



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P(PD) (MD) No. 2616 of 2014

and

M..P(MD) No.1 of 2014

V.Sivasankaran

...Petitioner

Vs.

Pushpalatha

...Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 13.11.2013 made in I.A.No. 234 of 2013 in O.S.No.41 of 2011 on the file of the Principal Sub Court, Kumbakonam.

For Petitioner : Mr.G.Gomathisankar
For Respondent : Mr.K.Govindarajan

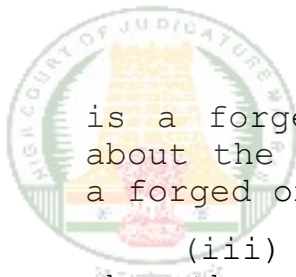
O R D E R

The Civil Revision Petition has been filed by the defendant to set aside the order passed by the Trial Court dismissing the petition filed under Order 13 Rule 3 of the Code of Civil Procedure to reject the unregistered, unstamped sale agreement relied on by the plaintiff.

2. The brief facts of the case are as follows:

(i) The respondent/plaintiff had filed O.S.No.41 of 2011 seeking for specific performance directing the defendant to execute and register the sale deed in favour of the plaintiff in respect of the suit property as per the agreement of sale dated 15.07.2009 and in default, to register the sale deed on behalf of the defendant in favour of the plaintiff. The plaintiff had claimed that the defendant entered into an agreement of sale in respect of the the suit property for a sale consideration of Rs.2,00,000/- on 15.07.2009 and on the same day, the plaintiff had paid a sum of Rs.1,95,000/- as advance to the defendant which was acknowledged by the defendant in the agreement and he had executed the agreement of sale in favour of the plaintiff and handed over possession of the suit property with all original parent documents in respect of the suit property to the plaintiff on the same day itself.

(ii) The defendant had filed written statement denying execution of any document in favour of the plaintiff and it was the further contention of the defendant that the alleged sale agreement



is a forged document and concocted one and he had no knowledge about the said agreement and that the agreement dated 15.07.2009 is a forged one.

(iii) On the above pleadings, the Trial Court framed issues and when the case was at the trial, the plaintiff had attempted to mark the alleged sale agreement dated 15.07.2009 and at that stage, an objection was raised by the defendant by filing an Application under Order 13 Rule 3 of the Code of Civil Procedure to reject the marking of the document contending that it was an Unregistered and Unstamped document.

(iv) The Trial Court had dismissed the petition, against which the present revision has been filed.

3. Learned counsel appearing for the petitioner/defendant would submit that it is the case of the plaintiff that part performance under Section 53-A of the Transfer of Property Act had been done by the defendant and possession had been handed over and when such being the position, the Sale Agreement must have been necessarily registered and without the same being registered, it cannot be allowed to be marked as a document. He would further submit that there are contrary pleadings in the plaint and at para 4 of the plaint, it has been stated by the plaintiff that in pursuance of the part performance, the possession of the suit property and the original deed in respect of the suit property were handed over to him, whereas in prayer (b) the plaintiff had sought for a direction to the defendant to put the plaintiff in possession of the property and in default seeking court to deliver the property to the plaintiff on behalf of the defendant. He would further submit that when there is an averment of part performance done by the defendants, in view of the amendment to Section 17(1)(a) of the Registration Act, the document is inadmissible in evidence and it cannot be relied upon and marked whereas the trial Court, without properly looking into the provisions, had dismissed the same.

4. In Support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Avinash Kumar Chauhan vs. Vijay Krishna Mishra** reported in **2009 2 SCC 532** and submit that though there is no provision under Section 49 of the Registration Act to receive the unregistered document in evidence for collateral purpose, the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act and if not stamped, such a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act.

5. In reply, the learned counsel appearing for the respondent would submit that admittedly, it is a Suit for Specific Performance. The case of the plaintiff is that the petitioner had entered into an agreement of sale in respect of the property for a sale



had paid a sum of Rs.1,95,000/- as advance and the defendant had executed an Unregistered Sale Agreement in the stamp paper with a face value of Rs.100/- and on the same day, the plaintiff was handed over possession of the suit property and the original title deeds in respect of the suit property. He would further submit that the agreement is dated 15.07.2009. Admittedly, the unregistered agreement of sale had come into force prior to the Amendment of the Registration Act, 1908 by the Tamil Nadu Amendment Act and at the relevant point of time, there is no requirement for registration of an agreement of sale. The present suit, being one for specific performance, the trial court had rightly finding that registration is not required had rejected the petition filed by the defendants. In support of the contention the learned counsel for the respondent/plaintiff relied on the following decisions:-

i) Minor. Ravi Bharathi .vs.P.Balasubramani reported in 2014(3) MWN(Civil)578

ii) Thirugnanasambandam .vs. Kannan and others reported in 2018(5)LW.33

iii) Ponnammal and another .vs. Perumal and others reported in 2016(3)MWN Civil 718.

6. The learned counsel for the respondent/plaintiff would further contend that this Court in **Devarajan .vs. Alphonsa Mary and another** reported in **2019 (2)CTC 290** had held that even after the amendment, non registration of an Agreement of Sale does not operate as a total bar to look into the same, since the proviso to Section 49 of the Registration Act, has carved out an exception. He would further submit that 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 and 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. He would further submit that the Trial Court had rightly rejected the petition filed by the defendant and he would submit that the order of the Trial Court does not suffer from any illegality or infirmity and hence the revision has to be dismissed. He would further submit that the decision relied on by the learned counsel for the petitioner will not be applicable to the facts of the case since the document sought to be marked was an unregistered sale deed.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Admittedly, it is a suit for specific performance. The plaintiff had attempted to mark the unregistered and unstamped document which was objected by the defendants. The Trial Court, while dismissing the Application had held that as per proviso to Section 49 of the Registration Act, the document can be allowed to be marked and had directed the plaintiff to pay the stamp duty and



penalty. In this regard, it is useful to refer to the following judgments:

9. In Minor Ravi Bharathi .vs.P. Balasubramani and another, this Court has held as follow:

7. The point for consideration in this Civil Revision Petition is as to whether an agreement of sale has to be discarded or rejected to be received as evidence in a suit for specific performance on the ground that the same is not a registered document.

8. The only ground on which the petitioner/second defendant seeks for rejection of the said agreement is that there was a part performance alleged by the plaintiffs themselves and under such circumstances, the said agreement having not been registered, cannot be received and marked as evidence. In my considered view, such contention of the learned counsel for the petitioner is liable to be rejected, in view of the fact that the said contention is against the statutory provision, namely proviso to Section 49 of the Registration Act, 1908, which reads as follows:

"Section 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 (IV 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 (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."

9. The very same provision of law was considered by this Court in a recent decision reported in 2014 (7) MLJ 861 = 2014 (5) LW 59 (R.Munusamy Vs. G.Krishttapillai), wherein this Court followed the decision of the Honourable Supreme Court reported in AIR 2003 SC 1905 = 2003 (2) MLJ 122 = 2004 (1) LW 706 (SC) (Bondar Singh and others Vs. Nihal Singh). This



Court observed in paragraphs 8 and 9 of this said decision as follows:

"8. A careful perusal of the abovesaid provision of law would indicate that a document required to be registered under Section 17 of the Registration Act, 1908, if not registered, it shall not be received as evidence of any transaction affecting such property or conferring such power. Though such an embargo is put under Section 49(c) of the said Act, the proviso made to the said Section however contemplates that such unregistered document affecting immovable property may be received as evidence either in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. Thus, it is evident that the proviso to Section 49 permits receipt of such unregistered document as evidence of any collateral transaction.

9. Keeping the above provision of law in mind, if the facts and circumstances of this case are considered, it would only show that the order passed by the Court below cannot be sustained. The contention of the learned counsel for the respondents, confining his submissions based on Section 49(c) alone, cannot be accepted, especially when the proviso, as discussed supra, permits marking of such document for collateral purpose. The other contention of the learned counsel for the respondents, namely the proviso to Section 49 of the said Act is applicable only to the suits for specific performance, is also liable to be rejected, since a careful reading of the said proviso would show that the same is applicable not only in respect of the suit for specific performance, but also in respect of the other suits where such document is intended to be marked as evidence for any collateral transaction."

10. In view of the specific provision made under the proviso to Section 49 of the Registration Act, 1908, allowing the unregistered document affecting immovable property, to be received as evidence of a contract in a suit for specific performance, the contentions raised by the learned counsel for the petitioner cannot be sustained and the same is liable to be rejected. The trial Court has rightly rejected the application filed by the petitioner seeking to discard the unregistered agreement of sale, dated 31.8.2005, with which I find no infirmity or illegality.



10. In **Ponnammal and another vs. Perumal and another** it has been held as under:

17. The second contention put forth on the side of the appellants/defendants is that since Ex-A16 is an agreement of sale and as per Section 49 of the Registration Act, 1908 (16 of 1908), the same has to be registered and since the same has not been registered it cannot be looked into.

18. For analysing the said legal position, the Court has to look into Section 49 of the said Act and the same reads as follows:

"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:1[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 (3 of 1877)2, 3[***] or as evidence of any collateral transaction not required to be effected by registered instrument.]"

A mere reading of the said Section would clearly reveal that in a suit for specific performance, an unregistered agreement of sale can be received as evidence. Further, Section 53-A of Transfer of Property Act, 1882 found previously has been omitted by Act 48 of 2001 under Section 6 with effect from 24-09-2001. Now the present legal propositions are:

(i) An unregistered sale agreement can be received as evidence in a suit for specific performance instituted under Chapter II of Specific Relief Act, 1963;

(ii) Section 53-A of Transfer of Property Act, 1882 found in the previous Section has been omitted with effect from 24-09-2001.

19. In the instant case, in Ex-A16, it has been clearly mentioned that possession of the suit properties has been given to the plaintiff. Only on that basis, the learned counsel appearing for the appellants/defendants has advanced his argument to the effect that Ex-A16 has to be registered.

20. It has already been pointed out prior to amendment dated 24-09-2001 in a suit for part performance filed under Section 53-A of the Transfer of Property Act, 1882, the



suit sale agreement has to be registered but after amendment to previous Section, the same has been omitted. Further, the suit for specific performance can be instituted only under Chapter II of Specific Performance Act, 1963 and if a suit for specific performance is instituted under the said Chapter, an unregistered sale agreement can be received as evidence and there is no legal impediment and therefore, the second contention put forth on the side of the appellants/defendants is not legally correct.

11. *Thirugnanasambandam vs. Kannan and others* reported in 2018 (6) CTC 198

"36. It is the contention of the learned counsel for the defendants that the sale agreement provides that the property was handed over pursuant to the agreement and as such, in view of the amendment to Section 17(1-A) of the Registration Act, the document is inadmissible in evidence. In view of the said contention of the learned counsel for the defendants, it would be appropriate to extract Section 17(1-A) of the Registration Act, which reads as follows:-

"17. Documents of which registration compulsory:-

(1).....

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53- of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said Section 53-A. "

It is significant to note that the above Section clearly provides that the contracts to transfer for consideration any immovable property for the purpose of Section 53- of the Transfer of Property Act shall be registered and if they have not been registered, then they shall have no effect for the purpose of Section 53-A of the Transfer of Property Act. The amendment to the Section 53-A of the Transfer of Property Act was made by way of Act 40 of 2001, under which the words "the contract, though required to be registered, has not been registered, or," have been omitted. Therefore, the amendment is very clear that if the document is not registered, no relief under



Section 53-A of the Transfer of Property Act can be claimed.

37. Section 53-A of the Transfer of Property Act clearly provides that if an agreement holder was put in possession of the property and he was having an instrument of transfer that has not been completed in the manner known to law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee in respect of the property of which the transferee has taken or continued in possession other than a right expressly proved by the terms of the contract. Therefore, it is clear that Section 53-A of the Transfer of Property Act is a defending provision under which a transferee can defend his possession against the transferor who wanted to claim possession from the transferee and for defending such action against the transferor the contract is required to be registered. Hence, the claim benefit under Section 53-A of the Transfer of Property Act, the contract has to be registered.

38. So far as Section 49 of the Registration Act is concerned, the Proviso to Section 49 reads as follows_ "Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property act, 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, [***] or as evidence of any collateral transaction not required to be effected by registered instrument."

The words 'or as evidence of part performance of a contract for the purpose of section 53-A of the Transfer of Property Act, 1882' were omitted by Act 48 of 2001.

39. Hence, the above said proviso to Section 49 provides that the suit for specific performance is maintainable and is not barred even though the contract is not registered. The said amendment will apply only to claim benefit under Section 53-A of the Transfer of Property Act and non-registration of the document will not affect the suit for specific performance. Under such circumstances, the contention of the learned counsel for the defendants that since the sale agreement was not registered, the plaintiff is not entitled to claim the relief of specific performance, cannot be accepted.

12. In view of the same, the Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition is also dismissed. However, the finding of the Trial Judge in respect



of the direction to the respondent/defendant to pay the stamp duty and penalty in respect of the document alone stands set aside.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal Sub Court,
Kumbakonam.

+1cc to M/s.K.GOVINDARAJAN,Advocate, SR.No.31996 DATED:12.10.2021

+1cc to M/s.G.GOMATHI SANKAR,Advocate, SR.No.31845 DATED:08.10.2021

C.R.P(PD) (MD) No. 2616 of 2014

and

M..P(MD) No.1 of 2014

08.10.2021

SR(CO)

GC/JC(10.11.2021) 9P 4C