



C.R.P.No.397 of 2020
and C.M.P.No.2084 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2022
CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.397 of 2020

and

C.M.P.No.2084 of 2020

1. Jagadeesan
2. Andal
3. G. Kulasekaran
4. Gowri
5. G. Shanmugam
6. M. Vijaya
7. Kasthuri

... Petitioners

Vs.

A. Logesh

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to strike off the plaint in O.S. No.394 of 2019 pending on the file of the Principal District Court, Thiruvallur.

For Petitioners : Mr. M.S. Subramanian

For Respondent : Mr. E. Prabhu



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ORDER

The revision petitioners are the defendants in O.S. No.394/19 on the file of the Principal District Court, Thiruvallur. The respondent/plaintiff filed the suit for specific performance of contract based on an unregistered agreement of sale dated 18.04.2018. The suit was taken on file by the learned Principal District Judge on 03.10.2019 and summons were issued to the defendants.

2. Now the present Civil Revision Petition is filed challenging the maintainability of the suit since the same is based on an unregistered sale agreement.

3. Heard Mr. M.S. Subramanian, learned counsel appearing for the revision petitioners and Mr. E. Prabhu, learned counsel appearing for the sole respondent.



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4. The learned counsel appearing for the revision petitioners contended that

- i. as per Registration (Tamil Nadu Amendment) Act 2012, Section (1) (f) to (i) were introduced to Section 17 of the Registration Act. This Act came into force with effect from 01.12.2012 and Section 17 (1) (g) mandates that any agreement for sale of an immovable property above the value of Rs.100/- must be registered.
- ii. As per Section 49(a) of the Registration Act, no document required to be registered, if not registered shall affect any immovable comprised therein.
- iii. Section 2(g) of the Contract Act stipulates that an agreement not enforceable in law is void and since the sale agreement is not registered as mandated under Section 17(1)(g) of the Registration Act, the same cannot be enforced.
- iv. The suit in O.S. No.394/2019 for specific performance of contract was filed subsequent to Tamil Nadu Amendment Act, 2012 and hence the suit itself is not maintainable.



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y. Proviso to Section 49 of the Registration Act speaks only of reception of document in a suit for specific performance of contract.

5. According to the learned Counsel for the revision petitioners the question involved here is with regard to the maintainability of the suit and not the admissibility of an unregistered sale agreement in evidence. He relied on the decision in *Surya Dev Rai vs. Ram Chander Rai and others* reported in (2003) 6 SCC 675 and contended that in an exceptional cases when manifest miscarriage of justice has been occasioned the High Courts vest with the power of superintendence under Article 227 of the Constitution. He also relied on the decision in *K.B. Saha and Sons Private Limited vs. Development Consultant Limited* reported in (2008) 8 SCC 564 wherein it is held that use of an unregistered document to prove an important clause thereof would not be said to be for collateral purpose.

6. Per contra Mr. E. Prabhu, learned counsel appearing for the



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respondent/plaintiff contended that the matter in issue is not *Res integra* inasmuch as the same has been decided by several single Judges as well a Division Bench of this Court in the following cases.

- 1) Kasthuri vs. R. Hemalatha reported in 2022 (2) CTC 246.
- 2) D. Devarajan vs. Alphonsa Mary and another reported in 2019 (2) CTC 290.
- 3) R. Ananda Padmanabhan (deceased) and others vs. R. Vadivel Gounder (deceased) and others reported in (2019) 6 CTC 823 (D.B)

He also relied on the decision of the Hon'ble Supreme Court of India in ***Jacky vs. Tiny @ Antony & others*** in SLP (C) No.3909/12 wherein it is held that the High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the power vested in them within the bounds of this authority. If a suit is not maintainable it is well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of Constitution of India can be exercised to question a plaint.



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7. The learned counsel appearing for the petitioners would contend that in none of the decisions cited by the learned counsel for the respondent Section 2(g) of the Contract Act is dealt with which clearly states that no agreement is enforceable unless the same is registered.

8. The point for determination is as to whether the non registration of the suit sale agreement bars the very institution of the suit.

9. It is appropriate to extract the provisions of Section 17 (1) (g) & 49 of the Registration Act.

State Amendments

Tamil Nadu: (i) In Section 17, in sub-section (1), after clause (e), the following clause shall be added, namely:-

"(f) ----

(g) instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards;

Section 49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any



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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:

⁵⁴ [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)⁵⁵, ⁵⁶ [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]

10. By reason of amendment under clause 17 (1) (g) by Act 29/12 by the State of Tamil Nadu all the instrument of agreement relating to the sale of immovable property of value of Rs.100/- and upwards are compulsorily registrable. However, it is pertinent to point out that a corresponding amendment has not been carried out to Section 49 or its provision.

11. A learned Single Judge of the Andhra Pradesh High Court



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had an occasion to consider a similar issue in ***R. Suresh Babu vs. G.***

Rajalingam and others reported in ***2016 SCC online Hyderabad 429***

where an amendment had been brought about by the State of Andhra Pradesh under A.P. Act 4/99, wherein Section 17(1)(g) was introduced which is in *pari materia* with the Tamil Nadu Act 29/12. No amendment to Section 49 was brought out in Andhra Pradesh State like the State of Tamil Nadu. However in Uttar Pradesh corresponding amendment was brought about in Section 49 of the Registration Act. Therefore, the learned Judge of Andhra Pradesh High Court in para 87 held thus:

"87. The contention of the revision petitioner can be accepted if the suit is filed for declaration or for any other reliefs based on title to claim right and title over the property, based on agreement of sale. But, in a suit for specific performance in view of Section 17(1)(g) and 17(2)(v) and proviso to Section 49, as amended from time to time, and the law applicable to the State of Andhra Pradesh as on the date of execution of agreement of sale, the plaint cannot be rejected."

The said discussion was followed by my learned brother Justice



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2019 (2) CTC 290 in which it has been held that

"12. However, the consequence of non-registration does not operate as a total bar to look into the contract, as the Proviso to Sec.49 itself carves out two exceptions : Where it can be used for any collateral purposes, and where it can be used as an evidence in a suit for specific performance. When the statute itself prescribes a legislative route within its scheme, that cannot be denied to the appellant herein."

12. In view of the express provision contained in Section 49 of the Registration Act, the suit itself cannot be rejected only on the basis that the sale agreement is unregistered as per provisions contained in Section 17(1) (g) of the Registration Act and Section 2 (g) of the Contract Act. Moreover the decision in ***Surya Devi vs Ram Chander Rai*** (cited supra) has been overruled by 3 member Judge of the Supreme Court in ***Radhey Shyam and another vs. Chhabi Nath and others*** reported in (2009) 5 CC 616. The decision in ***K.B. Saha and Sons Private Ltd., vs. Development Consultatn Ltd.*** (cited supra) would not apply to the facts of the present case because in the said decision the defendant had denied the



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execution of sale agreement. In the instant case the defendants had admitted the execution of the sale agreement in their notice dated 23.09.2019.

13. Thus viewed from any angle the Revision Petition fails and is therefore dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

11.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To,

The Principal District Judge, Thiruvallur



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R. HEMALATHA, J.
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