



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
C.R.P.(PD) (MD) No.1414 of 2012
and M.P.No.2 of 2012

G.Veeramani : Petitioner/1st Defendant

-vs-

1.N.Soundaramoorthy : 1st Respondent/Plaintiff

2.G.Sundarapandian

3.The Sub Registrar,
Kodavasal
Main Road, Kodavasal
Within the jurisdiction of
District Munsif of Nannilam

4.The District Registrar,
Mayiladudurai
Having office at District Registrar Office,
Mayildudurai
Within the jurisdiction of
District Munsif of Mayildudurai

5.The Government of Tamilnadu
Represented by District Collector,
Thanjavur,
Having Office at
Cutchery Road, Thanjavur,
Within the jurisdiction of
District Munsif of Thanjavur.

6.V.Balamurugan

7.Shanmugaraj

8.Venkatesh ... Respondents 2 to 8
/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 12.08.2011 passed in a memo filed by the first respondent and the plaintiff in O.S.No.391/2009 on the file of the Ist Additional District Munsif, Kumbakonam.



For Petitioner : Mr.S.Deenadhayalan
fof Mr.R.A.S.Anandraj

For Respondent : Mr.H.Lakshmi Shankar for R1

R2 to R8 dispensed with vide EB, 25.10.2019.

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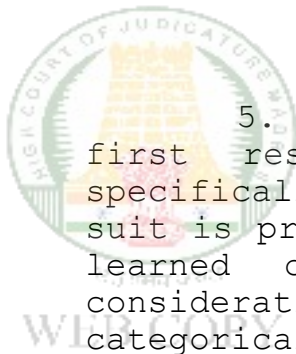
O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below dismissing the application filed by the petitioner/1st defendant seeking to reject the unregistered agreement of sale, which was sought to be marked by the first respondent/plaintiff.

2. The first respondent/plaintiff filed a suit for specific performance and for a relief of permanent injunction based on an unregistered agreement of sale dated 07.05.2006. As per the case of the plaintiff, pursuant to the agreement of sale, the possession of the property was also handed over to the plaintiff. The pleadings were completed, issues were framed and the case was at the stage of trial.

3. The plaintiff was in the box and the unregistered agreement of sale was sought to be marked as a document. This was objected by the petitioner/defendant on the ground that the plaintiff had specifically pleaded part performance under Section 53 (A) of the Transfer of Property Act (hereinafter referred to as 'the Act') and therefore, the sale agreement must be necessarily registered and without the same, the same should not be marked as a document. The Court below took into consideration the fact that the plaintiff had given up the relief of injunction and was only prosecuting the suit for the relief of specific performance. Therefore, the Court below took into consideration the judgment of the Hon'ble Supreme Court in ***S.Kaladevi v. V.R.Somasundaram and others*** reported in ***2010(2) TLNJ 471*** and came to a conclusion that even an unregistered sale agreement can be marked and it can be looked into for collateral purpose.

4. The learned counsel appearing on behalf of the petitioner submitted that even though the first respondent/plaintiff had given up the relief of permanent injunction, the entire pleadings in the plaint shows that the plaintiff had taken possession of the property pursuant to the sale agreement and therefore, the case will squarely come under Section 53(A) of the Act. The learned counsel submitted that the agreement cannot be admitted without the same being registered. The learned counsel, therefore, submitted that the Court below went wrong in rejecting the objections made by the petitioner.



5. Per contra, the learned counsel appearing on behalf of the first respondent/plaintiff submitted that the plaintiff has specifically given up the relief of permanent injunction and the suit is prosecuted only for the relief of specific performance. The learned counsel submitted that the Court below took into consideration the impact of Section 53(A) of the Act and has given a categorical finding that the unregistered sale agreement can be marked and can be relied upon for collateral purposes. Hence, absolutely, there is no ground to interfere with the finding of the Court below and this Civil Revision Petition is liable to be dismissed.

6. This Court has carefully considered the submissions made on either side and perused the materials available on record.

7. The first respondent/plaintiff had initially filed a suit claiming for the relief of specific performance and for permanent injunction. It is true that the first respondent/plaintiff had claimed possession of the property pursuant to the agreement of sale dated 07.05.2006 executed in his favour. The relief of permanent injunction was subsequently given up. What is now being prosecuted by the first respondent/plaintiff is only the relief of specific performance.

8. Under such circumstances, it should be seen whether the agreement of sale requires to be registered in order to be marked before the Court below and relied upon. It is seen that this unregistered agreement of sale had come into force prior to the amendment of the Registration Act, 1908 by Tamil Nadu Amendment Act, 29 of 2012. Therefore, at that point of time, there was no requirement for registration of an agreement of sale. The first respondent/plaintiff is not seeking his right under Section 53(A) of the Act, since he has already given up the right of permanent injunction.

9. This Court had an occasion to consider the impact of Tamil Nadu Amendment Act, 29 of 2012, in a case, where, a suit for specific performance was laid based on an unregistered agreement of sale. This Court in ***D.Devarajan v. Alphonsa Mary and another*** reported in **2019 (2) CTC 290** has held as follows:

"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 7 Rule 11, C.P.C. The State of Andhra Pradesh had brought in an identical amendment to Section 17 of the Registration with its own Section 17(1)(g). It reads in pari materia with Section 17(1)(g) as amended by Tamil Nadu and in fact is a forerunner to Tamil Nadu Amendment. Section 17 (1)(g) reads:

"Section 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 Section 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 were some arguments on Section 10 of the Indian Contract Act, 1872 and what emerges out of Section 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 Section 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, Section 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 Section 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."

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10. From the above judgment, it is clear that even after the amendment, non registration of an agreement of sale does not operate as a total bar to look into the contract, since proviso to Section 49 has carved out an exception. The proviso specifically provides that an unregistered agreement of sale can be used for any collateral purpose and it can be used as an evidence in a suit for specific performance. When such is the position of law, even after the amendment of the Registration Act, the plaintiff, in the present case, stands on a better footing. Therefore, this Court does not find any illegality or infirmity in the order passed by the Court below and the Court below has given cogent reasons for rejecting the objections raised by the defendant and this Court does not find any reasons to interfere with the same.

11. In the result, this Civil Revision Petition is dismissed and the Court below is directed to complete the proceedings in O.S.No.391/2009 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

The I Additional District Munsif Court,
Kumbakonam.

+1 CC to M/s.T.V.SIVAKUMAR, Advocate SR-95104.

C.R.P. (PD) (MD) No.1414 of 2012

25.10.2019

CS (20.11.2019) 5P 3C