

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

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

CRP.PD.No.2751 of 2018

and

CMP.No.16164 of 2018

H.Anu Venkat

..Petitioner

Vs.

1.V.Thangavel
2.R.Govindaraj
3.S.Padmavathy
4.K.Suresh Kumar

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the docket order passed by the learned II Additional District Judge at Salem in OS.No.160 of 2016 dated 06.12.2017.

For Petitioner : Mr.R.Jayaprakash

For Respondents

For R1

: Mr.T.Murugamanickam,
Senior Counsel
for Mr.T.S.Vijaya Raghavan

R2 to 4

: No appearance

ORDER

This Civil Revision Petition is filed against the docket order passed by the learned II Additional District Judge at Salem in OS.No.160 of 2016 dated 06.12.2017, thereby permitting the first respondent to mark unregistered and unstamped agreement dated 28.07.2014.

2. The first respondent filed suit for specific performance on the basis of the oral agreement confirmed by the receipt dated 28.07.2014. When the PW1's evidence, the first respondent while marking the unregistered receipt, possession and handing over agreement dated 28.07.2014, the petitioner objected the same. However, the court below permitted the said document to mark for collateral purpose but not to prove any right or title over the property. Aggrieved by the same, the present civil revision petition has been filed.

3. Mr.R.Jayaprakash, the learned counsel for the petitioner would submit that admittedly the said document is unregistered one and unstamped and as such it is inadmissible in evidence of the transaction affecting the immovable property. The said document is a

xerox copy of the unregistered document and as such it cannot be received even for collateral purpose. There is no such transaction between the petitioner and the first respondent for the sale of the suit property and the petitioner never agreed to sell his property to the first respondent as per the oral agreement. The suit itself is vexatious and frivolous one. According to the first respondent, the entire sale consideration of Rs.46,65,000/- was paid and filed suit for specific performance. It is unbelievable transaction. No one agree for payment of entire sale consideration without registration of sale deed. Under Section 17 of the Registration Act, 1908, the alleged document dated 28.07.2014, requires compulsory registration. Therefore, as per Section 49 of the Registration Act, it is inadmissible in evidence and liable to be rejected. As per Section 35 of the Stamp Act, there is clear bar to mark unregistered and unstamped document. In support of his contention, he relied upon the judgment in the case of **S.Baskar Vs. V.Palanisamy and Ors** reported in **2014 (1) MWN (Civil) 61**.

4. Per contra, Mr.T.Murugamanickam, Senior Counsel appearing for the first respondent submitted that unregistered and unstamped document can be marked for collateral purpose but not to prove any right or title over the property. Therefore, the court below rightly

permitted the first respondent to mark the same. He further submitted that as per proviso to Section 49 of the Registration Act, categorically permitting to receive as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877. In support of his contention, he relied upon the judgments in the case of **S.Kaladevi Vs. V.R.Somasundaram** reported in **(2010) 5 SCC 401** and in the case of **Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar** reported in **(2018) 7 SCC 639**.

5. Heard, Mr.R.Jayaprakash, the learned counsel for the petitioner, and Mr.T.Murugamanickam, Senior Counsel appearing for the first respondent.

6. The petitioner is the first defendant and the first respondent is the plaintiff. The first respondent filed suit for specific performance on the strength of the agreement dated 28.07.2014. The case of the first respondent is that the first defendant is the owner of the suit property by virtue of the sale deed dated 09.03.2000 purchased from his vendor one, Jayarani through her power of attorney one, Pichamuthu. The first respondent agreed to purchase the suit property and fixed total sale consideration of Rs.46,65,000/-. The agreement was oral and the petitioner received sale consideration by

cash and cheque on various dates. In pursuance to the receipt of entire sale consideration, the first defendant handed over the possession of the suit property along with all parent documents on 28.07.2014 and executed agreement. Based on the said agreement, the suit has been filed. While pending the suit, while PW1 marking the said document, the petitioner objected the same on two folds: (i) The document dated 28.07.2014 is unregistered and unstamped one and it cannot be marked for any purpose. (ii) The unregistered document is inadmissible in evidence unless such document is duly stamped. Admittedly, the document dated 28.07.2014 is an unregistered and unstamped one. However, the recitals of the said document revealed that the entire sale consideration was received by the petitioner herein and handed over all the parent documents in respect of the suit property.

7. The learned counsel for the petitioner relied upon the judgment in the case of **S.Baskar Vs. V.Palanisamy and Ors** reported in **2014 (1) MWN (Civil) 61**, wherein it is held as follows:

15. In the instant case, the materials available on record would show that possession was handed over to the Plaintiff by the Defendant on 20.1.2008, i.e., the date on which the Agreement of Sale was entered into. The Plaintiff has also done some act in

the property in furtherance of the said Agreement of Sale.

16. In the present Suit, interim injunction was obtained by the Plaintiff as against the Defendant from interfering with his peaceful possession of the property only to protect his right envisaged under Section 53-A of the Transfer of Property Act. under such circumstances, I am of the opinion that the Sale Agreement dated 20.1.2008 needs registration as required under Section 17(1-A) of the Registration Act.

17. Though the learned Senior Counsel appearing for the Plaintiff has relied upon some Judgments with regard to the Principle of Part Performance, I am of the opinion that the Judgments cannot be made applicable to the facts of the present case.

This Court held that the sale agreement needs registration as required under Section 17 (1-A) of the Registration Act.

8. The learned counsel for the first respondent relied upon the judgment in the case of **S.Kaladevi Vs. V.R.Somasundaram** reported in **(2010) 5 SCC 401**, wherein it is held as follows:

*13. Recently in the case of **K.B. Saha and Sons Private Limited v. Development Consultant Limited**1,*

this Court noticed the following statement of Mulla in his Indian Registration Act, 7th Edition, at page 189:-

".....The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under [Section 17](#) and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it....."

This Court then culled out the following principles:-

"1. A document required to be registered, if unregistered is not admissible into evidence under [Section 49](#) of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to [Section 49](#) of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. *A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.*

5. *If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

9. He also relied upon the judgment in the case of **Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar** reported in **(2018) 7 SCC 639**, wherein it is held as follows:

10. *On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party*

wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in our opinion, is no more *res integra*. In *S. Kaladevi v. V.R. Somasundaram and Ors.*, (2010) 5 SCC 401 this Court has restated the legal position that 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 as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

12. In the reported decision, this Court has adverted to the principles delineated in *K.B. Saha and Sons Private Limited v. Development Consultant Limited*, (2008) 8 SCC 564 and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance.

10. It is also relevant to rely upon the judgment in the case of

Yellapu Uma Maheswari & Another Vs. Buddha Jagadheeswararao and others reported in **2016 (2) LW 656**,

wherein the Hon'ble Supreme Court of India held as follows:

18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy , AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.

The Hon'ble Supreme Court of India held that when an unregistered sale deed is tendered in evidence, not as evidence of a completed

sale, but as proof of an oral agreement for sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Registration Act. Further held that it can still be admitted as evidence of a contract in a suit for specific performance.

11. In the present case, the court below permitted the first respondent to mark the unregistered and unstamped agreement dated 28.07.2014 for collateral purpose and not to claim any right or title under the said document. Therefore, the above judgments cited by the Senior Counsel appearing for the first respondent are squarely applicable to be case on hand and unregistered and unstamped agreement dated 28.07.2014 can be received for collateral purpose as evidence of a contract in the suit for specific performance as envisaged under proviso to Section 49 of the Registration Act. It is relevant to extract the provision under Section 49 of the Registration Act hereunder:

49. Effect of non-registration of documents required to be registered.—No document required by section 17 1 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered 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

12. Accordingly, an unregistered document affecting the immovable property may be received as evidence of a contract in a suit for specific performance. Therefore, the court below rightly permitted the first respondent to mark the same for collateral purpose. Hence, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand.

13. In view of the above, this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

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29.07.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To
The II Additional District Judge
at Salem



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G.K.ILANTHIRAIYAN,J.

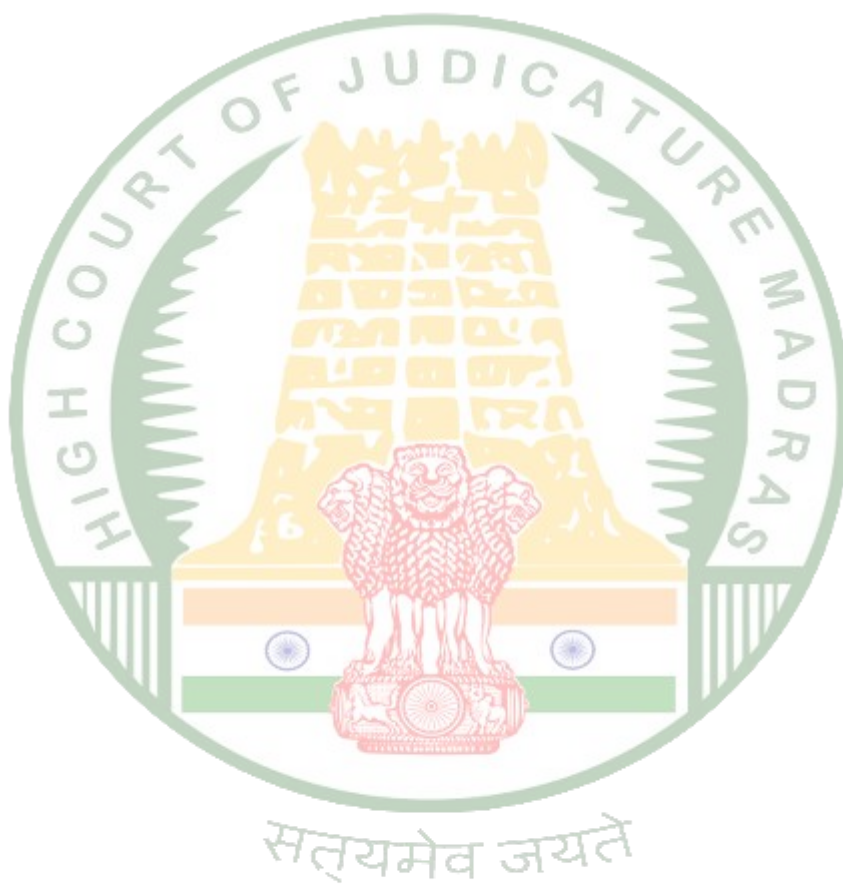
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