

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

C.R.P. No.4300 of 2013
and
C.M.P.No.1 of 2013

P.Siluvai Mary ... Revision Petitioner

Vs.

1.Irudhaya Mary
2.P.Susanna ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order passed in I.A.No.380 of 2010 in O.S.No.398 of 2006, dated 21.09.2012, on the file of the District Munsif Court, Thiruvallur.

For Petitioner : Mr.V.Chandrankanthan

For Respondents : Mr.K.Balaji

O R D E R

Aggrieved by the order of the trial Court made in I.A.No.380 of 2010 in O.S.No.398 of 2006, refusing to receive the documents dated 15.12.2000 and 20.08.1998 in evidence, the present revision is filed by the revision petitioner/plaintiff.

2.Originally, the suit in O.S.No.398 of 2006 has been filed, seeking specific performance on the basis of the document, said to have been executed on 15.12.2000. The plaintiff has also filed a mortgage letter dated 20.08.1998 during the trial. The plaintiff has filed these documents, which were objected to by the respondents, by stating that these documents could not be marked, since, they are unregistered and insufficient of stamp duty. The trial Court received certain documents, filed by the plaintiff and rejected the document dated 15.12.2000, said to be the agreement of sale. The suit itself is filed to enforce the

above document, claimed to be the agreement of sale.

3.The learned counsel for the revision petitioner/plaintiff submits that, though, the nomenclature of the document shows it as a sale deed, it is only an agreement of sale and therefore, it could be received in evidence in a suit for specific performance under the proviso to Section 49 of the Registration Act, 1908. Therefore, the learned counsel appearing for the revision petitioner restricted his arguments only with regard to the document dated 15.12.2000 (agreement of sale) and hence prayed for setting aside the order of the trial Court, refusing to receive the documents. In support of his submission, the learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of S.Kaladevi v. V.R.Somasundaram and others reported in (2010) 5 SCC 401.

4.The learned counsel appearing for the respondent would contend that the said document is not an agreement for sale and it is the sale deed, which requires compulsory registration. Further, the possession is also claimed by the plaintiff and in such a case, stamp duty penalty is also required. Hence, the learned counsel prayed for dismissal of the revision. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in the case of Avinash Kumar Chauhan v. Vijaya Krishna Mishra reported in 2009 (2) SCC 532.

5.The suit has been laid for specific performance on the basis of the document, dated 15.12.2000, claimed to be the agreement of sale, and to enforce the same. The above document, though, shown as an unregistered sale deed, the plaintiff has sought to enforce the same as an agreement of sale in the entire pleadings and she has not relied the above document for a complete sale of property. What is sought is only to enforce such agreement for sale and not to establish any title over the property on the basis of such document.

6.Therefore, I am of the view that, once, the document relied is an agreement for sale, there will be no difficulty in receiving the same in evidence, for enforcing such document, even though it is not a registered one, as per the proviso to Section 49 of the Registration Act, 1908, wherein, it is made clear that a document which is unregistered is also admissible for the purpose of enforcing a contract between the parties.

7.In the judgment reported in (2010) 5 SCC 401 cited supra, the Hon'ble Apex Court, in Para Nos.7 to 12, has held as follows :

"7. After having heard Mr K.V Viswanathan, learned Senior Counsel for the appellant and Mr T.S.R Venkatramana, learned counsel for the respondents, we

are of the opinion that having regard to the proviso to Section 49 of the Registration Act, 1908 (for short "the 1908 Act"), the trial court erred in not admitting the unregistered sale deed dated 27-2-2006 in evidence and the High Court ought to have corrected the said error by setting aside the order of the trial court.

8. Mr T.S.R Venkatramana, learned counsel for the respondents, however, strenuously urged that the 1908 Act is a complete code by itself and is a special law and, therefore, any dispute regarding the registration, including the refusal to register by any party, is covered by the provisions of that Act and the remedy can be worked out under it only. He referred to sections 71 to 77 of the 1908 act and submitted that the refusal to register a document by a party is exhaustively dealt with by the said provisions and the provisions of the Specific Relief Act, 1963 (for short "the 1963 Act") cannot be and should not be invoked in a case of failure to register a document which is complete in other respects, except for want of registration.

9. The learned counsel for the respondents submitted that the defendants refused to admit execution of the said document before the Sub-Registrar concerned because of the fraud played by the appellant (the plaintiff) inasmuch as instead of writing an agreement to sell, she got executed a full-fledged sale deed contrary to the agreement and understanding. The defendants accordingly walked out of the Office of Sub-Registrar without admitting the execution of the sale deed and under these circumstances the only remedy available to the appellant was to get an endorsement "registration refused" and then file an application before the Registrar under Section 73 of the 1908 Act. He also referred to Section 3 of the 1963 Act and submitted that the provisions of the 1963 act would not override the provisions of the 1908 act.

10. Section 17 of the 1908 Act is a disabling section. The documents defined in clauses (a) to (e) therein require registration compulsorily. Accordingly, sale of immovable property of the value

of Rs 100 and more requires compulsory registration. Part X of the 1908 Act deals with the effects of registration and non-registration.

11. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus:

"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 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

12. The main provision in section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of the proviso, 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 in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act."

8. Therefore, from the above, it is clear that an unregistered sale deed, which is sought to be relied as an agreement of sale can be used in evidence. That being the position, the act of the lower Court, rejecting the above document, is not correct. In the judgment reported in 2009 (2) SCC 532 (supra), though, the Apex Court has held that the agreement for sale of property reduced in writing requires no stamp duty to be paid, but, held that the said duty is required, if the possession has already been delivered. The above judgment is not applicable to the facts of the present case, for a simple reason that, the related laws were amended only in the year 2001, by which amendment, it is emphasized that compulsory registration is required, if possession is claimed. Whereas, in the given case, the agreement is of the year 2000, which is much prior to the amendment. Therefore, the above judgment is not applicable to the facts of the present case.

9. Therefore, this Civil Revision Petition is partly allowed. The order of the trial Court rejecting the document dated 15.12.2000, viz., unregistered sale deed is set aside. The trial Court is directed to receive the above document in evidence and decide the suit within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The District Munsif,
Thiruvallur.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.K.Balaji, Advocate Sr.No.21952

+1 cc to Mr.V.Chandrakanthan, Advocate Sr.No.22504

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BR(CO)
CSL/05.04.2019



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