



C.R.P.(PD).No.390 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.390 of 2022

&

C.M.P.No.2048 of 2022

R.Sekar

...Petitioner

Vs

K.Karthik

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the dismissal order dated 24.11.2021 in I.A.No.4 of 2021 in O.S.No.525 of 2021 on the file of the Hon'ble IV Additional District and Sessions Judge Coimbatore.

For Petitioner : Mrs.Girija Velmurugan



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ORDER

The defendant whose application for rejecting the plaint had been dismissed, is before this Court in the instant Civil Revision Petition. The parties are referred to in the same array as before the Trial Court.

2. The plaintiff / respondent herein had filed the suit O.S.No.525 of 2021 on the file of the IV Additional District and Sessions Judge, Coimbatore seeking specific performance of an agreement dated 17.05.2018. Since the defendant / petitioner had not acted as per the terms of the agreement, the plaintiff / respondent had come forward with the suit in question.

3. The defendant had entered appearance and filed a written



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statement on 05.10.2021. Along with the written statement, the defendant had also filed I.A.No.4 of 2021 seeking to reject the plaint.

The only substantive ground on which the rejection was sought for is that the plaint lacked cause of action as the relief was based on an unregistered agreement of sale, which is in violation of the provisions of Section 17(g) of the Registration Act, 1908. The defendant also seeks to have the plaint rejected on the ground that the 2nd defendant who was not a necessary party has been arrayed as party and therefore there was a misjoinder of parties and on this ground also, the plaint had to be rejected. Except for the above said grounds, there were no other reason for seeking the rejection.

4. The plaintiff / respondent had filed a counter stating that the validity of the document had to be considered only at the time of producing the same in evidence and the plaint cannot be rejected on this basis.

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5. The learned IV Additional District and Sessions Judge, Coimbatore by his order dated 24.11.2021, was pleased to dismiss the said application. The learned Judge had observed that the admissibility of the sale agreement in question has to be considered at the time when the parties seeks to mark the same. The registration or otherwise of the agreement cannot be a ground for rejecting the plaint. Further, misjoinder of parties is also not a ground for rejecting the plaint. Challenging the said order, the defendant / revision petitioner is before this Court.

6. Mrs.Girija Velmurugan, learned counsel appearing on behalf of the defendant / revision petitioner would contend that the suit itself proceeds only on the basis of the unregistered agreement of sale, since the relief claimed is one for specific performance. It is her contention that if the document is not marked in evidence, the plaintiff /

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respondent herein cannot obtain a decree and in these circumstances compelling the parties to a full trial is causing hardship to the defendant. Therefore, she would contend that the order impugned has to be set aside.

7. As rightly pointed out by the learned Judge, the suit is not at the stage, where the admissibility of the document has to be tested. The suit is only at the pleading stage and it is only when the document is sought to be marked that the question of its admissibility would arise. Even with reference to the admissibility of the unregistered document in a suit for specific performance, this Court had an occasion to deal with the said issue in the case of ***Kasthuri Vs. R.Hemalatha*** reported in ***2022 (1) LW 688***, where this Court has observed as follows:

“30.The learned counsel for the respondent had



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made his submissions that with the introduction of Clause 'g' to Section 17 (1) and by reason of the fact that Section 17 (2) (v) of the Act would apply only to the cases falling within the provisions of Section 17 (1) (b) and (c), the proviso to Section 49 would not come to the aid of the petitioner. This argument though attractive and plausible may not be the legislative intent and what is contemplated under the Act as it now stands for the following reasons:

i) By the introduction of Section 17 (1) (g), all agreements of sale of a value of Rs.100 and above have become compulsorily registrable under Section 17 (1) of the Act. The proviso to Section 49 had been introduced only to carve out an exception to the admissibility of a document in evidence, which under Section 17 (1) was compulsorily registrable.



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ii) *Today, an agreement of sale is compulsorily registrable. The proviso to Section 49 would continue to apply, since the exception is that the document, which is compulsorily registrable, which in the instant case is an agreement of sale, can be received in evidence to prove the agreement of sale in a suit for specific performance or the same can also be used as evidence for a collateral transaction. No doubt in a suit for specific performance, an agreement of sale is the primary purpose. However, the second exception in the proviso to Section 49 of the Act is not in addition to Exception No.1, but is independent of Exception No.1. If however the agreement of sale were to be used for any other purpose, for example to declare title to the property, then in such cases the very same document cannot be received in evidence as it does not*



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come within the first exception to the proviso to Section 49 of the Act. Therefore, the first exception in the proviso would continue to apply in the case of a suit for specific performance, despite the amendment to Section 17 (1) and Section 17 (1) (a) of the Act.”

8. Therefore, in the light of the above, the dismissal of the application cannot be called in question and accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

To

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The IV Additional District and Sessions Judge,
Coimbatore.

P.T.ASHA, J.,

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