IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2021

Date of Verdict : 13.07.2021

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

CRP.PD.No. 2805 of 2018
and
C.M.P.No.16403 of 2018

Gunasekaran ... Petitioner

Vs.

1. Periyasamy

2. The Sub Registrar
Pethanaikenpalayam
Attur Taluk, Salem District,
(The 2nd respondent is give up in the Revision) ... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 16.07.2018 in I.A.No.266 of 2018 in O.S.No.2 of 2014 on the file of the First Additional District Court, Salem.

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mr.P.Valliappan (for R-1)
: Given up (for R-2)

O R D E R

This Civil Revision Petition is directed as against the fair and decretal order in I.A.No.266 of 2018 in O.S.No.2 of 2014 dated 16.07.2018 on the file of the learned First Additional District Judge, Salem, thereby dismissing the petition to reject Ex.A-2 in the suit.

2. 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 for sale dated 23.09.2012. The case of the first respondent is that the petitioner and the first respondent entered into an agreement for sale dated 23.09.2012 with the petitioner to purchase the suit properties for the total sale consideration of Rs.10,50,000/- and paid a sum of Rs.8,50,000/- to the petitioner as advance. Thereafter, on 01.12.2013 on receipt of Rs.50,000/- out of the balance sale consideration, the petitioner handed over the possession of the suit property to the first respondent herein by execution of possession Muchalika dated 01.12.2013. Admittedly, it is an unregistered document and marked as Ex.A-2 during the trial. Therefore, the petitioner filed a petition to reject Ex.A-2 as inadmissible in evidence and the same was dismissed and aggrieved by the same, the present Civil

Revision Petition is filed.

3. The learned counsel for the petitioner submitted that Ex.A-2 is an unregistered document effecting an immovable property and required to be registered under the Registration Act as well as the Transfer of Properties Act. As per Section 49 of the Registration Act, the unregistered document effecting an immovable property and required under the Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered document. Therefore, Ex.A-2, the possession Muchalika is a document that does not prove any collateral purpose to come within the domain of the proviso of Section 49 of the Registration Act. He further submitted that the alleged possession Muchalika was executed on 01.12.2013, after the amendment under Section 17 of the Registration Act with effect from 01.12.2012. Therefore, the said document ought to have been registered before the concerned authority. In the said exhibit, there are recitals regarding cash consideration of Rs.50,000/- passed towards part of the sale consideration and also possession of the immovable properties handed over to the first

respondent herein. Therefore, the said document mandates for registration, since through the said document, possession was handed over to the first respondent herein. Without considering the same, the Court below mechanically dismissed the petition. In support of his contentions, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in (2009) 2 SCC 532 ***(Avinash Kumar Chauhan -vs- Vijay Krishna Mishra),*** in which it has been held as follows:-

> *"**22.** We have noticed heretobefore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act.*
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> ***24.** In the present case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. (See Pandey Oraon v.*

Ram Chander Sahu [1992 Supp (2) SCC 77] and Amrendra Pratap Singh v. Tej Bahadur Prajapati [(2004) 10 SCC 65]). The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof, which reads as under:

> *"49. Effect of non-registration of documents required to be registered.—No document required by Section 17 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:*
>
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 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 (1 of 1877) or as*

evidence of any collateral transaction not required to be effected by registered instrument."

25. *Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes."*

4. Further, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in 2013 (6) CTC 227 ***(Omprakash -vs- Laxminarayan),*** in which it has been held as follows:-

"10. From a plain reading of the aforesaid provision, it is evident that an instrument by which movable or immovable property is transferred, comes within the expression "conveyance". In the present case, an immovable property is transferred on payment of part of the consideration and handing over the possession of the property. It is relevant here to state that by the Stamp

(Madhya Pradesh Second Amendment) Act, 1990 (22 of 1990) a few articles including Article 23 of Schedule 1-A have been substituted and Explanation has been added to Article 23. The Explanation appended to Article 23 of Schedule 1-A of the Stamp Act as substituted by Section 6 of Act 22 of 1990 reads as follows:

> *"Explanation.—For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:*
>
> *Provided that, the provisions of Section 47-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:*
>
> *Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance, subject to a minimum of Rs 10."*

11. The aforesaid Explanation has come into effect with effect from 26-9-1990. The Explanation, therefore, creates a legal fiction. The agreement to sell shall be deemed to be a conveyance and stamp duty is leviable on an instrument whereby possession has been transferred. Thus the agreement to sell in question is a conveyance within the meaning of Section 2(10) of the Act and is to be duly stamped.

Section 35 of the Act makes instruments not duly stamped inadmissible in evidence, the relevant portion whereof reads as follows:

> *"**35.Instruments not duly stamped inadmissible in evidence, etc**.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
>
> *Provided that—*
>
> *(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper*

duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;"

5. Per contra, the learned counsel for the first respondent submitted that as per the proviso of Section 49 of the Registration Act, an unregistered document effecting immovable property and required by the Act to be registered may be received as an evidence of a contract in the suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. Therefore, there is absolutely no bar in receiving the document in evidence of any transaction effecting such property or conferring such power for the purpose of collaborating any fact or collateral transaction. The validity and relevancy of Ex.A-2 can be appreciated only during the trial by let in evidence. It cannot be rejected on his threshold when the first respondent specifically pleaded about Ex.A-2 in the plaint and annexed along with the plaint. Therefore, the Court below rightly dismissed the petition and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel the petitioner as well as the learned counsel for the first respondent.

7. The petitioner is the first defendant and the first respondent is the plaintiff. The first respondent filed the suit for specific performance on the basis of the agreement for sale dated 23.09.2012. On the date of agreement for sale paid a sum of Rs.8,50,000/- as advance and thereafter, on 01.12.2013, he paid another sum of Rs.50,000/- towards the part of the sale consideration. On receipt of the same, the petitioner executed possession Muchalika dated 01.12.2013 and the first respondent was put in possession in the suit property. The said possession Muchalika was marked as Ex.A-2 through P.W.1. After marking the said document, the petitioner filed a petition to reject Ex.A-2 as inadmissible document in the suit.

8.The point raised by the learned counsel for the petitioner is that the unregistered document can be marked even for collateral purpose. The Tamil Nadu Amendment Act, 2012 to the Registration Act mandates the Registration of such document with effect from 01.12.2012. Accordingly, Section 17 of the Registration Act says that the document which are mandatory registrable and Section 17 (b) says that the document which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. Whereas, the proviso of Section 49 of the Registration Act permits the Court to receive unregistered documents, which are mandatorily required to be registered. Accordingly, it can be received for the purpose of the evidence. The validity and genuinity of Ex.A2 can be appreciated only during the trial by let in evidence. Therefore, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand. Hence, this Court does not find any infirmity or illegality in the order passed by the Court below.

9. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

13.07.2021

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

1. The First Additional District Judge, Salem.

2. The Section Officer,
   V.R.Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

Kv

order made in
CRP.PD.No. 2805 of 2018

13.07.2021