

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.4052 of 2016

S.M.Mani

..Petitioner

Vs.

1.Kalaivani

2. Devika

3. Sadhana

4. Gowsar rahamath

5. Shanthibalachandar

..Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the unnumbered docket order dated 31.03.2016 against the fair order made in unnumbered O.S. /2016 (General No.1870/2016) on the file of the Principal District Judge, Dharmapuri District.

For Petitioner : Mr.P.Valliappan

For Respondents : Notice Served (No Appearance)
(for R1, R2, R4 & R5)
: Not Ready (No Appearance)
(for R3)

ORDER

This Civil Revision Petition is directed as against the docket order passed in I.A.Nos.16 and 17 of 2016 in unnumbered O.S. /2016 dated 31.03.2016 on the file of the Principal District Judge, Dharmapuri District, thereby, rejecting the suit as not maintainable.

2. The petitioner is the plaintiff. The petitioner filed a suit for specific performance, on the strength of the un-registered agreement for sale dated 25.03.2015. On perusal of the plaint and documents, the Court below rejected the suit without numbering the plaint for the reason that the main purpose of the agreement is to execute the sale deed and there is no collateral transaction. In view of the Section 17(1-A) of the Registration Act, the agreement for sale has to be registered and as such, with un-registered agreement for sale, the suit is not maintainable.

3. Though notice was served on the respondents and the name is also printed in the cause list, no one appeared on behalf of the respondents.

Heard the learned counsel for the petitioner.

4. In this regard, the learned counsel for the petitioner would rely upon the judgments reported in 2018 (1) MWN 181 (***A. Mahendran -vs- M. Palaniammal***), 2019 (2) CTC 290 (***D. Devarajan -vs- Alphonsa Mary***) and 2019 (6) CTC 580 (***G. Veeramani -vs- N. Soundaramoorthy***). This Court held in the judgment reported in 2019 (6) CTC 580 (***G. Veeramani -vs- N. Soundaramoorthy***) 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 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 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 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.”

5. Accordingly, the suit is very much maintainable with the un-registered agreement for sale, since, even after the amendment, non registration of an agreement for sale does not operate as a total bar to look into the Contract. It is relevant to extract the Proviso to Section 49 of the Registration Act as follows:-

“49. Effect of non-registration of documents required to be registered. No documents required by Section 17 [or

by any provision of the Transfer of Property Act, 1882 (IV of 1882)], to be registration 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].”

6. It specifically provides that an un-registered agreement for sale can be used for any collateral purpose and it can be used as an evidence in the suit for specific performance. Therefore, the Court below ought not to have rejected the suit without even numbering the plaint. Therefore, the order passed by the Court below is perverse and illegal and it is liable to be set aside.

7. In view of the above discussion, this Civil Revision Petition is allowed and the docket order passed in unnumbered O.S. /2016 dated 31.03.2016 is set aside. The Registry is directed to return the original plaint filed along with the present Civil Revision Petition and after receipt of the same, the petitioner is directed to re-present the plaint within a period of two weeks before the trial Court. Thereafter, the trial Court is directed to number the plaint and dispose the suit within a period of twelve months from the date of numbering the plaint on merits and in accordance with law. Consequently, the connected Miscellaneous Petition is closed. No costs.

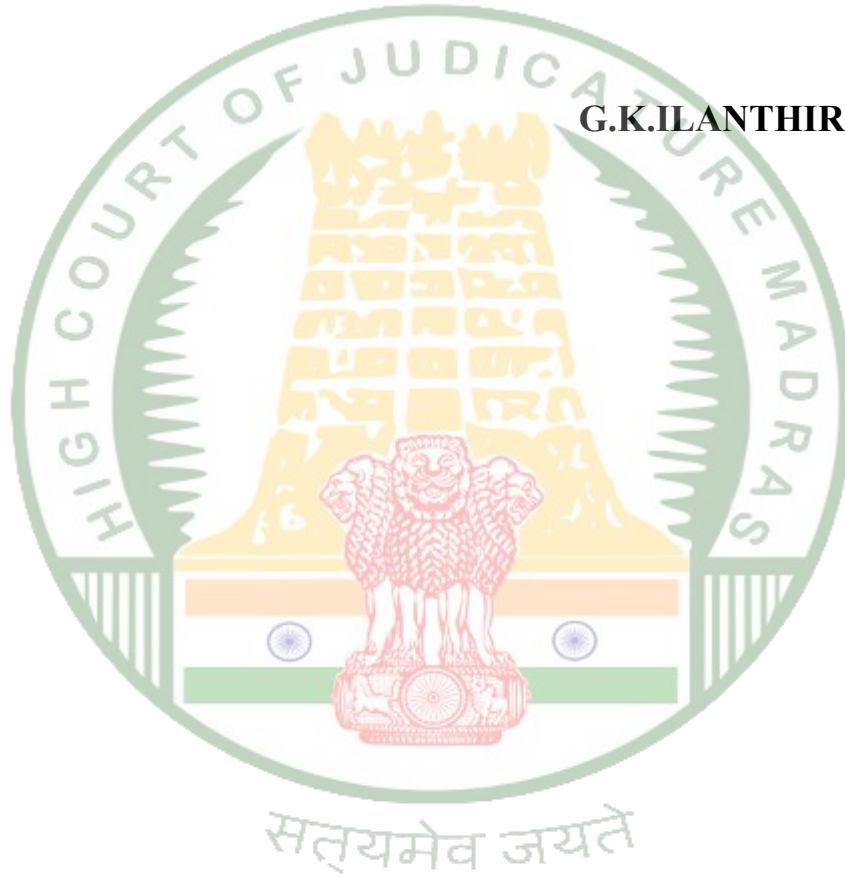
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Speaking/Non-speaking order
 Index : Yes/No
 Internet : Yes/No
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To

The Principal District Judge, Dharmapuri District.

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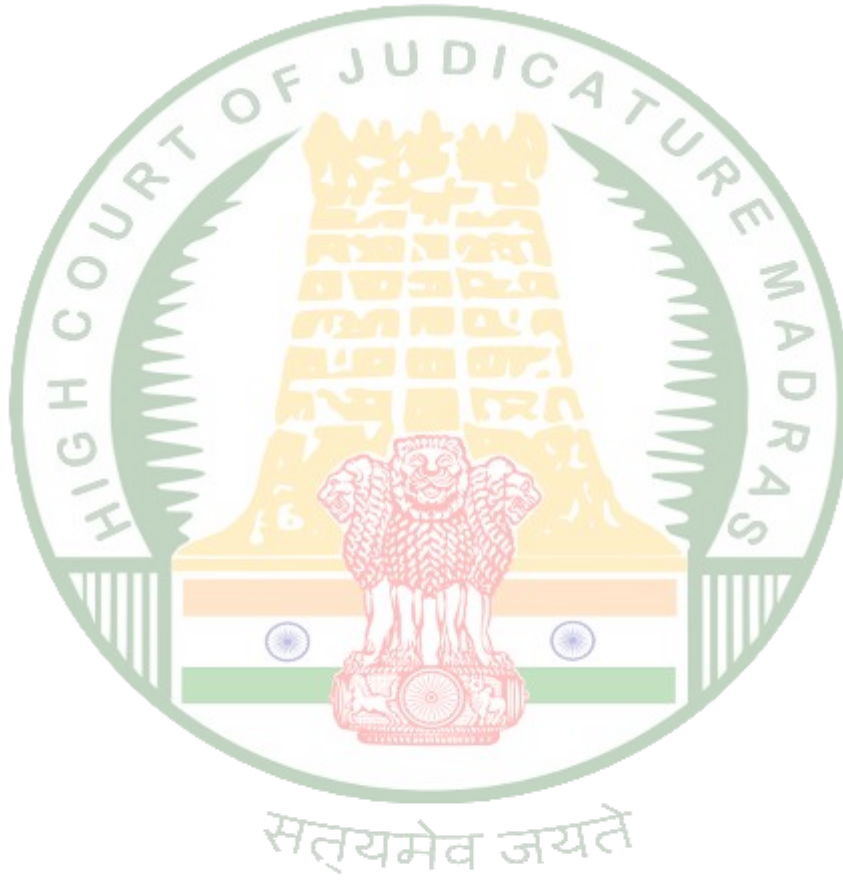
G.K.ILANTHIRAIYAN,J.

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