



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 09.03.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P. (MD) No.1178 of 2013
and M.P. (MD) No.1 of 2013

P.Murugan
Krishnan

Vs.

... Petitioner
... Respondent

Prayer : This revision petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 18.03.2013 passed in I.A.No.149 of 2012 in O.S.No.13 of 2009 on the file of the District Munsif cum Judicial Magistrate, Bodinaickkanur, Theni District.

For Petitioner : Mr.K.Guhan
For Respondent : Mr.P.Muthu Vijaya Pandian

ORDER

This Civil Revision Petition is filed against the order dated 18.03.2013 in I.A.No. 149 of 2012 in O.S.No.13 of 2009 on the file of the District Munsif cum Judicial Magistrate, Bodinayakanur, Theni District.

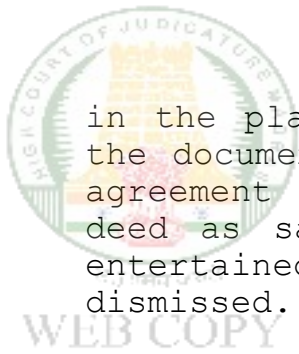
2. The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The petitioner herein filed a suit in O.S.No.13 of 2009 for a prayer of specific performance. In that suit, the petitioner filed a petition in I.A.No.149 of 2012, for a prayer of marking documents. That petition was dismissed by the trial Court. Against which, the petitioner preferred this Civil Revision Petition.

3. Brief substance of the petition in I.A.No.149 of 2012 is as follows:

The suit document dated 28.08.2002 is really an agreement of sale and on the date of agreement itself, the property was handed over to the petitioner, However, sale deed was not executed on that date, but, the document was to be treated as a sale agreement and permission is to be granted to mark the document.

4. Brief substance of the counter in I.A.No.149 of 2012 is as follows:

The plaintiff himself has described the document as sale deed



in the plaint, now, the petitioner sought for permission to treat the document as sale agreement. There is no wordings as to a sale agreement in the document. There is no provision to mark a sale deed as sale agreement and an un-registered sale deed cannot be entertained as a sale agreement and the petition is to be dismissed.

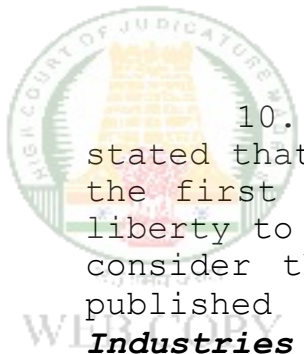
5. After considering both sides, the trial Court dismissed the petition, as the document is not registered under Sections 49 and 17 of the Indian Registration Act. Against which, the petitioner preferred this Civil Revision Petition on the following grounds:

6. On the side of the revision petitioner, it is stated that the trial Court failed to consider Ex.A1, which is a vital document to the suit and that document is un-stamped document and the same can be relied upon as a document to prove the case of the plaintiff.

7. On the side of the revision petitioner, it is stated that the document is only a sale deed, which is, a vital document. Though named as sale deed, the wordings in the document clearly reveals that the document is only an agreement for sale.

8. To substantiate this claim a Judgment of this Court published in 2009 (2) L.W. 457 [Deivanai Ammal Vs. Kumarayee Ammal and others] is cited, wherein, it is stated that "13.. In such view of the matter, this Court is also of the view that the document assailed, naley, unregistered sale deed has to be received at this stage and the respondents are at liberty to object it at the time of marking through defendants and the Court below shall decide the legal enforceability of the document at the time of final hearing of the case".

9. Another judgment of this Court published in **2017 (5) CTC 33 [Bollineni Developers Ltd., Vs. K.Sailendra Kumar and others]** is cited, wherein, it is stated that "... The right conferred under Section 53(3) of the Transfer of Property Act is the right available to the person to protect his possession and does not create any title on him. Whereas, Section 49 of the Registration Act clearly show that the unregistered sale agreement can be received as an evidence in a suit for specific performance. Now the plaintiff has not filed any suit to protect his possession. He simply filed a suit for enforcing the Contract. Therefore, the contention of the learned Counsel for the Applicant that Section 53-A of the Transfer of Property Act will come into play cannot be sustained. Suit for mere enforcing the Contract and not for land. Accordingly, the leave granted by this Court is sustained and this Application filed for revocation of the leave is liable to be dismissed. "

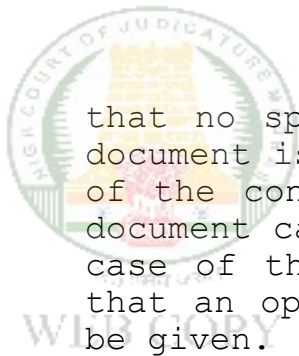


10. On the side of the revision petitioner, it is further stated that the trial Court can not refuse to accept the document at the first instance. It is further stated that the parties are at liberty to object for the marking of the documents and the Court can consider the same at that stage only. A judgment of this court published in **2011 (2) CTC 258 [N.Subhash Chand Jain Vs. Uniply Industries Limited]** is cited, wherein, it is stated that "However, it is upto the respondent to raise objections relating to admission when the documents are marked by the defendants. The Lower Court is directed to dispose of the suit within a period of eight weeks from the date of receipt of a copy of this order. "

11. On the side of the revision petitioner, it is stated that a document required to be registered, if un-registered, can be admitted in evidence as evidence of a contract in a suit for specific performance. A judgment of the Hon'ble Supreme Court published in **2010 (4) MLJ 529 [S.Kaladevi Vs. V.R.Somasundaram and others]** is cited, wherein, it is stated that "15. The issue before us is only with regard to the admissibility of unregistered sale deed dated 27.02.2006 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 suit as framed by the plaintiff or the circumstances in which the sale deed was executed. If any issue in that regard had 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 27.02.2006 tendered by the plaintiff in evidence. 16.... By admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of 1908 Act is affected; rather Court acts in consonance with proviso appended to Section 49 of the 1908 Act. "

12. On the side of the respondent, it is stated that the suit is for specific performance, the allegation is that the entire sale consideration was already paid, the document is an un-registered sale deed, which is in-valid. Even if the document is admitted, the document is dated 28.08.2002, the suit notice was sent on 11.03.2008, after a lapse of six years and there is limitation and the document is rightly rejected by the trial Court.

13. On the side of the revision petitioner, it is stated that the document is dated 28.08.2002. At that time, there is no necessity to register a sale agreement and the document was meant only a sale agreement, though the nomenclature is "sale". It is stated that in that document there is a clear wordings that the executor of the document undertakes to register a sale deed at the convenience of the executrix of the document. It is further stated



that no specific time limit is fixed in the sale agreement. This document is only a contract and the suit is for specific performance of the contract. The respondent can raise his objections and the document can be accepted subject to proof and relevance and that the case of the petitioner cannot be thrown away at the threshold and that an opportunity for the petitioner to put forth his case has to be given.

14. The headings of the document is sale, at the same time, there are wordings to presume the document to be a sale agreement. The wordings that "the executor of the document will execute a sale deed when it is convenient to the executrix" is available in the document. The nature of the document can be decided only after the trial. An opportunity for the petitioner to put forth his case has to be given. The citations cited by the petitioner also are applicable to the present facts of this case. The trial Court can mark the document subject to objection and subject to proof and relevance, after completion of the trial, the trial Court can come to a conclusion, whether that document is a sale deed or a sale agreement and whether the suit is barred by limitation, etc.

15. In view of the above observations, this Civil Revision Petition is allowed and the order dated 18.03.2013 in I.A.No. 149 of 2012 in O.S.No.13 of 2009 on the file of the District Munsif cum Judicial Magistrate, Bodinayakanur, Theni District is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The District Munsif cum Judicial Magistrate,
Bodinayakanur, Theni District

Copy to

The Section Officer,
VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai. (Records if any)

+1 CC to Mr.K.GUHAN, Advocate (SR-11122[F] dated 11/03/2020)

C.R.P. (MD) No.1178 of 2013

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