

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.755 of 2015
& M.P.No.1 of 2015

1.K.Sathyabama
2.K.Mahalakshmi

.. Petitioners

Vs.

K.Muthukumar

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.07.2014 made in I.A.No.85 of 2014 in O.S.No.70 of 2011 on the file of the Court of the District Munsif, Nannilam.

For Petitioners : Mr.R.Saravanan
for M/s.Sai Bharath and Ilan

For Respondent : Mr.A.Muthukumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 14.07.2014 made in I.A.No.85 of 2014 in O.S.No.70 of 2011 on the file of the Court of the District Munsif, Nannilam.

plaintiff in O.S.No.70 of 2011 on the file of the Court of the District Munsif, Nannilam. The respondent filed the said suit against the petitioners for specific performance of agreement of sale dated 15.04.2002 executed by one Kunchithapatham, husband of the first petitioner and father of the second petitioner. The petitioners filed written statement on 20.12.2011 and are contesting the suit. Trial commenced. The respondent filed proof affidavit and produced agreement of sale dated 15.04.2002 to be marked as Exhibit. The respondent filed application for payment of stamp duty and penalty and the said application was allowed. The respondent has paid stamp duty and penalty on 26.11.2013 and produced the agreement of sale to be marked as Exhibit. At that time, the petitioners filed I.A.No.85 of 2014 under Order XIII Rule 3 and Section 151 of C.P.C not to mark the unregistered agreement of sale dated 15.04.2002 filed by the respondent and prayed for rejection of the said document. According to the petitioners, the said document is a forged one. The husband of the first petitioner, deceased Kunchithapatham did not execute the said document. According to the petitioners, the said Kunchithapatham borrowed a sum of Rs.18,000/- from mother of the respondent and handed over the suit property to her and agreed to repay the said amount and after repayment he will get the suit property. The respondent has

claimed that as per the agreement dated 15.04.2002, the said Kunchithapatham and respondent agreed that respondent would take possession of the suit property from mother of the respondent and amount of 18,000/- borrowed from mother of the respondent would be treated as part of sale consideration. In view of the fact that the possession was given to the respondent as per the said agreement, the same has to be registered as per Section 53(A) of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908. The value of the property is more than Rs.100/-. Therefore, the agreement of sale has to be registered. The agreement of sale typed in a white paper is not duly stamped and registered. For the above reason, the petitioners have filed the present application.

3.The respondent filed counter affidavit and submitted that he has filed the suit for specific performance of agreement of sale. He is not claiming protection under Section 53(A) of the Transfer of Property Act, 1882 and not seeking any relief under Section 53(A) of the Transfer of Property Act, 1882. In view of the same, Section 17 of the Registration Act, 1908 is not applicable and agreement of sale is not compulsorily registrable and prayed for dismissal of the application.

4. Before the learned Judge, the learned counsel for the respondent contended that to decide the issue, Section 53(A) of the Transfer of Property Act, 1882 and Sections 17 & 49 of the Registration Act, 1908 must be read together. As per the proviso to Section 49 of the Registration Act, 1908 an unregistered document with regard to immovable property may be received as evidence in a suit for specific performance of agreement of sale.

5. The learned Judge considering the averments in the affidavit, counter affidavit, Section 53(A) of the Transfer of Property Act, 1882 Sections 17 (1-A) and 49 of Indian Registration Act, 1908 and judgments relied on by the parties, dismissed the application.

6. Against the said order dated 14.07.2014 made in I.A.No.85 of 2014 in O.S.No.70 of 2011, the present Civil Revision Petition is filed by the petitioners.

7. The point for consideration in the present Civil Revision Petition is whether the unregistered agreement of sale dated 15.04.2002 relied on by the respondent can be marked as Exhibit.

8.The objection of the petitioners is that according to the respondent, possession was handed over as per the said agreement. In view of the said fact, the said agreement has to be compulsorily registered as per Section 53(A) of the Transfer of Property Act, 1882 and Section 17 of the Indian Registration Act, 1908. This contention is without merits. Plaintiff cannot rely on unregistered agreement of sale if possession was handed over to him as per the agreement if he files a suit seeking protection under Section 53(A) of the Transfer of Property Act, 1882. In a suit for specific performance, the relevant provision is only Section 49 of Indian Registration Act.

The Section 49 of Indian Registration Act reads as follows:

"No document required by Section 17 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 evident of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.”

In the proviso to Section 49 of Registration Act, 1908, it is made clear that an unregistered document can be received as evidence to prove the contract in a suit for specific performance or for part performance under Section 53(A) of the Transfer of Property Act or as evidence for any collateral purpose not compulsorily registrable. In the present case, the respondent has filed the suit for specific performance of agreement of sale dated 15.04.2002 and has paid stamp duty and penalty on 26.11.2013 as per orders of Court. As per proviso to Section 49 of Indian Registration Act, an unregistered agreement of sale can be marked as exhibit in a suit for specific performance.

9. The learned Judge has considered elaborately three Sections - 53(A) of the Transfer of Property Act, 1882 and Sections 17(1-A) and 49 of the Registration Act, 1908 and extracted all the Sections in the impugned order. Considering the facts of the present case and the scope of these three Sections, the learned Judge dismissed the application by giving cogent and valid reason. The learned Judge

has also given reason as to why the decision reported in **2014(1) MWN (Civil) 69 (Venkatesan Vs. R.Natarajan)** is not applicable to the facts of the present case. The learned Judge has exercised his power properly and dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 14.07.2014 made in I.A.No.85 of 2014 in O.S.No.70 of 2011.

10.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes

Internet :: Yes/No

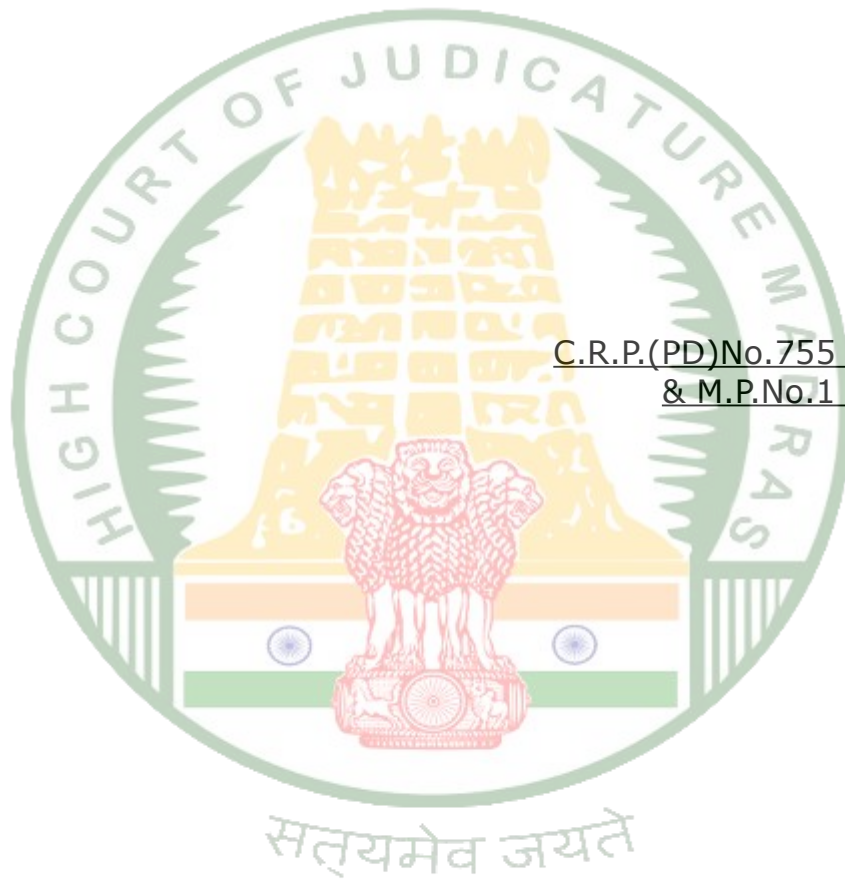
To

The District Munsif,
Nannilam.

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V.M.VELUMANI,J.

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