

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 2894 of 2019

and

C.M.P. No. 18801 of 2019

S. Rajamani

... Petitioner

-Vs-

1. V. Dhivya Abirami

2. Mageswari

3. V. Ganapathy

4. V. Saradevan

5. V. Manimegalai

6. S. Kannammal

7. S. Nathiya

8. S. Thirumoorthy

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed by the learned Principle Sub-Judge, at Pondicherry in I.A. No. 312 of 2016 in O.S. No. 41 of 2016 on 03.08.2019.

For Petitioner

: Mr. M. Balasubramanian

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 312 of 2016 in O.S. No. 41 of 2016, on the file of the learned Principal Sub-Judge, at Pondicherry, by order dated 03.08.2019.

2. Before the trial Court, the plaintiff viz., Dhivya Abirami filed a suit in O.S. No. 41 of 2016 against seven defendants, who are the respondents 2 to 8, for various reliefs of declaration and injunction pertaining to the suit property.

3. In the said suit, the present revision petitioner namely Rajamani filed an application in I.A. No. 312 of 2016, to implead himself as one of the party defendant under Order 1 Rule 10(2) read with Section 151 of Civil Procedure Code and the said petition since has been rejected or dismissed by the learned Judge in the impugned order dated 03.08.2019, as against which, this revision has been filed.

4. Mr. M. Balasubramanian, learned counsel appearing for the revision petitioner would submit that, on 17.09.1993, a sale agreement was entered into between one Navaneedhammal and one Arunan in respect of the suit property for sale consideration of Rs. 1,05,000/- (Rupees One Lakh Five Thousand Only). Rs. 15,000/- (Rupees Fifteen Thousand Only) has been paid in advance and remaining Rs. 90,000/- (Rupees Ninety Thousand Only) to be paid. On said payment, the sale deed was executed by the said Navaneedhammal.

5. In this context, it is the further claim of the petitioner herein, as projected by the learned counsel that, on the very same day, i.e., on 17.09.1993, by way of unregistered sale deed, the said Navaneedhammal executed the sale of the suit property in favour of Arunan and accordingly, the said Arunan became the owner of the property, under whom the present revision petitioner i.e., Rajamani came as tenant and accordingly, he came to the suit property as tenant under the said Arunan, as such, continuing even till date in the suit

premises.

6. In this context, it is the further case of the revision petitioner that, subsequently Arunan died, therefore his daughter one Mageswari is the present owner of the property, under whom the present revision petitioner claimed to be a tenant continuously.

7. However, in a parallel development, Navaneedhammal who executed the sale agreement dated 17.09.1993 died subsequently in the year 2004, i.e., on 10.03.2004 and her legal heirs who are the defendants 2 to 7, jointly executed the sale deed in respect of the suit property to and in favour of the plaintiff viz., Dhivya Abirami and the said sale deed was registered in the concerned Registered Office i.e., Sub Registrar, Oulgaret, Puducherry on 14.10.2015, thereby the plaintiff claimed the ownership of the property, where she seems to have found that, the first defendant had been in accommodation or been trying to interfere with the possession of the suit property, hence the said suit was laid seeking additional prayer for permanent injunction and also for the prayer of declaring the sale agreement dated 17.09.1993 between Navaneedhammal and Arunan as well as the alleged Will dated 29.12.2006 as null and void and non-est in law and

accordingly, the suit was laid and it is pending.

8. In this context, it is the further claim of the present petitioner that, as per the unregistered sale deed dated 17.09.1993, the property was sold to one Arunan, who was the father of the first defendant and the said Arunan himself put the present petitioner in possession as tenant in the suit premises and he had been accordingly continuing as a tenant in the suit premises, even after the demise of Arunan, his daughter continues to attorn the tenancy in favour of the present petitioner and accordingly as a tenant in the suit premises under the first defendant, the present petitioner is still in possession.

9. Therefore, the learned counsel would submit that, whether the plaintiff in the suit is the owner of the property or the first defendant is the owner of the property, even though it is the main issue to be decided, in resolving the lis between these two, the possession of the present revision petitioner as a tenant in the suit premises cannot be unnecessarily disturbed and therefore in that context, in order to protect his interest as a tenant in the suit premises, instead of going for a separate legal proceedings as it would cause multiplicity of the

proceedings, the present revision petitioner wanted to be implead as one of the party defendant in the suit, that is the reason why, he filed the present application with the aforesaid prayer for impleadment.

10. Therefore, the learned counsel appearing for the revision petitioner would submit that, the rejection now made through the impugned order by the trial Court on the application of the petitioner herein needs interference of this Court.

11. The learned counsel has cited the judgment reported in **2014(1) CTC 447** in the matter of ***T. Sivaperumal vs S. Viswanathan and others***, where he relied upon the following propositions:

" Registration Act, 1908 (16 of 1908), Section 17 - Unregistered Sale Deed - Whether can be looked in to for purposes for proving payment of Sale consideration - Held, Sale Deed can be construed as a receipt and evidence of payment and also for purpose of proof of signature of the party concerned.

Lastly, the third question of law, Ex. B.4, Sale Deed, a document, has been proved by the Appellant. But, here the Ex. B.4 cannot be treated as Sale Deed which is an

unregistered document. At best, what can be construed is for payment of receipt, since Ex. B.4 is only the signature, which is marked. Ex. B.4 is only a signature of the document and the signature alone has been proved. The signature tallies along with the signature of the other admitted documents. Therefore, it cannot be construed as a document as such it could only be considered as evidence for payment. In this aspect alone, it can be considered. Therefore, this question of law is answered in favour of the Appellant only to treat that in Ex. B.4 the signature has been proved for the purpose that the transaction, which took place between the parties and the sale consideration has been passed. When the sale consideration is passed and also when the Power of Attorney is proved coupled with interest, definitely, the same cannot be canceled. Unfortunately, the Trial Court including the Appellate Court has totally failed to consider this aspect and was swayed away by the document, namely, Ex. B.4 being an unregistered Sale Deed."

12. He would submit that, if at all the unregistered sale deed dated 17.09.1993 cannot be treated as a sale deed in the eye of law, the unregistered document, atleast, for proving the passing of sale

consideration, can be treated as a receipt and based on which, the right of the said Arunan, on whose behalf the first defendant is agitating the issue, can very well be decided. Therefore, merely because the said sale deed dated 17.09.1993 is an unregistered document, it cannot be brushed aside, even without being considered as a document correlatively not for the purpose of title but atleast for the purpose of considering the sale consideration as passed and the proof of signature made by the erstwhile owner of the property.

13. The said submission made by the learned counsel appearing for the revision petitioner has been considered and also the materials placed before this Court have been perused.

14. Admittedly, it is a case for declaration and consequential relief with regard to the issue over the title of the suit property, where the main issue was between the plaintiff and the first defendant. Defendants 2 to 8, even though had been arrayed as defendants, may or may not fight the issue with the plaintiff, because, they being the legal heirs of the Navaneedhammal already executed the sale deed in favour

of the plaintiff.

15. Be that as it may, the main contest on the issue raised in the suit is between the plaintiff and the first defendant. The plaintiff claimed right over the property by virtue of the sale deed dated 14.10.2015 executed by the defendants 2 to 8 being the legal heirs of the original owner of Navaneedhammal, whereas, the first defendant claimed the ownership of the property on the basis of the alleged unregistered sale deed dated 17.09.1993 or the Power of Attorney executed on that day and also on the basis of the registered sale agreement dated 17.09.1993 between the said Navaneedhammal and one Arunan, who is none other than the father of the first defendant.

16. Therefore the triable issue in the suit is only between the plaintiff and the first defendant eventually where some supportive role can be played by other defendants from whom only the plaintiff claimed right of title.

17. In this lis, absolutely the present petitioner who is a third party has no role, since he admittedly is a tenant claimed to have been

in possession of the suit property as has been put in under one Arunan, i.e., the father of the first defendant.

18. In that circumstances, if at all the present petitioner wants to protect his possessory right as a tenant, he can establish the same in the manner known to law, if an endeavor goes against him for eviction of his possession unlawfully or illegally or without the known source of law.

19. For that purpose he cannot seek indulgence of the court below, to implead him as one of the party in the suit as the triable issue pending in the said suit is not at all connected with the present third party and therefore in such view of the matter, this Court is of the considered view that, the rejection made by the learned Judge in the impugned order in I.A. filed by the present revision petitioner / third party in I.A. No. 312 of 2016 is justifiable and sustainable.

20. So far as the judgment referred to by the learned counsel in Sivaperumal's case, no doubt, the said principle can very well be pressed into service in appropriate circumstances and the principle

enunciated therein to treat unregistered document for the purpose of proof of payment of sale consideration or money etc., would no way advance the case of the present petitioner for seeking impleadment in the main suit, as admittedly he is a tenant and he is not claiming any right of ownership over the suit property.

21. Therefore for all these reasons, the present revision cannot be accepted and accordingly the same fails and it is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

03.10.2019

Index : Yes

Speaking order

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To

The learned Principle Sub-Judge,
Pondicherry.

R. SURESH KUMAR, J.

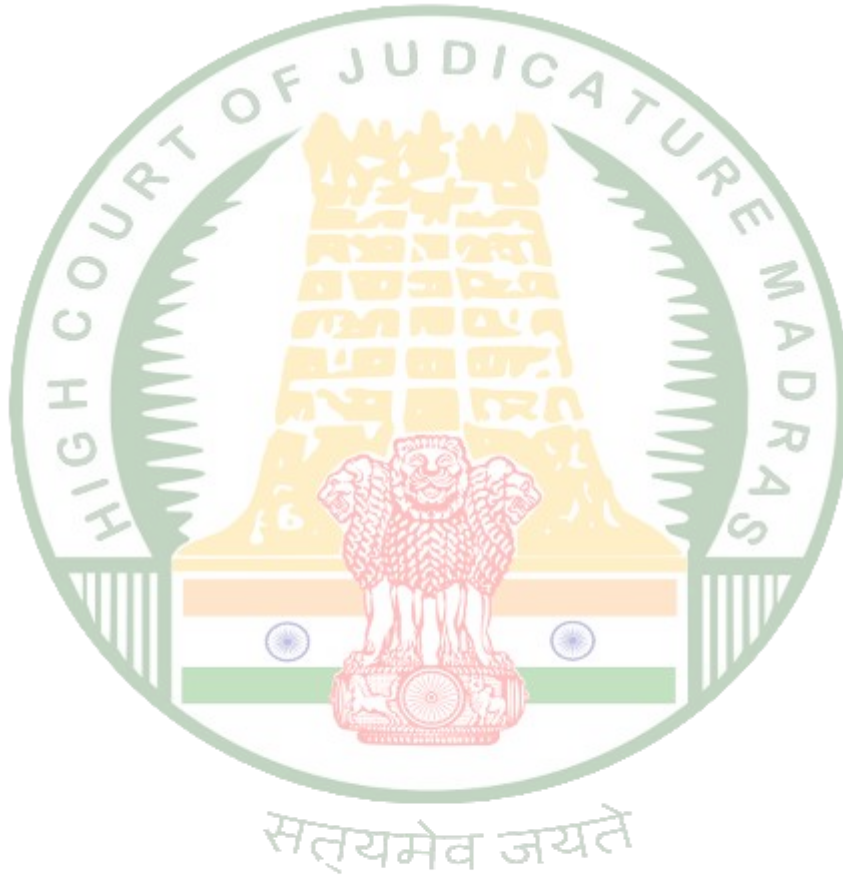
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