumar vs. G.Kishore Kumar & Ors.

"As per the Order 13, Rule 3 of CPC, the Court may at any stage of the suit reject any document which it considers irrelevant and inadmissible in evidence. So the Trial Court has rightly disallowed the documents Nos.1 & 2. Therefore, the impugned order passed by the Trial Court does not warrant any interference and the revision petition is hereby dismissed."



iv) 2015(3) TLNJ 346 (Civil) Ramalingam and others Vs. Ramachandran

v) 2013(4) CTC 145 (D.Srinivasan and others vs. D.Chairman and others)

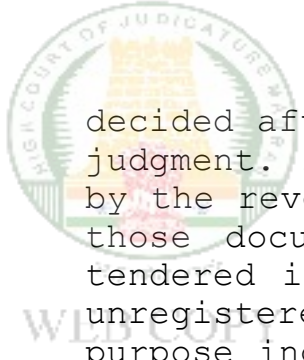
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6.The learned counsel for the caveator submitted that the defendants cannot be shut down at the threshold itself by preventing them by marking of documents. In the present case, documents are already marked and therefore, their admisibility can be decided only after conclusion of trial and at the time of delivering judgments. An unregistered document can be looked into for collateral purpose. The respondents are not claiming any title based on the unregistered saledeed. They want to rely on the said documents to prove their possession. Therefore, marking the documents by the Court is valid and legal. In a suit for permanent injunction filed by the petitioners it is for the petitioners to prove their possession to succeed in the suit.

7.I have heard the learned counsel appearing for the petitioners and the respondents and also perused the entire materials on record and also considered the judgments relied on by the learned counsel for the petitioners.

8.It is well settled that a party cannot be shut down from marking documents in the trial. Except a question of sufficiency of stamp duty is raised, all other documents must be marked subject to objection. The Court has to consider the documents as well as the objection of opposite party and decide whether documents can be accepted or rejected. In the present case, the documents are already marked. The learned Judge has rightly held that acceptability of these documents will be considered after conclusion of trial while delivering the judgments.

9.On earlier occasion, in the judgment reported in **2014(3) TNCJ 619 N.A.K.Gopalakrishnaraja v. P.Elangovan**, I held that an unregistered document can be looked into for collateral purpose, if collateral purpose claimed by the party is independent or divisible from transaction, which law requires registration. As per proviso to Section 49 of Stamp Act an unregistered documents can be used for collateral purpose. In number of judgments of this Court as well as the Hon'ble Apex Court it has been held that an unregistered document can be marked and looked into for collateral purpose. In the order reported in **2009(2) MLJ 361 S.Kaladevi vs. V.R.Somasundaram and others**, this Court held that an un-registered document cannot be admitted in evidence due to want of registration for the purpose of proving important clause in the said document. In the present case, respondents are not relying on the un-registered documents to prove their title. They are relying on said documents to prove their possession. Therefore, the said document has been rightly marked by learned Judge and held that admisibility of the said document for collateral purpose, can be



decided after conclusion of trial and at the time of delivering of judgment. As far as other exhibits are concerned they are issued by the revenue authorities, which are public documents. Therefore, those documents are rightly marked by the learned Judge when tendered in evidence by respondents. In view of the fact that an unregistered document can be marked and looked into for collateral purpose independent of the transaction requiring the registration, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. The judgment reported in **2015(3) TLNJ 346 (Civil) Ramalingam and others Vs. Ramachandran, 2013(4) CTC 145 (D.Srinivasan and others vs. D.Chairman and others)** deals with un-registered family arrangements based on which title is claimed. In the present case respondents are not claiming title based on the un-registered sale deed and therefore, those two judgments have no bearing on the issue in question.

10. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

To

The IV Additional District Court, Tirunelveli.

+one cc to M/s.S.Meenakshi Sundaram, Advocate in SR.No.21388

+one cc to M/s.P.Maharajan, Advocate in SR.No.21134

am

CSL/JGB-DP/05.05.2016 :5P/4C

C.R.P (MD) No.693 of 2016 (PD)

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