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C.R.P. (PD) No. 1095 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1095 of 2019
and C.M.P. No.7208 of 2019

T.Ganesan

...Petitioner

Versus

L.Kannappa Chettiar

...Respondent

Civil Revision Petition is filed under Article 226 of the Constitution of India, to set aside the fair and decreetal order passed in I.A. No.17153 of 2017 in O.S. No.868 of 2017 dated 30.01.2018 on the file of XV Assistant City Civil Court, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr. G.Mohanarangan

For Respondent : No appearance

ORDER

This Civil Revision Petition is directed against the order passed by the XV Assistant City Civil Court, Chennai, in I.A. No.17153 of 2017 in O.S. No.868 of 2017.



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WEB COPY 2. The revision petitioner, as plaintiff, filed the suit in O.S. No.868 of 2017

before the XV Assistant City Civil Court, Chennai, for recovery of a sum of Rs.7,42,500/- which was stated to be paid by the plaintiff to the defendant as part of sale consideration pursuant to the sale agreement dated 04.02.2014. During the pendency of the suit, the petitioner filed an Interlocutory Application in I.A. No.17153 of 2017 to mark the original sale agreement dated 04.02.2014 which is unregistered. The said application was dismissed by the trial Court by order dated 30.01.2018. The above revision petition is filed challenging the order in I.A. No.17153 of 2017. The petitioner has also filed a review application to review the order passed in I.A. No.17153 of 2017 in a subsequent application in I.A. No.3930 of 2018. However, the said review was rejected on the ground that there was no error apparent on the face of the record to review the order dated 30.01.2018.

3. The sale agreement dated 04.02.2014 is required to be registered pursuant to an amendment in the Registration Act. It is the case of the revision petitioner that the plaintiff and defendant have entered into an unregistered agreement of sale dated 04.02.2014 and that the defendant had received a sum of Rs.5,50,000/- as advance under the said sale agreement.



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4. A reading of Section 49 of the Registration Act, 1908, shows that the receipt of unregistered document is permissible for collateral purpose. Section 49 of the Registration Act, clearly enable the Court to admit the document as evidence for collateral purpose even though the document which is required to be registered is not registered.

5. The revision petitioner has filed a suit for recovery of a sum of Rs.5,50,000/- which was paid to the defendant as part of sale consideration. The lower Court dismissed the application mainly on the ground that the suit filed by the revision petitioner is not for specific performance and therefore, the document cannot be received as evidence. The lower Court expressed its view that payment of consideration should be taken as part of transaction affecting right in immovable property and therefore, payment of any money as advance under the sale agreement cannot be treated as a collateral transaction. Even if the agreement of sale is registered it does not involve any transfer of any right in relation to an immovable property. Therefore, the conclusion of the trial Court that an unregistered document and payment of consideration under the document should be treated as a transaction affecting the immovable property, is erroneous and against well settled propositions of law.



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When the payment of advance under sale agreement is not a transaction affecting right in immovable property, the document as such can be admitted for collateral purpose.

6. The trial Court has referred to a judgment of this Court in the case of *Pyarijan Vs. Puttappa*, reported in 2006 (2) *Law Weekly* 437 wherein this Court has dealt with the document which is neither registered nor stamped. It is well settled that a document cannot be looked into for collateral purpose if it is neither registered nor stamped. Therefore, the judgment has no application to the facts of the present case. However, the conclusion of the lower Court that payment of advance cannot be considered as a collateral transaction, is erroneous as an unregistered sale agreement is admissible in evidence to prove the receipt of money.

7. Hence, this Court is unable to sustain the order passed by the XV Assistant Judge, City Civil Court, Chennai, in I.A. No.17153 of 2017 in O.S. No.868 of 2017 and the same is hereby set aside. In fine, the Civil Revision Petition is allowed. The petition in I.A. No.17153 of 2017 in O.S. No.868 of 2017 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No



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Speaking Order / Non-Speaking Order
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Copy to:

The XV Assistant City Civil Judge, Chennai.



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S.S.SUNDAR, J .,

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