



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.231 of 2018 (PD)

and

C.M.P. (MD) .No.942 of 2018

N.Muthukumar

... Petitioner /
Petitioner/ 1st defendant

Vs.

1.M.Karupapiah

... 1st respondent /
1st respondent / plaintiff

2.P.R.Rajesh Kumar

3.S.Satheeshkumar

... Respondents 2 & 3/
Respondents 2 & 3 / Defendants 2 & 3

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 20.12.2017, made in I.A.No.533 of 2017 in O.S.No.83 of 2015 by the learned I-Additional District Judge, Tiruchirapalli.

For Petitioner

: Mr.S.Rajeshkanna

ORDER

This civil revision petition has been filed by the revision petitioner / 1st defendant as against the order dismissing the petition filed under Section 151 of C.P.C. to impound the unregistered document viz., sale agreement said to have been entered between the 1st respondent / plaintiff and the revision petitioner / 1st defendant, dated 24.05.2014 and to send the same to the Deputy Collector (stamp Duty), Tiruchirapalli.

2.The first respondent / plaintiff has filed the suit for recovery of money. Pending trial, the revision petitioner / 1st defendant intended to mark two unregistered documents viz., (a) the deed of confirmation said to have been entered into between the 1st respondent / plaintiff dated 20.01.2014 and (b) the sale agreement said to have been entered between the 1st respondent / plaintiff and the revision petitioner / 1st defendant, dated 24.05.2014. Hence, he has filed I.A.No.533 of 2017 praying to impound the unregistered



sale agreement, dated 24.05.2014 and to send the same to the Deputy Collector (Stamp Duty). The Court below, after hearing both sides, dismissed the said application. Aggrieved by that order, the revision petitioner / 1st defendant has filed this revision petition.

3. The learned counsel for the revision petitioner / 1st defendant would submit that since the document which sought to be marked is not sufficiently stamped, as per Section 35 of the Indian Stamp Act, the instruments not duly stamped inadmissible in evidence and hence, unless and until stamp duty with penalty is paid, the said document could not be marked. He would further submit that as per amended Section 17(1)(g) of the Registration Act, with effect from 01.12.2012, the sale agreement for the value of Rs.100/- and more requires compulsory registration and therefore, the revision petitioner / 1st defendant has filed the said interlocutory application seeking to impound the said document and to send the same to the Deputy Collector (Stamps), Tiruchirapalli, but, the Court below, without considering the same, has erroneously dismissed the said application. Therefore, the same needs to be interfered with. Thus, he prayed to allow this civil revision petition.

4. Heard the learned counsel appearing for the petitioner and perused the records carefully.

5. Admittedly, the suit is filed only for recovery of money paid under unregistered sale agreement. In order to mark the unregistered sale agreement, dated 24.05.2014, the revision petitioner / 1st defendant has filed the said interlocutory application for impounding the document and for sending the same to the Deputy Collector (Stamp Duty), Tiruchirapalli. As per Article 5 (j) of the Schedule I of the Indian Stamp Act, the stamp duty for the sale agreement is Rs.20/-. It is seen that the unregistered sale agreement, dated 24.05.2014, has been written on Rs.20/- stamp paper. Hence, the said document can be taken as sufficiently stamped.

6. Section 49 of the Registration Act reads as follows:

"Section 49. Effect of non-registration of documents required to be registered.- No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 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 (4 of 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 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

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7. From the above provision, it is clear that an unregistered document may be received as an evidence to the contract in a suit for specific performance or as the evidence of any collateral transaction not required to be effected by registered instrument. Therefore, an unregistered sale deed of an immovable property of the value of Rs.100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the provision of Section 49 of the Registration Act. Hence, the document sought to be marked by the revision petitioner / 1st defendant can be admitted in evidence for collateral transaction under Section 49 of the Registration Act and therefore, the question of sending the same to the Deputy Collector (Stamp Duty), Tiruchirapalli does not arise. The Court below has rightly dismissed the said application and the same needs no interference of this Court.

8. In view of the above, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(P&S)

/True Copy/

Sub Assistant Registrar

To

The Ist Additional District Judge, Tiruchirapalli.

Copy to : The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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MV:KKR:SAR1:23/03/2018/3P/4C