

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.1026 OF 2019

&

C.M.P.NO.27726 OF 2019

V.Ramesh

...Appellant/Plaintiff

Vs.

Smt.Bhavani

...Respondent/Defendant

PRAYER:

Appeal under Section 96 of the Code of Civil Procedure, 1908, against the judgement and decree made in O.S.No.178 of 2016 dated 18.06.2019 on the file of the Principal District Judge of Kancheepuram at Chengelpet.

For Appellant : Mr.R.Balasubramanian

For Respondent : Mr.T.Srinivasamohan
for Mr.V.Virumandi

JUDGMENT

The appeal suit is filed against the judgment and decree dated 18.06.2019 passed in O.S.No.178 of 2016 on the file of the Principal District Judge of Kancheepuram at Chengelpet.

2.The plaintiff is the appellant in the Appeal Suit who instituted the suit for specific performance for the purchase of a house plot for his own house, more specifically described in the plaint. The parties have agreed to sell suit mentioned property for a total sale consideration of Rs.18,00,000/- out of which Rs.7,00,000/- was paid towards advance by the plaintiff to the defendant. On receipt of the balance sale consideration of Rs.11,00,000/-, the defendant has to execute the sale deed as per the suit sale agreement.

3.The appellant/plaintiff has contended that he was always ready and willing to perform his part of the contract and made frequent demands with the defendant, who in-turn has evaded his part of the contract, which resulted in issuance of notice and institution of the suit for specific performance.

4.The respondent/defendant has disputed the said contention raised by the plaintiff and denied the allegations. The contention of the respondent/defendant is that he borrowed a loan amount of Rs.3,00,000/- and the plaintiff had obtained signatures in the blank papers and filled the same subsequently. Thus, the suit sale agreement itself is false and at no point of time, the defendants has enunciated to sell the property in favour of the plaintiff.

5.At the outset, it is contended that there was no intention to execute the sale on the part of the defendant and the blank signatures obtained from the defendant was adduced by the plaintiff for the purpose of creating the suit sale agreement and therefore the suit is liable to be dismissed.

6.The Trial Court framed the issues as to whether the suit agreement is true and valid; whether the plaintiff is entitled to the relief of specific performance and to what relief the plaintiff is entitled for. An additional issue was framed by Trial Court as to whether the plaintiff is entitled for the relief of permanent injunction as prayed for.

7.With reference to the issues, the Trial Court arrived at a conclusion that the suit sale agreement is an unregistered document and therefore the same cannot be enforced at all. The Trial Court formed an opinion that an unregistered sale agreement cannot be entertained for the purpose of enforcing the conditions stipulated and therefore, dismissed the suit and granted the alternate relief and refund of advance with interest.

8.The question to be considered by this Court is that whether an unregistered sale agreement is enforceable or not. In this regard, this Court has considered the issue in the case of G.Veeramani Vs. N.Soundaramoorthy reported in 2019(5) LW 471; wherein it is held as follows;

"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.

10. From the above judgement, 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.

9. In another case of D. Devarajan Vs. Alphonsa Mary reported in 2019 (2) CTC 290, this Court held as follows;

"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."

10.The Hon'ble Supreme Court in the case of S.Kaladevi Vs. V.R.Somasundaram & Others reported in 2010 (3) MWN (Civil) 556 held as follows;

"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. 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 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."

11.Relying on the above judgments, the learned counsel appearing on behalf of the appellants reiterated that registration of sale agreement is a mandatory condition and even in case of an unregistered sale agreement, the Court can decide the issues on merits. Contrarily, the Trial Court has dismissed the relief of specific performance, solely on the ground that the suit sale agreement is not a registered document. It is further contended that the plaintiff was ready and willing to perform his part of contract and he has explained the said readiness in the plaint itself.

12.The learned counsel appearing on behalf of the respondent disputed the contentions raised on behalf of the appellant by stating that the Trial Court has not framed the issues regarding readiness and willingness. The Trial Court has not gone into the nature of the agreement as well as the defense taken in the written statement. The first respondent has specifically defended his case by stating in his written statement that there was no intention to sell his property and the suit sale agreement is a created document by using blank signatures given

in lieu of the loan transaction. The blank signatures were obtained with ante-dates, were filled up and therefore, the defendants has taken a defense that the suit sale agreement itself is false and not enforceable.

13. Considering the said arguments, this Court is of the opinion that the Trial Court has committed an error in respect of dismissing the suit mainly on the ground that the said sale agreement is not a registered document. Such a registration is not mandatory as per judgments cited supra and therefore the Trial Court ought to have considered the merits as well as the terms and conditions and the defense raised by the defendants and arrived at a finding. Contrarily, the judgment was delivered mainly on the ground that the suit sale agreement is not a registered document. This apart, the Trial Court has not framed any issues regarding readiness and willingness to be established by the plaintiff for the purpose of grant of relief of specific performance.

14. In a suit for specific performance establishing readiness and willingness is a mandatory one and the plaintiff has to prove the same beyond any pale of doubt. However, there is no finding in this regard in the judgment and therefore, an enquiry in this aspect is also imminent.

15. This defects noticed in the judgment passed by the Trial Court cannot be rectified by this Court in the First Appeal. A fresh trial is required in view of the fact that defense taken by the defendants is to be adjudicated by scrutinizing the documents carefully and by considering the evidence to be adduced. All these issues are to be considered on the basis of the materials placed by the respective parties.

16. This being the factum, this Court is of the considered opinion that the suit requires retrial and for this purpose it is to be remanded. Accordingly, judgment and decree dated 18.06.2019 in O.S.No.178 of 2016 is quashed. The original suit is remanded back to the Trial Court for conducting retrial. The parties to the Original Suit are at liberty to set out their pleadings by following the procedures contemplated. The Trial Court is requested to conduct the trial as expeditiously as possible and avoid unnecessary adjournments so as to ensure such litigations are disposed of within a reasonable period of time. The parties to the suit are directed not to seek unnecessary adjournments and even in case of request for adjournment the same is to be granted by recording reasons.

17.In the result, the Appeal Suit stands allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrm

To

The learned Principal District Judge,
Kancheepuram at Chengelpet.

Copy To

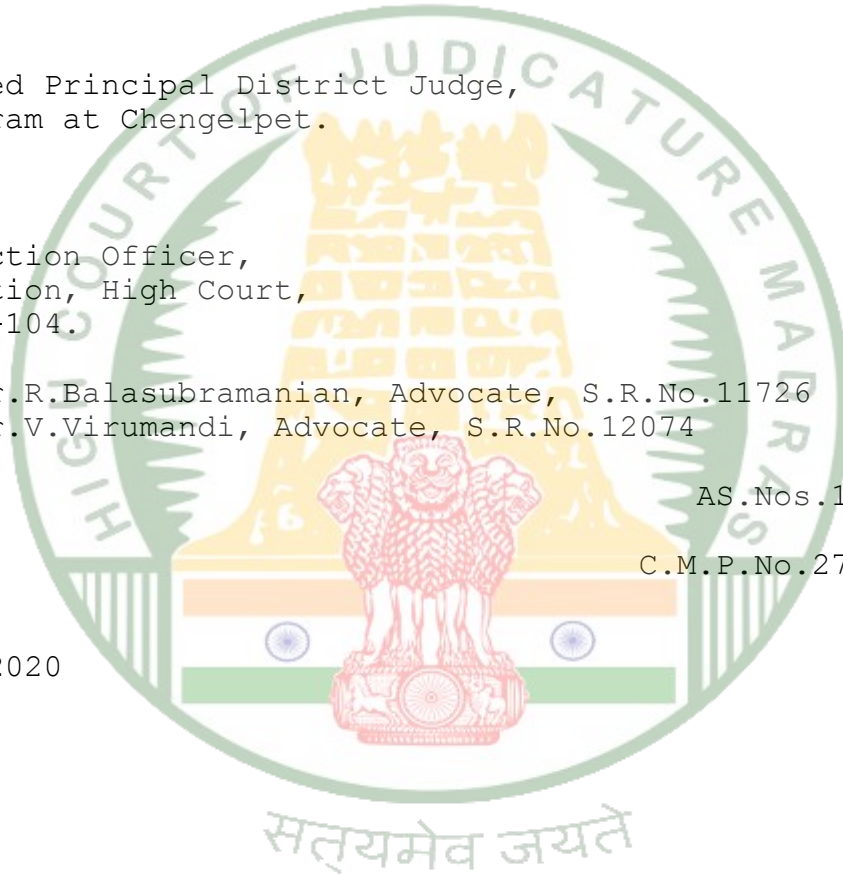
The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.R.Balasubramanian, Advocate, S.R.No.11726

+2cc to Mr.V.Virumandi, Advocate, S.R.No.12074

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