

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

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

C.R.P.(NPD) No.1948 of 2017
and C.M.P.No.9454 of 2017

H.Rajamani ... Petitioner

Vs.

Rekha ... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 21.03.2017 passed in I.A.No.969 of 2016 in O.S.No.606 of 2011 by the Additional District Munsif Court at Alandur.

For Petitioner : Ms.D.Kalaivani
for Mr.J.Manikandan

For Respondent : Mr.B.Vijay

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 21.03.2017 passed by the learned Additional District Munsif, Alandur in I.A.No.969 of 2016 in O.S.No.606 of 2011,

thereby dismissing the petition filed by the petitioner to reject the sale deed dated 12.12.1998 which was marked as Ex.A.5, as inadmissible in evidence.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit in O.S.No.606 of 2011 for partition. While the respondent was examined as P.W.1, she marked an unregistered and unstamped sale deed as Ex.A.5 with objection. When the suit is pending for the cross-examination of P.W.1, the petitioner filed the petition to reject the Ex.A.5. The trial Court dismissed the said petition, as against which the petitioner filed this Civil Revision Petition.

3. On perusal of records revealed that the suit is pending for cross examination of P.W.1. and Ex.A.5 was marked for collateral purpose. Further the trial Court recorded that the petitioner can very well cross-examine P.W.1 pertaining to the disputed documents. Further only at the time of conclusion of trial, the Court below can decide the fact of admissibility of the documents.

4. In this regard, learned counsel appearing for the petitioner

relied upon the judgment dated **02.09.2019** passed in **Civil Appeal No.6772 of 2019** in the case of **Prakash Sahu Vs. Saulal and ors** in which, the Hon'ble Supreme Court of India held that an unregistered agreement of sale can be seen for collateral purpose under the proviso to Section 49 of the Registration Act, 1908.

"4. The Trial Court based its reasoning on a decision of this Court in S. Kaladevi vs. V.R. Somasundaram & Ors. (2010) 5 SCC 401 elucidating as follows:-

"(i) In that situation it is essential for the registration of the document, if, unregistered is not admissible in evidence under Section 49 of the Registration Act.

(ii) Yet, such unregistered document can be used by way of collateral evidences provided in the proviso to the Section 49 of the Registration Act.

(iii) For effecting with the collateral transaction, whose registration is required by law should be free from the transaction or be divisible from that.

(iv) Collateral transaction should be such

a transaction which may not be automatically expected of effecting by the registered document, i.e. Rupees One Hundred or any transaction or instrument or right or interest in any immovable property of the value of more than Rupees One Hundred.

(v) If the document is inadmissible in evidence in the absence of registration then any of its estopple cannot be admitted in evidence and for use of the document for purposes of proving important part, it would not be utilized by way of collateral purpose.”

5. He also relied upon the judgment of the Hon'ble Division Bench of this Court reported in **2012 (3) CTC 160** in the case of ***Venkata subramaniya Chettiar (died) and ors Vs. Perumal Chettiar and ors.,*** which reads as follows :-

"19. In the light of the above principles let us consider the admissibility/evidentiary value to be attached to Ex.B1. Ex.B1-partition deed though not registered can be looked into for collateral purpose of division in status and also for

considering the nature and character of possession. While the trial Court erred in declining to look into the contents in Ex.B1-unregistered partition deed, in our considered view, the contents of Ex.B1 could be looked into for "collateral purpose" of proving division in status and the subsequent separate enjoyment of the parties. To that extent, the finding of the trial Court as to the value to be attached to Ex.B1-unregistered document is liable to be set aside."

6. He also relied upon another judgment reported in **(2003) 4 SCC 161** in the case of **Bondar Singh and ors Vs. Nihal Singh and ors**, which held as follows :-

"5. The main question as we have already noted is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor interest of the plaintiff, is an admitted document in the sense its execution is not in dispute. The only defence set up against said document is that it is unstamped and unregistered

and therefore it cannot convey title to the land in favour of plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes....."

In the above judgments, the Hon'ble Supreme Court of India as well as the Hon'ble Division Bench of this Court held that under the law, the sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed, even though not admissible in evidence, can be looked into for collateral purposes.

7. In view of the above discussion, the Court below rightly dismissed the petition and this Court finds no infirmity or irregularity in the order passed by the Court below. However, it is made clear that the admissibility of the Ex.A.5 can be considered only at the time of conclusion of trial.

8. Accordingly, this Civil Revision Petition stands dismissed.
There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.03.2021

Internet : Yes

Index : Yes/No

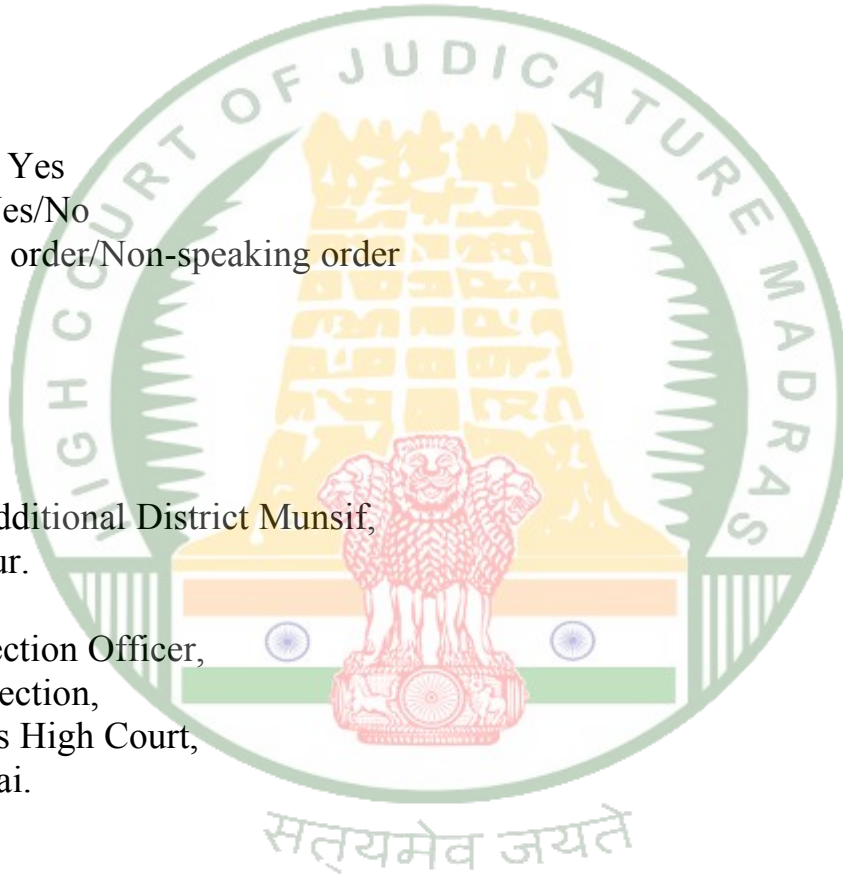
Speaking order/Non-speaking order

rts

To

1. The Additional District Munsif,
Alandur.

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

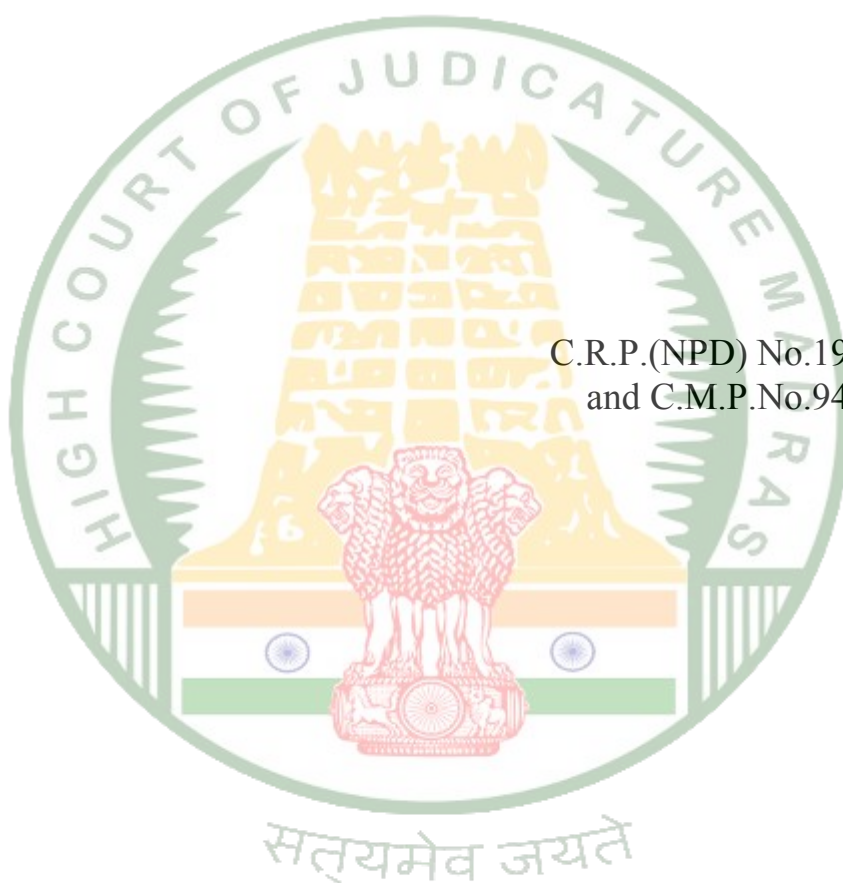


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