

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4867 of 2011
& C.M.P.No.7297 of 2017
& M.P.No.1 of 2011

Paramasivam

.. Petitioner

Vs.

1.Saradha

2.Rajamani

3.Sathyakeerthi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.08.2011 made in O.S.No.111 of 2006, on the file of the Sub-Court, Vridhachalam, in receiving the undated and unregistered sale deed as Ex.A2.

For Petitioner : M/s.R.Meenal

For R1 : M/s.G.Anabayachozhan

For R2 & R3 : Given up

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ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 23.08.2011 made in O.S.No.111 of 2006, on the file of

the Sub-Court, Vridhachalam, in receiving the undated and unregistered sale deed as Ex.A2.

2. The petitioner is third defendant, first respondent is the plaintiff, respondents 2 and 3 are the defendants 1 and 2 in O.S.No.111 of 2006, on the file of the Subordinate Court, Vridhachalam. The first respondent filed the suit against the respondents 2, 3 and petitioner for specific performance of the agreement of sale dated 22.05.2006.

3. According to the first respondent, the respondents 2 and 3 agreed to sell the suit property to the first respondent for a total sale consideration of Rs.2,00,000/-. The first respondent paid Rs.1,50,000/- as part sale consideration and terms of agreement of sale were reduced into writing by agreement of sale dated 22.05.2006. The first respondent was always ready and willing to perform his part of the contract by paying balance sale consideration and get the sale deed executed. The first respondent issued notice to the respondents 2, 3 and petitioner about the agreement of sale in his favour and called upon the respondents 2 and 3 to execute the sale deed in his favour. The first respondent

also gave a representation to the Sub-Registrar not to register any sale deed to be executed by the respondents 2 and 3. Subsequently, the first respondent and his son in law having found that the respondents 2 and 3 are going to execute the sale deed in favour of the petitioner, approached the Panchayat in the presence of one Ramamoorthi and Mani from Dharmakudikattai on 10.07.2006, wherein the petitioner agreed not to purchase the property and demanded the payment of a sum of Rs.12,510/- spent by him for purchasing stamps on which sale deed was typed and for other expenses. The first respondent paid a sum of Rs.12,000/- and got the sale deed typed in the stamped paper from the petitioner. The first respondent came to know that the respondents 2 and 3 have executed the sale deed in favour of the petitioner on 11.07.2006. In the circumstances, the first respondent filed the suit for specific performance against the respondents 2, 3 and petitioner. The suit is being contested by the respondents 2, 3 and petitioner. The first respondent filed proof affidavit and marked documents including the unregistered stamped sale deed as Ex.A2. The learned Judge, marked the said document as Ex.A2, subject to objection of counsel appearing for the respondents 2, 3 and petitioner.

4. Against the said marking of the document dated 23.08.2011 made in O.S.No.111 of 2006 and to set aside the order of the learned Judge receiving the unregistered sale deed as Ex.A2, the present civil revision petition is filed by the petitioner.

5. The learned counsel appearing for the petitioner submitted that the unregistered document cannot be marked and cannot be relied on for any purpose. The learned counsel appearing for the petitioner submitted that the said document is inadmissible in evidence. The learned Judge committed an irregularity in marking the unregistered sale deed as Ex.A2, subject to the objection. It is compulsorily registrable as per law. The learned Judge ought to have decided the question of admissibility instead of marking the document, subject to objection raised by the petitioner and respondents 2 and 3.

6. Per contra, the learned counsel appearing for the first respondent submitted that the petitioner, knowing fully well about the agreement of sale dated 22.05.2006, in favour of the first respondent, was making arrangement for purchasing the suit property. At the request of the first respondent, a Panchayat was

held and the petitioner was confronted, where he agreed not to purchase the property and handed over the sale deed typed on stamped paper to the first respondent and demanded and received a sum of Rs.12,000/- being the amount spent by him for purchase of stamps and other expenses from the first respondent. The first respondent is relying on the said sale deed marked as Ex.A2 only for collateral purposes and not to prove the issue of genuineness of the agreement of sale deed dated 22.05.2006 and it is the right of the first respondent to get a decree of specific performance. In support of his contentions, relying on the judgments reported in **"2015 (2) TLNJ 340 (Civil) (T.Chakrapani Vs. K.Adimoolam)" and "2014 (4) TLNJ 49 (Civil) (R.Munusamy Vs. G.Krishttappillai and others)"**, he submitted that the unregistered document can be received as evidence for collateral purposes in a suit for specific performance.

7. Heard the learned counsel appearing for the petitioner and first respondent and perused the materials available on record.

8. The point for consideration in Civil Revision Petition is whether unregistered sale deed or stamped paper can be looked

into for collateral purpose or not by the Trial Court. The document marked as sale deed has to be duly marked and compulsorily registered. It is not in dispute that it is duly stamped. It is the case of the first respondent that before it could be registered, he informed the petitioner about the agreement of sale executed by the respondents 2 and 3 in favour of the first respondent and his prior right to purchase the property and being put on notice by the first respondent, the petitioner agreed not to purchase the property from the respondents 2 and 3 and handed over the sale deed typed in the stamped paper to the first respondent after receiving a sum of Rs.12,000/- for purchase of the stamps and other expenses.

9. The learned counsel appearing for the first respondent has contended that the first respondent is not relying on the said unregistered sale deed to prove his case with regard to the agreement of sale dated 22.05.2006 and he has right to get a decree for specific performance. According to the learned counsel appearing for the first respondent, the document is being relied on by the first respondent for collateral purposes and the same can be marked, subject to objection if any by respondents 2 and 3 and petitioner. This contention has considerable force. In number of

cases, this Court as well as the Hon'ble Apex Court has held that the duly stamped unregistered document can be marked and relied on for collateral purposes. The Division Bench of this Court reported in **"(2001) 1 MLJ 1 (Ac. Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and five others)"** has elaborately considered this issue, marking of the documents and held among other things a duly stamped unregistered document can be marked and relied on for collateral purposes.

10. The said judgment is followed in number of subsequent cases. In view of the judgment in said cases, as well as the judgments relied on by the learned counsel appearing for the first respondent, unregistered document can be relied on by the first respondent for collateral purposes. In view of the well settled judgment, I hold that the learned Judge has not committed any irregularity in marking the unregistered sale deed as Ex.A2, subject to the objection.

11. For the above reasons, the civil revision petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed. After elaborate arguments and

when the order is being delivered, the learned counsel appearing for the petitioner submitted that the suit was dismissed for default on 09.08.2016 and the first respondent filed an I.A. to condone the delay in filing the petition to restore the suit. The said application is pending. The learned Subordinate Judge, Vridhachalam is directed to dispose of the said application on merit within a period of two months from the date of receipt of a copy of this order.

12. The learned counsel appearing for the first respondent also submitted that all the records were sent to this Court, due to the pendency of the civil revision petition and for that reason, the application to condone the delay petition is not taken up for hearing. The Registry is directed to send all the records along with the copy of the order immediately to the Subordinate Court, Vridhachalam.

17.08.2017

Index: Yes/No
gsa

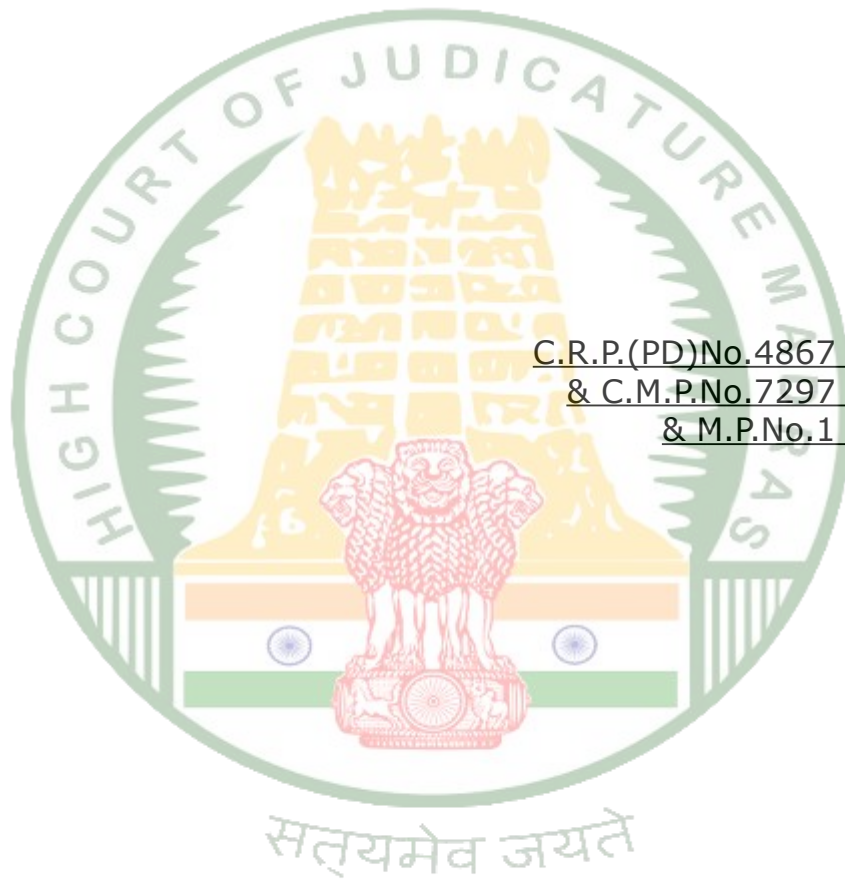
To

The Subordinate Judge,
Vridhachalam

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V.M.VELUMANI, J.

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