IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.2615 of 2018
and
CMP.No.15693 of 2018

B.Kalan ..Petitioner/Plaintiff

Vs

1.Rucki

2.N.Sathish

3.J.Mani

4.J.Meena ..Respondents/Defendants

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.06.2018 in I.A.No.31 of 2018 in O.S.No.47 of the 2013, on the file of the learned District Minsif Court, Kothagiri.

For Petitioner	:	Mr.V.Chinnasamy
For R1,3 & 4	:	No appearance
For R2	:	Mr.K.G.Senthil Kumar

O R D E R

The above Civil Revision Petition revolves around the refusal of the learned District Munsif, Kothagiri, to permit the marking of an unstamped Sale Agreement dated 19.08.2013, after receiving the deficit Stamp Duty with penalty under section 35(A) of the Tamil

Nadu Stamp Act.

2 The facts in brief, are as follows:

The revision petitioner, who is the plaintiff in the suit O.S.No.47 of 2013, pending on the file of the District Munsif, Kothagiri, had filed the suit for specific performance of the said Sale Agreement dated 19.08.2013.

3 In the pleadings, the plaintiff has clearly stated as follows "the possession of the suit property was handed over to the plaintiff by the first defendant on the Sale Agreement dated 19.08.2013, itself, as such, now the plaintiff is physical possession and enjoyment of same and is plucking Green Tea leaves from the garden".

4 The respondents/defendants had filed a written statement, dated 07.01.2014, inter alia denying the agreement of sale and the alleged sale consideration. The defendants would also contend that the plaintiff cannot claim for right on the basis of an unregistered agreement of sale Deed dated 19.08.2013, since it was a document, under which possession had been handed over and therefore, without registration, the same cannot be even taken on file.

5 On 20.01.2018, the plaintiff took out the impugned application to permit him to pay stamp duty with penalty for the unstamped Sale Agreement dated 19.08.2013. He would place reliance upon the Judgment reported in ***2009 (2) SCC 532: AIR 2009 SC 1489 (Avinash Kumar Chauhan Vs. Vijay Krishna Mishra)*** in order to substantiate the relief sought for.

6 The same was opposed by the defendants, inter alia contending that after the amendment to the Registration Act, the defect in any agreement which is unstamped or unregistered, cannot be cleared by paying deficit stamp duty with penalty and the document cannot even be received for collateral purpose and they sought for a dismissal of the said application.

7 The learned District Munsif, on hearing both sides, proceeded to dismiss the said application on the ground that as per the amendment to the Registration Act, 2012, every Sale Agreement should be registered and the plaintiff in a suit has himself admitted that the Sale Agreement was unstamped and hence, he wants to pay the Stamp Duty and further held that a perusal of the alleged Sale Agreement would reveal that the same has been written in Rs. 20/- non judicial stamp paper. But as per Schedule 1 Article 5(J) of Indian

Stamp Act, the stamp duty of agreement is Rs.20/-, so that as per Stamp Act this agreement was sufficiently stamped.

8 Therefore, there was no question of collecting stamp duty and allowing the agreement of the same. Challenging the said order, the revision petitioner/plaintiff is here before this Court. An additional typed set of papers was filed enclosing a copy of the unregistered Sale Deed and a reading of the same would clearly indicate that the possession has been purported to be handed over under the said document.

9 The learned counsel for the petitioner would argue that in Judgment reported in ***2006 (4) MLJ 706 - [Karuppannan Vs. Thavasiappan and another]***, this Court has held that an unregistered document can be marked as an exhibit, if the plaintiff is willing to remit the deficit portion of the stamp duty with penalty and the admissibility of the same could be gone through at the time of the trial. Therefore, the counsel would argue that documents may be received for evidence and at the time of marking, the issues could be framed. He would also rely upon the Judgment reported in ***2009 (2) SCC 532 – [Avinash Kumar Chauhan Vs. Vijaya Krishna Mishra]*** where once again the very same issue was considered and wherein it was held that under Section 49, there was no prohibition

to receive unregistered documents, if it is for collateral purpose. From the Judgments that have been relied upon by the revision petitioner, it is clearly indicated that any unstamped documents can be received/marked for the collateral purpose, which is permitted under section 49 of the Registration Act.

10 Per contra, the learned counsel for the respondents/defendants would rely upon the two Judgments of this Court reported in ***2017 (1) CTC 198 – [S.Thirumalai Vs. S.Govindarajan (Died)]*** *and* ***2017 (3) CTC 163 – A.Raja Boopathi (Died) Vs. A.Vivekanandan]*** where it has been held that where a document is compulsorily registrable, it is inadmissible evidence for any purpose.

11 Heard the counsel and perused the papers.

12 From a perusal of the documents, which is now sought to be marked viz., an agreement of sale, it is clear that under the Sale Agreement, possession has been allegedly handed over to the revision petitioner/plaintiff. The agreement of sale Deed is itself sought to be marked only to prove the factum that there is an agreement between the parties and that, the possession of the property has been handed over on the basis of the agreement of

sale. Therefore, the document is sought to be marked only to prove the primary purpose and not collateral purpose. There is no quarrel on the provision that under Section 49 of the Transfer of Property Act, the unregistered documents can be relied upon for a collateral purpose provided it is properly stamped or if not after complying with the provision of Section 35 of the Indian Stamp Act, where the document is required to be stamped. In the instant case, admittedly the document has been properly stamped, however, the document is sought to be marked for the primary purpose, which is compulsorily registrable under the terms of the Registration Act. The Judgments rendered by this Court earlier has held that an unregistered agreement cannot be allowed to be marked for any primary purpose and the facts of the case would clearly apply to the facts of this case.

13 In the result, the Civil Revision Petition stands dismissed and order passed by the learned District Munsif, Kothagiri, in I.A.No. 31 of 2018 in O.S.No. 47 of 2013, dated 07.06.2018, is confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

01.04.2019

dua

Index: Yes/No

Internet: Yes/No
Speaking order / Non-speaking order

To

The District Minsif Court,
Kothagiri.

P.T.ASHA, J.
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