

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.06.2017

Coram:

The Honourable Ms.**Justice V.M.VELUMANI**

C.R.P.(PD)No.131 of 2015
and M.P.No.1 of 2015

M.Ramanathan

... Petitioner

Vs.

Bubeshraja

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order in I.A.No.630 of 2014 in O.S.No.85 of 2014 dated 26.11.2014 pending on the file of the Principal Sub Court, Erode.

For Petitioner : Ms.P.T.Ramadevi

For Respondent : Mr.M.Naraayanaswamy

ORDER

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This Civil Revision Petition is filed against the fair and final order in I.A.No.630 of 2014 in O.S.No.85 of 2014 dated 26.11.2014 pending on the file of the Principal Sub Court, Erode.

2. The Petitioner is defendant and respondent is plaintiff in O.S.No.85 of 2014. The respondent filed the suit for recovery of advance amount with interest. According to the respondent, the petitioner entered into an agreement of sale dated 14.11.2013 with the respondent to sell the suit property to the respondent for a total sale consideration of Rs.41 lakhs and respondent paid Rs.6 lakhs as advance. Subsequently, the respondent came to know that on misrepresentation made by the petitioner, agreement of sale has been entered. The respondent issued notice to rescind the agreement of sale and filed suit for recovery of advance amount paid by him. The petitioner filed written statement on 12.06.2014 and is contesting the suit. After framing issues, trial commenced. The respondent marked agreement of sale as Ex.A1.

3. The petitioner filed I.A.No.630 of 2014 under Order XIII Rule 3 and Section 151 of CPC to reject the sale agreement dated 14.11.2013 as inadmissible in evidence, when sought to be produced by the respondent for marking the same as document on their side. According to the petitioner, as per the Tamil Nadu Act 29 of 2012, all the agreements of sale must be compulsorily registered and as the respondent is relying on the unregistered agreement of sale for main purpose, the said unregistered document cannot be marked and the

same is inadmissible.

4. The respondent filed counter affidavit and submitted that the respondent is relying on the said agreement of sale only for collateral purpose to prove the payment of advance amount and the suit is only for the recovery of the said amount and not for specific performance of agreement of sale. The duly stamped document even though not registered can be relied on for collateral purpose.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, all the materials on record and the judgments relied on by the learned counsel for the petitioner and respondent, dismissed the application.

6. Against the order of dismissal dated 26.11.2014 made in I.A.No.630 of 2014, the present civil revision petition is filed by the petitioner/defendant.

7. Heard both sides and perused the materials available on record.

8. From the materials on record, it is seen that the respondent

filed the suit for recovery of advance amount paid to the petitioner and to prove the payment of advance amount, the respondent is relying on the agreement of sale. The respondent is not seeking any relief for specific performance and therefore, the respondent is relying on the stamped and unregistered agreement of sale for collateral purpose. The petitioner in para-3 of the written statement, admitted the execution of the agreement of sale and receipt of advance.

9. The issue whether duly stamped and unregistered document can be marked and relied on for collateral purpose is no longer res integra. Whether an unregistered and unstamped document can be admitted in evidence to substantiate the case of the party producing the same was considered by the Hon'ble Apex Court and this Court in number of cases.

(a) When a document is compulsorily registerable, the unstamped and unregistered document is inadmissible in evidence and cannot be marked for any purpose.

(b) When a document is properly stamped but not registered, the same can be marked for collateral purpose. If the other party objects to marking of the document, the document can be marked subject to objection and Court has to decide at the conclusion of trial, whether the document produced is only for collateral purpose and not

for main purpose.

(c) If the document is insufficiently stamped and unregistered and the party producing the same offers to pay deficit stamp duty and penalty, the Court has to impound the said document and refer the same to the concerned Sub Registrar for determining the correct stamp duty payable on the document. On receipt of such determination, the Court has to direct the party to pay the deficit stamp duty and penalty. If the parties producing the same pays deficit stamp duty and penalty, the document can be marked for collateral purpose. If the party fails to pay deficit stamp duty and penalty, the Court cannot admit the said document."

10. As per the judgments of the Hon'ble Apex Court, a duly stamped and unregistered document can be marked and relied on for collateral purpose. The Division Bench of this Court in the judgment reported in **(2001) 1 MLJ 1 (A.C.Lakshmipathy and another v. A.M.Chakrapani Reddiar and others)**, held that a duly stamped and unregistered document can be marked and relied on by the parties for collateral purpose.

11. In view of the well settled pronouncement, the contention of the petitioner is devoid of merits.

12. The learned trial Judge has rightly dismissed the application

by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 26.11.2014.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2017

Index:Yes

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To
The Principal Sub Court,
Erode.



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V.M.VELUMANI, J.

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