

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.451 of 2019
and
C.M.P.No.12712 of 2019

C.Ramya

..Appellant/Respondent
/Plaintiff

vs.

1.C.Ganambal
2.C.Dineshkumar
3.C.Senthilkumar

..Respondents/Petitioners
Defendants

Appeals filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 10.04.2019 made in I.A.No.281 of 2018 in O.S.No.7 of 2018 on the file of the learned Sessions Judge (Fast Track Mahila Court), Namakkal.

For Appellant :
Mr.N.Manokaran

For Respondents :
Mr.S.Viswanathan

For M/s.Dass Viswa Associates

[For R1 to R3]

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J U D G M E N T

The appeal suit is filed against the judgment and decree passed in I.A.No.281/2018 dated 10.04.2019.

2.The respondent plaintiff is the appellant in the appeal suit. The respondents in the appeal suit filed an Interlocutory Application in I.A.No.281 of 2018 in O.S.No.7 of 2018 under Order 7 Rule 11 of the Code of Civil Procedure, seeking

rejection of plaint.

3. The contention of the respondents plaintiff before the trial Court was that the Government has amended the Registration Act and implemented compulsory registration of sale agreement from 01.12.2012. The alleged sale agreement involved in this suit is not a registered one and therefore, the same is void and cannot be entertained for the purpose of filing the suit for the relief of specific performance. There is no collateral purpose in the sale agreement. As per Section 17 and 49 of Registration Act, the suit is barred under law and the same is to be registered. The petition was filed under Order 7 Rule 11 of C.P.C., mainly on the ground that the suit sale agreement is admittedly not a registered document and therefore, the suit for specific performance cannot be entertained and consequently, the plaint is to be rejected.

4. The appellants respondents disputed the said ground by stating that the suit was filed on 02.01.2018 before the Principal District Judge, Namakkal and on 07.02.2018, the defendants appeared through their counsel.

5. It is contended that the suit has been filed by the respondents / plaintiff on the basis of unregistered sale agreement dated 24.12.2014 and the Government has amended the Registration Act and implemented compulsory registration of sale agreement from 01.12.2012 is absolutely false. As per Section 17 and 49 of Registration Act, the suit is barred under law and the same is also denied.

6. Relying on the Apex Court judgment as well as the judgment of the High Court for suit for specific performance, such a registration is not compulsory with reference to Section 42 of the Registration Act and therefore, the petition is liable to be dismissed.

7. The trial Court considered the issues raised between the parties and arrived a conclusion that the non-registration of the sale agreement is a vital factor and therefore, the suit for specific performance cannot be entertained and accordingly, rejected the plaint. The trial Court mainly relied upon Section 17 of the Registration (Tamil Nadu Amendment) Act 2012 and held that entertaining a suit for specific performance, the sale agreement must be a registered one and the sale agreement in the present suit admittedly is not registered. The suit cannot be entertained and accordingly, rejected the plaint.

8. The learned counsel appearing on behalf of the appellant made a submission that the legal proposition set out by the trial Court is absolutely in contradiction with the principles

reiterated by the Hon'ble Supreme Court of India as well as by the High Court of Madras.

9. Even recently, the High Court of Madras in the case of D.Devarajan Vs. Alphonsa Mary, reported in [2019(2) CTC 290], 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 VII Rule 11 CPC. The state of Andhra Pradesh had brought in an identical amendment to Sec.17 of the Registration with its own Sec.17(1)(g). It reads in pari materia with Sec.17(1)(g) as amended by Tamil Nadu, and in fact is a forerunner to Tamil Nadu amendment. Sec.17(1)(g) reads:

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

10. The Madurai Bench of Madras High Court in the case of G.Veeramani Vs. N.Soundaramoorthy and others, reported in [2019 (6) CTC 580], held as follows:

"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 was 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 nonregistration 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."

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 case of Minor Ravi Bharathi S/o.Late Rajeswaran Vs. P.Balasubramani and another, reported in [2014(3) MWN (Civil) 578], the High Court of Madras made an observation as follows:

"8. The only ground on which the petitioner/second defendant seeks for rejection of the said agreement is that there was a part performance alleged by the plaintiffs themselves and under such circumstances, the said agreement having not been registered, cannot be received and marked as evidence. In my considered view, such contention of the learned counsel for the petitioner is liable to be rejected, in view of the fact that the said contention is against the statutory provision, namely proviso to Section 49 of the Registration Act, 1908, which reads as follows:

"Section 49: Effect of non-registration of documents required to be registered--No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (IV of 1882), to be registered shall--

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (IV of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877 (I of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

10. In view of the specific provision made under the proviso to Section 49 of the Registration Act, 1908, allowing the unregistered document affecting immovable property, to be received as evidence of a contract in a suit for specific performance, the contentions raised by the learned counsel for the petitioner cannot be sustained and the same is liable to be rejected. The trial Court has rightly rejected

the application filed by the petitioner seeking to discard the unregistered agreement of sale, dated 31.8.2005, with which I find no infirmity or illegality."

12. The Apex Court of India in the case of Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and others, reported in (2018) 7 SCC 639, held as follows:

"9. In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9-7-2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17 (1-A) of the 1908 Act came into force with effect from 24-9-2001. Whereas, the suit agreement was executed subsequently on 9-7-2003. Section 17(1-A) of the 1908 Act reads thus:

"17. Documents of which registration is compulsory.-(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871) or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely-

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A."

10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53-A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi v. V.R. Somasundaram [S. Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401 : (2010)

2 SCC (Civ) 424] this Court has restated the legal position that 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 as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

11. Section 49 of the 1908 Act reads thus:

"49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

12. In the reported decision, this Court has adverted to the principles delineated in K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd. [K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd., (2008) 8 SCC 564] and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment [Dierdre Elizabeth (Wright) Issar v. Ameer Minhaj, 2016 SCC OnLine Mad 31541] that the sale agreement dated 9-7-2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53-A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the

1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the trial court after the parties adduce oral and documentary evidence."

13. The Hon'ble Supreme Court of India in the case of S.Kaladevi Vs. V.R.Somasundaram & Others, reported in AIR 2010 SUPREME COURT 1654, held as follows:

"11. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus:

"49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

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 the 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 the 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 the 1908 Act."

14. Perusal of the above judgments, it is unambiguous that for the purpose of entertaining a suit for specific performance, the sale agreement entered into between the parties need not be registered. The said unregistered sale agreement would not come under the purview of compulsory registration and on that ground, the suit for specific performance cannot be rejected.

15. This being the legal principles reiterated by the Apex Court, as well as by the High Court as per the judgments cited supra, this Court is of the considered opinion that the judgment and decree passed by the trial Court is perverse and not in consonance with the legal principles settled. Consequently, the judgment and decree dated 10.04.2019 passed in I.A.No.281 of 2018 is quashed and the appeal suit in A.S.No.451 of 2019 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

16. The trial Court is directed to take the plaint on file and proceed with the trial as expeditiously as possible.

Sd/-

Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

Kak

To

1.The learned Sessions Judge,
(Fast Track Mahila Court),
Namakkal.

+1cc to Mr.Dass & Viswa Associates, Advocate, S.R.No.7466
+1cc to Mr.N.Manokaran, Advocate, S.R.No.7887

A.S.No.451 of 2019

BS (CO)
KKV/20/07/2020