

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) NO.1928 OF 2017

A.Mahendran

... Petitioner

Vs.

M.Palaniammal

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 26.02.2016 passed by the Principal District Court at Dharmapuri in C.R.No.1166 of 2016 in Unnumbered Plaint No.____ of 2016 rejecting the suit as not maintainable.

For Petitioner : Mr.P.Valliappan

ORDER

The petitioner has preferred the above Civil Revision Petition against the order dated 26.02.2016, passed by the Principal District Judge, Dharmapuri, in C.R.P.No.1166 of 2016 in Unnumbered

Plaint No. Nil of 2016.

2. The petitioner / plaintiff has filed the above suit for specific performance on the basis of a sale agreement dated 07.11.2015. The Lower Court has rejected the suit as not maintainable as the sale agreement was unregistered one. The Lower Court has held that the main purpose of the agreement to execute the sale deed. There is no collateral transaction and only in contract or for the purpose of evidence alone the unregistered documents are to be used. On the above finding, the plaint was rejected. The petitioner, aggrieved over the rejection of the plaint at the threshold, has come up with the present Civil Revision Petition.

3. Section 49 of the Registration Act, 1908, reads as under:

"49. Effect of non-registration of documents required to be registered - No document required by section 17 32[or by any provision of the Transfer of Property Act, 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, 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 part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.]"*

4. Order VII Rule 1 of the Code of Civil Procedure describes the particulars to be contained in the plaint, which reads as under:

"1. Particulars to be contained in plaint. - *The plaint shall contain the following particulars:-*

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the

plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject - matter of the suit for the purposes of jurisdiction and of Court-fees, so far as the case admits."

5. In any suit, the list of documents be furnished and the relevant documents relied on by the plaintiff shall be produced before this Court. The admission of document can be taken only during the trial. In the instant case, the Court below has refused to number the plaint at the threshold on the grounds that the document relied on is an unregistered document.

6. The Hon'ble Supreme Court in **BONDAR SINGH AND OTHERS VS. NIHAR SINGH [AIR 2003 SC 1905]** has held 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."

7. In similar circumstances, this Court in **K.SATHISHKUMAR VS. A.S.MANICKKAM AND OTHERS [CRP (NPD) NO.861 OF 2016 decided on 18.03.2016]** has directed to number the plaint. This was followed by this Court in another case in **K.RANGASAMY VS. A.SHANMUGAM AND OTHERS [CRP (NPD) NO.3799 OF 2016 decided on 05.12.2016]**. In the above judgment, it is observed that even the document is inadmissible, there can be a judgment on the basis of admission made during trial.

8. The issue whether the document is admissible or not and whether the relief can be granted on the basis of an inadmissible document are all to be decided by the Court at the time of trial and the Court shall not refuse to number the plaint at the threshold.

9. In the light of the above, the order dated 26.02.2016 passed in C.R.No.1166 of 2016 in Unnumbered Plaint No.____ of 2016, by the learned Principal District Judge, Dharmapuri, is hereby set aside and the Trial Court is directed to number the Unnumbered plaint, within a period of two weeks from the date of receipt of a copy of this order and decide the issue on merits and in accordance with law.

10. With these observation and direction, the Civil Revision Petition is disposed of. No costs.

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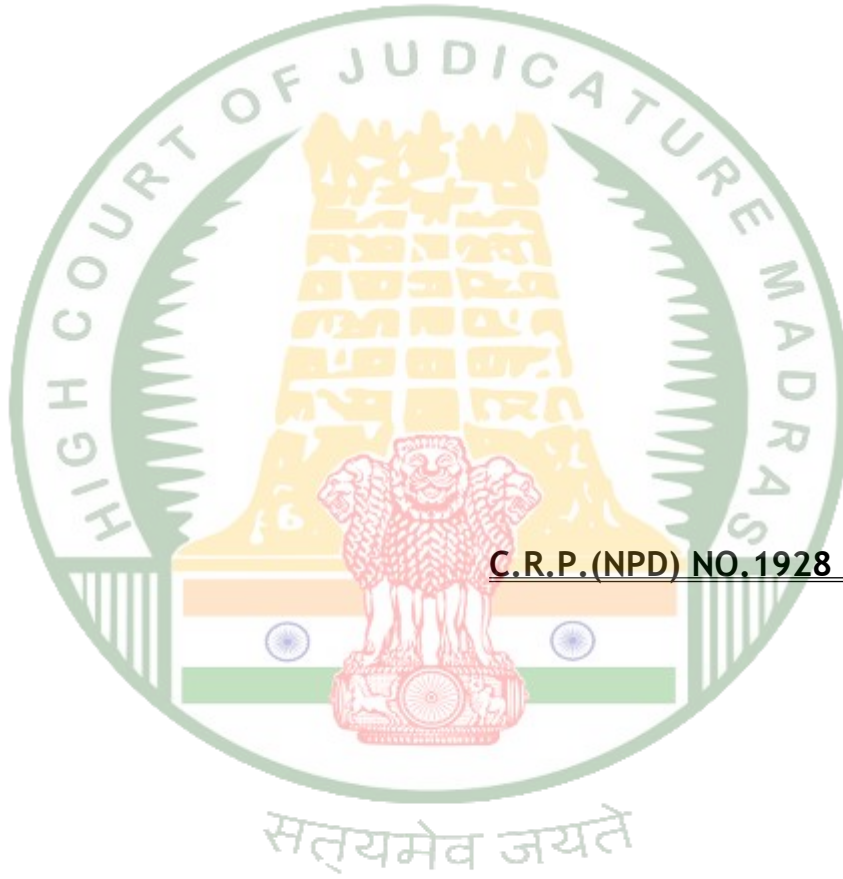
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To

The Principal District Judge
Dharmapuri.

M.GOVINDARAJ, J.

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