

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.08.2018

Judgment Pronounced on : 25.01.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.354 of 2018

and CMP.Nos.9108 & 9109 of 2018

D.Devarajan

... Appellant/Plaintiff

Vs

1.Alphonsa Mary

2.D.Mohan

... Respondents/Defendants

Prayer :- Appeal Suit filed under Section 96 of CPC read with Order 41 Rule 1 of CPC, against the decree and judgment dated 14.02.2018 rendered in O.S.No.29 of 2017 on the file of the learned Additional District Judge, Dharmapuri.

For Appellant : Ms.M.G.Rajeswari

For Respondents : Mr.R.Prabakar

JUDGMENT

1.1 The plaintiff in O.S.No.29 of 2017 has come forward with the present appeal. The suit is laid for specific performance of an unregistered agreement of sale dated 14.6.2015, and as per the plaint the total consideration payable is Rs.13,72,500/- against which, the plaintiff has paid an advance of Rs.50,000/-. In the written statement the execution of the unregistered sale agreement is not disputed, but its non performance is sought to be justified on grounds that are not germane to the ongoing appeal.

1.2 The trial Court dismissed the suit on a preliminary issue that the suit agreement was not registered as per Section 17(1) (f) of the Registration Act. This appeal is preferred against it.

2. Points for consideration:

Whether the non-registration of suit agreement bars the institution of the suit?

3. The learned counsel for the appellant submitted :

- As per Registration (Tamil Nadu Amendment) Act, 2012, Section (1) (f) to (i) were introduced to Section 17 of the Registration Act, 1908. This Act came into effect on 01.12.2012. While Section 17(1)(g) requires that any agreement for sale of an immovable property above the value of Rs.100/- must be registered, the same is saved Vide Proviso to Section 49. This proviso was not amended alongside the amendment introducing Section 17(1)(g). Again an unregistered agreement is saved under Section 10 of the Indian Contract Act, 1872 too.
- The learned counsel submitted that at any rate this matter should not be heard preliminarily to non-suit the plaintiff and relied on the judgment in Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and Ors. [(2018) 7 SCC 639]. Reliance was also made on the judgment of the Andhra High Court in R. Suresh Babu Vs. G. Rajalingam & 2 Others [(2017) ALT 668].

4. Per contra the learned counsel for the respondents argued that the suit is laid to enforce an agreement of sale of a value over Rs.100/- for an injunction against alienation and for mandatory injunction. There is no alternative prayer in terms of Section 22 of the Specific Relief Act. Secondly, Section 49 of the Registration Act does not go repugnant to Section 17(1)(g), as the Proviso thereof, only enables the use of an unregistered document for collateral purposes. Thirdly, it is not every agreement amounts to a contract but only an agreement enforceable in law as defined as Contract under Section 2(h) of the Contract Act and the Act proceeds to state under Sec 2 (g) that an agreement not enforceable by law is void. And Section 10 of the Contract Act is consistent with this basic definition and the second part to it does not carve out any exception to any document required to be registered in law. As per the judgment of the Hon'ble Supreme Court in K.B. Saha and Sons Private Limited Vs. Development Consultant Limited [(2008) 8 SCC 564], the collateral transaction which may be proved by an unregistered document must be an independent transaction not relating to anything as per the terms of under the unregistered document.

5. The suit is for specific performance and the cause of action for the suit is founded on an agreement of sale dated 14-06-2015. As outlined earlier the execution of this agreement is

not in dispute. It is also not in dispute that this agreement of sale which is required to be registered as per Sec.17(1)(g) of the Registration Act, was not so registered. Since the cause of action is founded on this agreement, and since the same is not registered, the trial Court took up the maintainability of the suit as a preliminary issue and dismissed the suit. Has the approach of the trial Court is a course not approved in the Code of Civil Procedure?

6. Under Order XIV Rule 2 (2)(b) CPC where a suit is barred by any law for the time being in force, the Court can take up the issue as a preliminary issue. On the face of the Registration Act, there is no bar for instituting a suit for specific performance. Even Sec.49 bars receiving an unregistered document required to be registered under Sec.17 in evidence, but not the institution of a suit. Sec.49 reads:

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

7. The learned counsel for the appellant relied heavily on the Proviso to contend that an unregistered agreement affecting immovable property is no bar to be received as evidence in a suit for specific performance. This is an aspect that has come before Andhra Pradesh High Court in Suresh Babu case. The setting is substantially identical, except for a marginal variance where the case came up before the Andhra Pradesh High Court against an Order dismissing an application of the defendant to reject the suit under Order VII Rule 11 CPC. The state of Andhra Pradesh had brought in an identical amendment to

Sec.17 of the Registration with its own Sec.17(1)(g). It reads in pari materia with Sec.17(1)(g) as amended by Tamil Nadu, and in fact is a forerunner to Tamil Nadu amendment. Sec.17(1)(g) reads:

Sec.17: Documents of which registration is compulsory:

"(1) (a) to (f)

(g) instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards;"

The point was whether the Proviso to Sec.49 admits an unregistered agreement as an evidence in a suit for specific performance. The Andhra Pradesh High Court answered this in the affirmative. This Court is in concurrence with the view. And, it is obvious.

8. There was some arguments on Sec.10 of the Indian Contract Act, 1872 and what emerges out of Sec.10 can be stated. It reads:

" Section 10. What agreements are contracts :- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

The second paragraph of Sec.10 only insists that where any formalities requires that a contract be in writing or must be attested or registered, the same shall be done. In other words, Sec.10 even as it defines in the first paragraph 'what agreements are Contracts' also goes to state in the second paragraph that the ingredients stipulated for the formation of a valid contract should not be stretched as exempting any statutory formalities prescribed for the formation of the contract. Here, the second paragraph itself requires that the need for registration in terms of the Registration Act therefore needs to be complied with.

9. However, the consequence of non-registration does not operate as a total bar to look into the contract, as the Proviso to Sec.49 itself carves out two exceptions: Where it can be used for any collateral purposes, and where it can be used as an

evidence in a suit for specific performance. When the statute itself prescribes a legislative route within its scheme, that cannot be denied to the appellant herein.

10. In conclusion, the appeal is allowed and the decree of the trial court is dismissed, and the matter is remanded back to the trial court for deciding other issues involved in the suit. No costs. Consequently, connected miscellaneous petitions are closed. Appellant is entitled to have the Court fee refunded.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1.The Additional District Judge
Dharmapuri.

2. The Section Officer,
V.R Section,
High Court, Madras

+1cc to Ms.M.G.Rajeswari, Advocate sr.no.6395
+1cc to Mr.R.Prabakar, Advocate sr.no.6105

A.S.No.354 of 2018

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