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C.R.P.(NPD) No.3620 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2019

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THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3620 of 2019

N.Narayana Sathiya Sivasenathipathi

... Petitioner

-Vs-

1.M.M.Selvaraj

2.M.M.Thangammal

3.The Branch Manager

SME Branch, Corporation Bank

Corporation Bank, Ganga Nagar

Avinashi Road, Tiruppur District.

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to direct the Principal District Court at Tiruppur to expedite the proceedings taken on file in O.S.CFR.No.1827 of 2016 pending on the file of the Principal District Court at Tiruppur and number the same within the time frame fixed by this Honourable Court and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.P.S.Kothandaraman
For Respondents : Mr.P.Valliappan – for R1

ORDER

This revision petition has been filed seeking a direction to the Principal District Court at Tiruppur to expedite the proceedings in O.S.CFR.No.1827 of 2016 pending on the file of the Principal District Court at Tiruppur and number the same within the time frame. The order passed by the learned Judge in the unnumbered O.S., on 27.04.2016 reads as follows.



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"No representation. When sale agreement has to be registered mandatory after 01.12.2012 and when sale agreement dated 25.02.2013 in this case stands unregistered, suit for specific performance is not maintainable. Main prayer is barred by law. Therefore, the question of alternative prayer is also not maintainable. Plaint rejected."

2. Before the Court below, the suit was laid for specific performance on the alleged sale agreement dated 25.02.2013 between the parties. However, the said suit, even before numbering, on scrutiny, was rejected through the impugned order dated 27.04.2016 by the learned Judge stating that, since the sale agreement has to be mandatorily registered from 01.12.2012, the sale agreement dated 25.02.2013 should have been registered and without having registered, the suit cannot be laid on the basis of the unregistered sale agreement.

3. Heard Mr.P.S.Kothandaraman, learned counsel appearing for the revision petitioner and perused the materials placed on record.

4. Though the law made it compulsory to register a sale agreement after 01.12.2012, the effect of non registration would be nothing but, such unregistered document cannot have the evidentiary value or otherwise it is not admissible in evidence. Beyond that, the learned Judge ought not to have held that the very suit itself cannot be laid based on the unregistered sale agreement. Once the suit is laid



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and summons are issued, it is for the parties to prove the case. For instance, if the defendants, on issuing of summons, appear before the Court and agrees that there is an agreement on 25.02.2013, then it may be a case where the sale agreement in question dated 25.02.2013 would become an acceptable document, provided the stamp duty payable by the agreement holder should have been paid with penalty as contemplated under the Stamps Act.

5. In that view of the matter, the present reason stated by the learned Judge through the impugned order and that too, based on which, rejecting the plaint even without numbering, in the considered opinion of this Court, is erroneous and therefore, the said order is liable to be interfered with.

6. Though Mr.P.Valliappan, learned counsel for the first respondent would submit that, the second respondent / defendant is no more and therefore, the legal representatives have to be brought on record, without which the plaint cannot be entertained, this Court is of the view that, it is for the plaintiff to decide who are all the parties to be impleaded in the plaint and if ultimately the plaintiff files the plaint without impleading necessary parties, he has to suffer for such non joinder of necessary parties. Moreover, at this stage, it is the issue between the trial Court and the plaintiff, as the suit itself is unnumbered, and the plea of the first respondent at this juncture, need not be gone into by this Court and once the suit is numbered, it is open to the respondents / defendants to assail the said plaint itself



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on the grounds available to them. Therefore, their grievance can very well be agitated after the suit is numbered.

7. In that view of the matter, the impugned order is set aside and the matter is remitted back to the trial Court for numbering the suit, if it is otherwise in order. With the above observation, this Civil Revision Petition is disposed of. No costs.

12-11-2019

Index : Yes
Internet : Yes
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To

The Principal District Judge, Tiruppur.

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This Civil Revision Petition has been listed today under the caption 'For being mentioned' at the instance of the learned counsel appearing for the petitioner.

2. This Court, while disposing the said CRP on 12.11.2019 after setting aside the impugned order therein remitted the matter back to the trial Court for numbering the suit.

3. However, the original Complaint filed before this Court has not been returned as no such content has been mentioned in the order dated 12.11.2019. By virtue of that, the petitioner is not able to file the original Complaint before the Court concerned to get it numbered.

4. In view of the above, the Registry is directed to return the original Complaint copy filed along with this CRP by the petitioner, after retaining the photocopy of the same by getting acknowledgment from the counsel on record of the petitioner.

23.01.2023



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