

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(PD).No.4477 of 2010
and
MP.No.1 of 2010

M/s.Shenoy Nagar Benefit Fund Ltd.,
Rep. by its Executive Director,
No.12, Ormes road,
Kilpauk, Chennai - 600 010.

... Petitioner

vs.

1.Radha
2.P.Sakunthala
3.S.Muthuraja
4.S.Hemalatha

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 02.09.2010 in IA.No.15930 of 2009 in OS.No.4403 of 2007 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Sriram

For Respondents : Mr.S.Baskaran for R1

Mr.V.Manisekaran for R3

No appearance for R2 and R4

ORDER

The revision petitioner is the second defendant in OS.No.4403 of 2007 on the file of the XVIII Assistant Judge, City Civil Court, Chennai. The first respondent / plaintiff filed the above suit for the following reliefs:

(i) to direct the first and fourth defendants to execute and register the sale deed in respect of the property bearing Door No.24, Bhagavathi Ammal 2nd street, Kolathur, Chennai - 600 009 in pursuant to the oral agreement which resulted in an unregistered sale deed executed by the first and fourth defendants in their favour.

(ii) to declare the sale deed dated 31.05.2003 registered on 05.06.2003 executed by the first defendant in favour of the second defendant, registered as document No.4000 of 2003, at the office of the Sub-Registrar, Sembium as null and void.

(iii) to declare the sale deed dated 29.03.2006 executed by the second defendant in favour of the third defendant and registered as document No.2500 of 2006 at the office of the Sub-Registrar, Sembium as null and void.

(iv) to grant permanent injunction restraining the third defendant, his men and agents from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and for awarding of costs.

2. The defendants filed their written statement and both the parties went for trial and the trial has not yet commenced. At that stage, the second defendant filed an application in IA.No.15930 of 2009 in the suit in OS.No.4403 of 2007, under Order XIII Rule 3 of Code of Civil Procedure praying to reject the unregistered sale deed dated 25.02.1996 filed along with the plaint. The plaintiff filed her counter in the said application.

3. The learned XVIII Assistant Judge, City Civil Court, Chennai after analysing the evidence on record, concluded that the admissibility of the unregistered sale deed would be decided at the time of passing the Judgment in the suit in OS.No.4403 of 2007 and dismissed the application filed by the second defendant. Aggrieved over the same, the second defendant filed the present Civil Revision Petition under Article 227 of the Constitution of India.

4. Mr.M.Sriram, learned counsel appearing for the revision petitioner relied on the decision of the Honourable Supreme Court in **Avinash Kumar Chauhan vs. Vijay Krishna Mishra** reported in **(2009) 3 MLJ 409 (SC)** and contended that the instruments not duly stamped cannot be admitted as evidence and that even as per Section 49 of the Registration Act, to receive an unregistered sale deed as evidence for collateral purpose, the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act. He further relied on the decision of this court in **A.C.Lakshmi pathy and another vs. A.M.Chakrapani Reddiar and five others** reported in **2001 (1) CTC 112** and contended that even the family arrangement if not registered and the value of the property is more than Rs.100/- (Rupees Hundred only), the same cannot be received as evidence.

5. *Per contra*, the learned counsel appearing for the respondents would contend that the document which is mentioned in the plaint has not yet been marked and the observation made by the trial court that the admissibility of the document can be tested at the time of pronouncing

Judgment in the suit in OS.No.4403 of 2007 is perfectly in order and cannot be found fault with.

6. It is true that the trial in OS.No.4403 of 2007 has not yet commenced. The document which is filed along with the plaint is an unregistered sale deed dated 25.02.1996 and it has not yet been admitted as an evidence till date. Therefore, the trial court is directed to keep in mind the provisions of Sections 17, 35 and 49 of the Registration Act before admitting the said document. The trial court is also directed to keep in mind the settled proposition of law laid down in **Avinash Kumar Chauhan vs. Vijay Krishna Mishra** reported in (2009) 3 MLJ 409 (SC) and the facts of the case in OS.No.4403 of 2007 before marking the said document as an evidence. The learned counsel appearing for the revision petitioner is at liberty to raise his objections at the time of marking the document.

7. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

R.HEMALATHA, J.

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8. Since the suit is pending from the year 2007, the learned XVIII Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

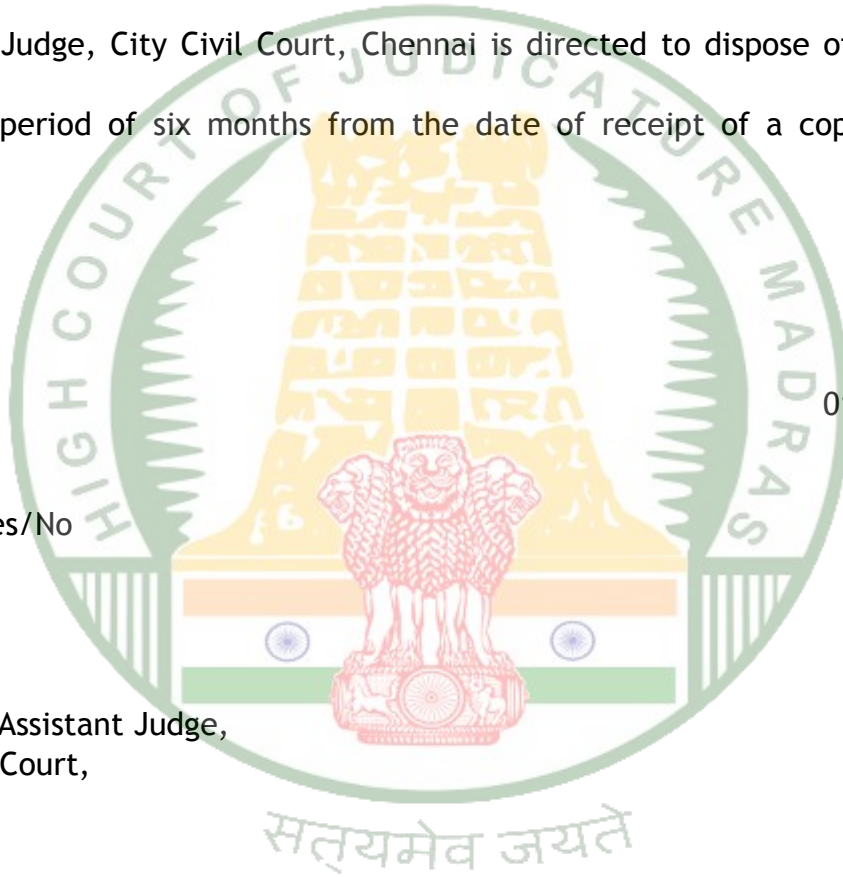
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To

The XVIII Assistant Judge,
City Civil Court,
Chennai.



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