



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.351 of 2011

and

M.P(MD)No.1 of 2011

K.Jeyapal .. Petitioner / Plaintiff

Vs.

1.N.Subbaiah

2.The Sub Registrar,

Sub Registration Office, Ettayapuram,

Tuticorin District.

.. Respondents / Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 05.01.2010 made in O.S.No.29 of 2009 by the Sub Court, Kovilpatti, refusing to mark the sale deed dated 15.05.2006 executed by the first defendant, on the side of the petitioner.

For petitioner : Mr.B.Rajesh Saravanan

For Respondent No.2 : Mr.J.Gunaseelan Muthiah,
Addl. Govt. Pleader.

ORDER

The petitioner / plaintiff filed the suit in O.S.No.29 of 2009 seeking to direct the first respondent / first defendant to register the sale deed dated 15.05.2006, executed by him, in favour of the petitioner / plaintiff. The petitioner / plaintiff filed proof affidavit along with five documents, in which, the Court below refused to mark the unregistered sale deed dated 15.05.2006. Aggrieved over the same, the petitioner / plaintiff has filed the present civil revision petition.

2.The learned counsel for the petitioner / plaintiff would submit that the suit property belongs to the first respondent / first defendant and on 15.05.2006, he agreed to sell the same in favour of the petitioner / plaintiff for a sum of Rs.1,00,000/-. The first respondent / first defendant also received the said sum from the petitioner / plaintiff and executed a unregistered sale deed. The petitioner / plaintiff filed the sale deed dated 15.05.2006, along with the proof affidavit. But, the Court below has erroneously refused to mark the same. Since the suit is filed for the relief of specific performance, the Court below ought to have marked the unregistered sale deed. In this regard, he would also rely upon the Judgment of the Hon'ble Supreme Court in **S.Kaladevi v. V.R.Somasundaram and Others** reported in (2010)5

**Supreme Court Cases 401.**

3. Even though paper publication was ordered in respect of the first respondent / first defendant and a proof has also been filed, there is no representation on behalf of the first respondent.

4. Heard the learned counsel for the petitioner / plaintiff and the learned Additional Government Pleader for the second respondent / second defendant and perused the records carefully.

5. Perusal of records shows that the petitioner / plaintiff filed the suit seeking to direct the first respondent / first defendant to register the sale deed dated 15.05.2006, executed by him, in favour of the petitioner / plaintiff. The petitioner / plaintiff has filed his proof affidavit and he was also examined as P.W.1. The Court below refused to mark the unregistered sale deed dated 15.05.2006. The Hon'ble Supreme Court in **S.Kaladevi v. V.R.Somasundaram and Others** reported in **(2010)5 Supreme Court Cases 401** has held that in a suit for specific performance, the trial Court ought to have marked the unregistered sale deed tendered by the plaintiff and the relevant portion is extracted as below:

"... 7. After having heard Mr.K.V.Vishwanathan, learned senior counsel for the appellant and Mr.T.S.R.Venkatramana, learned counsel for the respondents, we are of the opinion that having regard to the proviso to Section 49 of the Registration Act, 1908 (for short, '1908 Act'), the trial court erred in not admitting the unregistered sale deed dated 27.02.2006 in evidence and the High Court ought to have corrected the said error by setting aside the order of the trial court.

... ..

12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed



can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.

....

16.The issue before us is only with regard to the admissibility of unregistered sale deed dated 27.2.2006 in evidence and, therefore, it is neither appropriate nor necessary for us to consider the contention raised by learned counsel for the respondents about the maintainability of the suit as framed by the plaintiff or the circumstances in which the sale deed was executed. If any issue in that regard has been struck by the trial court, obviously, such issue would be decided in accordance with law. Suffice, however, to say that looking to the nature of the suit, which happens to be a suit for specific performance, the trial court was not justified in refusing to admit the unregistered sale deed dated 27.2.2006 tendered by the plaintiff in evidence.

17.The argument of learned counsel for the respondents with regard to Section 3(b) of the 1963 Act is noted to be rejected. We fail to understand how the said provision helps the respondents as the said provision provides that nothing in 1963 Act shall be deemed to affect the operation of 1908 Act, on documents. By admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of the 1908 Act is affected; rather the court acts in consonance with the proviso appended to Section 49 of the 1908 Act.

18.The result is that appeal is allowed, the order of the High Court dated 13.11.2008 and that of the trial court dated 11.12.2007 are set aside. The trial court shall mark the unregistered sale deed dated 27.2.2006 tendered by the plaintiff in her evidence and proceed with the suit accordingly".

6.In view of the above, the order dated 05.01.2010, with regard to refusal of marking the unregistered sale deed dated 15.05.2006, in O.S.No.29 of 2009, passed by the Court below, is set aside. The Court below is directed to permit the petitioner / plaintiff to mark the same as an exhibit, through him. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Sub Judge,
Kovilpatti.

2. The Sub Registrar, Sub Registration Office,
Ettayapuram, Tuticorin District.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1CC TO MR.B.RAJESH SARAVANAN, Advocate Sr. No. 57626

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.57773

ORDER MADE IN
C.R.P (MD) No.351 of 2011
and
M.P (MD) No.1 of 2011

TR (22.04.2019) 4P 7C