



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.11.2017

DELIVERED ON : 06.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.377 of 2017

and

C.M.P. (MD) No.1851 of 2017

Meenal,
W/o.Rama Annamalai,
Melamadam Lane,
Annamalai Vilas,
Karaikudi Town & Taluk,
Rep. By her Power of Attorney
L.Nehru : Revision Petitioner/Respondent/Plaintiff

vs.

S.P.Natchiappan : Respondent/Petitioner/33rd Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, passed in I.A.No.355 of 2015 in O.S.No.154 of 2011 dated 14.12.2016.

For Petitioner : Mr.S.Parthasarathy

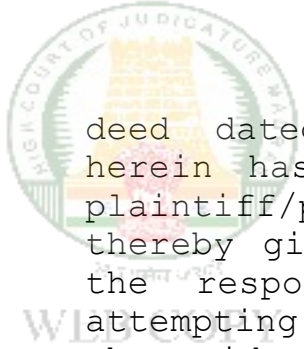
For Respondent : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 14.12.2016 made in I.A.No.355 of 2015 in O.S.No.154 of 2011, on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

2. The facts of the case, in nutshell, are as follows:

2.1. The petitioner herein is the plaintiff in O.S.No.154 of 2011, suit for specific performance and the respondent herein is the 33rd defendant in the said suit. According to the petitioner, he purchased the suit property from the defendants 1 to 31 vide



deed dated 13.06.1997, whereas, the 33rd defendant/respondent herein has created a forged deed dated 06.07.2004, as if the plaintiff/petitioner has executed a document in his favour, thereby given up her rights and during the course of the trial, the respondent/33rd defendant has filed I.A.No.355 of 2015, attempting to mark the said document dated 06.07.2004, as one of the evidences. The Trial Court, despite the objections raised by the plaintiff, has allowed the said I.A., aggrieved over the same, the present revision came to be filed.

3. The learned Counsel for the petitioner would submit that during the course of trial, the respondent has filed the said I.A. and the petitioner has opposed the same, on two grounds, viz., it is an unregistered document and want of stamp paper. Since the property value is more than Rs.100/-, according to the petitioner, the document has to be registered as per Section 15 of Registration Act and unregistered document should not be marked as evidence before the Court. Moreover, the respondent, in the course of trial, has admitted that he has got title only through that document, therefore, the document could not be accepted as per Proviso 49 of Indian Registration Act and the learned Judge ought not to have allowed the said I.A., which is for marking an unregistered document as one of the evidences.

4. Upon notice, the learned Senior Counsel appearing for the respondent, on instructions, submitted that the petitioner has executed the said document dated 06.07.2004, in favour of the respondent and the petitioner had signed in the said document as Executant. Though the petitioner disputed her signature in the said document, she has admitted the signature of one of the witnesses, namely, Lakshmanan, S/o Velu Ambalam. Therefore, the signature of the witness alone was marked as Ex.B.2. Since, the impugned document is a vital one, the respondent has filed the said I.A., for marking the entire document. The learned Judge, after considering all the material facts, has allowed the said I.A., therefore, the present revision is not warranted.

5. Heard the learned Counsel appearing for both sides and perused the documents placed on record.

6. A perusal of the documents would show that admittedly, the disputed document, intended to be marked, was executed only on 06.07.2004 and compulsory registration of sale agreement came into force, only in December, 2012. According to the petitioner, the respondent is claiming right over the property only based on this document. Even if it is construed to be a sale agreement, registration is not compulsory in the year 2004.

7. A perusal of documents would also show that the disputed document is not required to be registered, since it does not



convey any right or title over the immovable property to the value of Rs.100/- or more and it does not require compulsory registration. The document is only a declaration of certain facts and therefore, it does not require any stamp paper.

8. There are certain exemptions to the registration of documents and it is useful to extract Clause V of Section 17(2) of the Registration Act, 1908, which reads as follows:

"(2) Nothing in clauses (b) and (c) of sub-section (1) applies to

...

(v) [any document other than the documents specified in sub-section (1-A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or"

9. Admittedly the impugned document does not convey any title or establish any right, but, creates a right to execute another document. Even assuming without admitting that the impugned document requires registration, even then it can be admitted as evidence in a suit for specific performance. Section 49 of the Act speaks about the effect of non registration of documents required to be registered. However, as per proviso 49 of the Act, the impugned document can be received as evidence of a contract in a suit for specific performance. For better understanding, Section 49 of the registration Act is extracted hereunder:

"[provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (IV of 1882), to a registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (I of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

10. The learned Senior Counsel has also relied upon the judgment reported in **(2010) 4 MLJ 529 (SC)**, in the case of **S.Kaladevi Vs. V.R.Somasundaram and others**, in which, it is categorically held that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance. The relevant observations is extracted as under:

"1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.



2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by registered document, that is, a transaction creating, etc., any right, title or interest of immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its term can be admitted in evidence and that to us document for the purpose of providing and important clause would not be using it as a collateral purpose."

11. The above judgment, cited supra, squarely applies to the present case on hand and therefore, I am of the considered opinion that the order of the learned Judge in I.A.No.355 of 2015 in O.S.No.154 of 2011 dated 14.12.2016, does not warrant any interference.

12. Accordingly, this civil revision petition is dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

+ 1 cc TO Mr.S.Parthasarathy , Advocate in SR No. 46384

+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 46437

gk

AE/JC/SAR1/19.02.2018/4P/4C

order made in
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and

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