



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.2643 of 2012

Subalakshmi ... Revision Petitioner/1st Respondent/
1st Plaintiff

vs.

1.Radhakrishnan ... 1st Respondents/Petitioner/
7th Defendant

2.Jeyalakshmi ... 2nd Respondent/2nd Respondent/
2nd Plaintiff

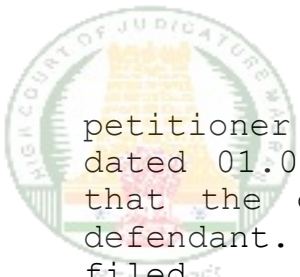
PRAYER: Petition filed under Article 227 of the Constitution of India against the fair order and decreetal order, dated 18.09.2012 passed in I.A.No.678 of 2010 in O.S.No.89 of 2007, on the file of the learned District Munsif, Kovilpatti.

For Petitioner : Mr.S.Pon Senthil Kumaran

For Respondents : Mr.D.Nallathambi
for R.1
: R.2-given up

ORDER

The plaintiff in the suit in O.S.No.89 of 2007, on the file of the District Munsif Court, Kovilpatti is the revision petitioner. The petitioner and the second respondent in the Civil Revision Petition filed a suit in O.S.No.89 of 2007 for declaration that the unregistered sale deed dated 01.07.1983 said to have been executed by one Krishnammal is not true, void and not binding on the plaintiffs and for other consequential reliefs. The seventh defendant filed written statement contesting the suit on various grounds. After the plaintiffs' evidence was over, the seventh defendant in the suit / the first respondent in the Civil Revision Petition filed an interlocutory application in I.A.No.678 of 2010 for marking certain documents. Though the petition contains several other documents to be marked as Exs.B.9 to B.27, the revision



petitioner objected to the marking of the unregistered sale deed dated 01.07.1983. The lower Court allowed the petition by stating that the document can be marked to prove possession of seventh defendant. Against that, the above Civil Revision Petition is filed.

WEB COPY

2. It is pertinent to mention that the very relief in the suit is to declare the unregistered document of sale as void and not true. Though the document viz., the unregistered sale deed executed by Krishnammal was marked, the document itself was impounded and sent for collection of stamp duty and penalty, pursuant to the order passed by the lower Court in I.A.No.779 of 2010 in O.S.No.89 of 2007.

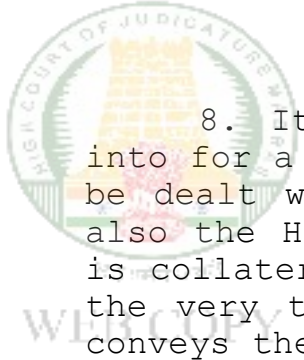
3. It is not disputed now that the unregistered document of sale is duly stamped. When a document is duly stamped, Section 35 of the Registration Act cannot be invoked. Though it is true that the unregistered and un-stamped document is inadmissible even to prove collateral transaction by virtue of Section 49 of the Registration Act and a document which requires compulsory registration can be marked and relied upon for the purpose of proving collateral transaction.

4. The learned Counsel appearing for the revision petitioner relied upon a judgment of the Honourable Supreme Court in **K.B.Saha and Sons Private Limited Vs. Development Consultant Limited** reported in **(2008) 8 Supreme Court Cases 564**, wherein the Honourable Supreme Court considered what is collateral transaction and made a distinction between unregistered document and the document which is neither registered nor stamped.

5. This Court is unable to get any support from the judgment of the Honourable Supreme Court cited by the learned Counsel appearing for the petitioner to help the revision petitioner.

6. As per Section 35 of the Stamp Act, if not stamped, a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act. When the document is neither stamped nor registered, the said document cannot be looked into for collateral purpose.

7. In the case on hand, the unregistered sale deed dated 01.07.1983 stipulates that possession was handed over to the vendee. Though the document was originally un-stamped by virtue of the fact that the stamp duty and penalty was collected for the instrument long back by the trial Court itself, this Court must presume that the document is duly stamped. Hence, marking of document to prove collateral transaction cannot be prevented.



8. It is true that the unregistered document can be looked into for a transaction which is collateral, which is not required to be dealt with by a registered instrument. Further this Court and also the Honourable Supreme Court had an occasion to consider what is collateral purpose. The document cannot be relied upon to prove the very transaction. In the case on hand, the document of sale conveys the right in immovable property from the vendor in favour of the vendee. The document of sale consists of two parts. Conveying the title is one part and handing over possession is another part. If the document is unregistered, there cannot be actual conveyance of title under the document. Further regarding the fact of handing over possession to the vendee are payment of consideration, they are collateral to the main transaction and the unregistered sale deed can be relied upon to prove that the possession is handed over to the vendee as per the document. The submission of the learned Counsel for the petitioner that the Court cannot accept the document which is an unregistered sale deed for the purpose of proving the possession of vendee cannot be accepted.

9. For the reasons stated above, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SSL

To

The District Munsif Court, Kovilpatti.

+1 CC to M/s.S.PON SENTHIL KUMAR, Advocate (SR-12639[F] dated 20/03/2020)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-12417[F] dated 19/03/2020)

C.R.P. (MD) No.2643 of 2012

DATED : 18.03.2020

SS/14.05.2020/3P-4C

<https://hcservices.ecourts.gov.in/hcservices/>