BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 25.01.2022

ORDER PRONOUNCED : 01.02.2022

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P.(MD) No.1877 of 2017

and

C.M.P.(MD) No.9778 of 2017

Kasthuri ... Petitioner/Respondent/ Plaintiff

vs.

R.Hemalatha ... Respondent/Petitioner/ Defendant

PRAYER:- This Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 04.04.2017 made in I.A.No.159 of 2017 in O.S.No.199 of 2014 on the file of the learned 3rd Additional District Judge, Trichy.

For Petitioner : Mr.Raguvaran Gopalan for Mr.K.Prabhakar

For Respondent : Mr.H.Lakshmi Shankar

ORDER

The plaintiff, who is the revision petitioner before this Court, is challenging the order passed by the learned 3rd Additional District Judge, Trichy in I.A.No.159 of 2017 in O.S.No.199 of 2014.

2.I.A.No.159 of 2017 was filed by the defendant to take up the issue as to whether an unregistered agreement of sale could be marked as evidence as a preliminary issue. After considering the application, the learned 3rd Additional District Judge, Trichy has come to the conclusion that the agreement of sale dated 10.09.2013 was sought to be marked to establish the primary purpose and therefore, it cannot be received in evidence.

3.Though the issue for consideration before this Court is purely a legal issue, there is a necessity to briefly touch upon the facts that have ultimately culminated in the passing of the impugned order.

FACTS OF THE CASE:-

4.The petitioner herein, who is the plaintiff, had filed a suit O.S.No.199 of 2014 for specific performance on the file of the learned 3rd Additional District Judge, Trichy. It is her case that on 10.09.2013, the defendant had entered into an agreement of sale with her to sell the suit schedule properties for a total sum of Rs.22,00,000/- and on the date of the agreement, a sum of Rs.20,00,000/- was paid as advance and the parties had agreed that the balance sum of Rs.2,00,000/- would be paid within a period of 6 months from the date of the agreement. The defendant had undertaken to register the sale deed on receiving the said sum. The parties had clearly agreed that the time would not be essence of the contract.

5.It is the case of the plaintiff that the defendant's husband was present, when the parties had entered into the agreement of sale and executed the document. It is the also case of the plaintiff that she was always ready and willing to proceed further with the agreement. However, the defendant had been putting off the same. This constrained the plaintiff to issue a legal notice dated 01.02.2014, which was refused to be received by the defendant though intimation of the same had been given to her for over 3 days. On 14.12.2014, the plaintiff has also effected a paper publication informing the general public about her entering into an agreement of sale with the defendant. Since the defendant had failed to perform her part of the contract, the plaintiff had come forward with the instant suit for specific performance.

6.The defense to the above suit was that the plaintiff and the defendant's husband were known to each other for over 30 years and the plaintiff had been running a chit business, into which she had roped in the defendant's husband. It appears from the contentions of the written statement that the defendant's husband joined in various chits and also obtained the prize money. Meanwhile, the plaintiff had also borrowed a sum of Rs.15,00,000/- from the defendant's husband, for which, she had executed a promissory note in favour of the defendant's husband on 11.02.2015. The money was not returned and the plaintiff had cheated the defendant's husband for which he had given a criminal complaint. The suit is only a counter blast to the above complaint.

7.The defendant would further submit that when they had initially participated in the chit transactions, the title deeds of the defendant had been taken by the plaintiff and this has now been put into use for filing the above suit. She has come forward with the categoric case that there is no agreement of sale entered into between herself and the plaintiff and the signature therein is not her signature and neither is the signature of her husband, who is shown to have signed the document as a witness, the signature of her husband. Therefore, she sought for the dismissal of the suit.

8.After the chief examination of the plaintiff as P.W1, the defendant has come forward with the impugned petition. The plaintiff had filed a memo stating that she had no objection to the same being taken up as a preliminary issue. Ultimately, by the impugned order, the learned 3rd Additional District Judge, Trichy had held that the agreement of sale dated 10.09.2013 could not be received in evidence as it is sought to be marked for establishing the primary object. Challenging the said order, the petitioner/plaintiff is before this Court.

SUBMISSIONS:-

9.Both the learned counsels have addressed only the legal issue without submitting arguments on the merits of the suit. The question that is now placed for my consideration has been time and again considered by the various Courts both the Hon'ble Supreme Court as well as the various High Courts. The distinction that the learned counsels are now seeking to place for my consideration is the Tamil Nadu Amendment Act 29 of 2012 to the Indian Registration Act and its effect on the proviso to Section 49 of the said Act. The learned counsels have also addressed the arguments on Section 54 of the Transfer of Property Act.

10.Mr.Raguvaran Gopalan, learned counsel for the petitioner would dissect his argument as follows:-

He would at the outset submit that the very purpose and object of the Registration Act as expressed by various judicial pronouncements is to create a public record of the conveyances of property, to prevent fraud and to enable the members of the public to have access to the public record to verify title. He would argue that Section 17 of the Registration Act (herein after called the Act) deals with the list of documents that are compulsorily registrable and those documents, which do not require registration though they may create right or interest on immovable property. He would further submit that Section 17 (2) (v) of the Act sets out that the provisions of Section 17 (1) (b) and (c) of the Act would not apply to the documents, which by itself does not create a right, title or interest in the property, but only gives a right to obtain another document, which would result in creating a right, title and interest. He would also rely upon the definition of the sale agreement under Section 54 of the Transfer of Property Act, 1882, which would clearly spell out that an agreement of sale does not create any interest or charge over the property. He would thereafter take me through the Central Amendment Act 48 of 2001 (herein after referred to as Act 48 of 2001), by which Sub-Section 1-A was inserted in Section 17 and to the Tamil Nadu Amendment Act 29 of 2012 (herein after referred to as Act 29 of 2012), where under a new category of documents were added to the list of documents that are compulsorily registrable under Section 17(1) of the Act. He would also take me through the amendments introduced in Andhra Pradesh and Uttar Pradesh.

11.The learned counsel would trace the legislative history of Section 49 of the Act, which according to him had its genesis in the judgment of the Privy Council reported in ***1926 (24) LW 396 (Dayal Sing Vs. Indar Singh)***. This judgment had given rise to the introduction of a proviso to Section 49 of the Act. He would thereafter discuss the judgment of the Hon'ble Supreme Court in the case of ***Muruga Mudaliar (deceased) and others Vs. Subba Reddiar*** reported in ***64 LW 18 : 1951 ILR 473***, where the effects of Section 17 and Section 49 came up for the consideration of a Full Bench of this Court on the basis of a reference. The Bench had discussed the phrase "effecting the property" and the effect of Section 49 (a) and (c) and had ultimately held that an unregistered agreement of sale can be admitted as evidence of a contract in a suit for specific performance. He has also pointed out the anomaly that has arisen due to the amendment to Section 17 of the Act without a similar amendment to Section 49. He would rely on the following judgments:-

"*i)Dayal Singh V. Inder Singh - 1926-24-LW-396*
ii)Muruga Mudaliar Vs. Subba Reddiar- 195164-LW-18
iii)R.Suresh Babu V. G.Rajalingam - 2016 SCC Online Hyd 429
iv)Surendra Kumar V. Amarjeet Singh- AIR 2004 All 335
v)D.Devarajan V. Alphonsa Mary - (2019) 2 CTC 290
vi)C.Ramya V. C.Gnanambal - AS 451 of 2019, dated 31.01.2020
vii)V.Ramesh V. Bhavani -AS.1026 of 2019 dated 13.02.2020
viii)SM Mani V. Kalaivani and ors -CRP 4052/2016 dated 11.02.2021
ix)P.Mokkamayan v. J.Udhayakumar - AS(MD).55/2019 dated 01.07.2021.

12.*Per contra*, Mr.H.Lakshmi Shankar, learned counsel appearing for the respondent/defendant would submit that the petitioner/plaintiff is attempting to rely on the unregistered agreement of sale for a primary purpose and the agreement to sell affects the immovable property and therefore, as per the provisions of Section 17 (1) of the Act, is compulsorily registrable. He would rely upon Section 17 (1) (g) of the Act, which has been introduced by Act 29/2012, where under an instrument of agreement relating to sale of immovable property of a value of Rs.100/- and upwards was made compulsory registrable. The explanation attached to Section 17 (2) relating to agreement of sale had been omitted. Therefore, the learned counsel contended that the legislative intent was to make an agreement of sale compulsory registrable and once it is compulsory registrable, then under Section 49 of the Act it cannot be received even in evidence. Though Section 54 of the Transfer of Property Act would state that an agreement of sale does not create any interest or charge on the property, by virtue of the introduction of Section 17 (1) (g) by the Act 29 of 2012, registration of an agreement of sale becomes compulsory. He would argue that the reliance on Section 17 (2) (v) of the Act would not be applicable in the instant case as the Clause in Section 17 (2) is only referable to the documents referred to in Section 17 (1) (b) and (c) and not Section 17 (1) (g) of the Act. Therefore, though prior to the amendment in the year 2012, an agreement of sale simpliciter was not registrable, however by reason of the amendment, registration has become compulsory and consequently, Section 49 (a) and (c) of the Act would come into play. He would therefore submit that the agreement of sale, subject matter of the suit, which is of a value of Rs.22,00,000/- is therefore compulsorily registrable and under the provisions of Section 49 (a) and (c) of the Registration Act cannot be received in evidence. The learned counsel would further submit that the proviso to Section 49 ignores the effect of Section 49 (a) and (c) of the Registration Act as it now stands after the amendment.

13.In short, the learned counsel would submit that by virtue of the amendment the proviso to Section 49 relating to an agreement of sale becomes otiose. He would rely on the judgment of the Hon'ble Supreme Court in the case of ***K.B.Saha and sons Private Limited Vs. Development Consultant Limited*** reported in ***(2008) 8 SCC 564*** in support of his argument that the terms of an unregistered document cannot be used in evidence or in admitted evidence. He would rely on the judgment of the Hon'ble Supreme Court in the case of ***Dadi Jagannadham Vs. Jammulu Ramulu and others*** reported in ***2001 (3) Law Weekly 596***, where the Bench had resolved the contradictions between order XXI Rule 92 (2) and the amendment to Article 127 of the Limitation Act in order to give effect to the amendment to Article 127. He would therefore submit that the same principle should be applied and the contradictions between the proviso to Section 49 and Section 17 (1) (g) should be harmonised in such a manner as to give effect to the object of the Act 29 of 2012. He would also rely upon the judgment of the Hon'ble Supreme Court in the case of T.G.Ashok Kumar Vs. Govindammal and another reported in 2010 (14) SCC 370 to put across an argument that the Hon'ble Supreme Court had itself observed that the registration of an agreement of sale must be made compulsory for various reasons. In all, the learned counsel would submit that the order of the learned 3rd Additional District Judge, Trichy in answering the preliminary issue against the plaintiff has to be sustained.

DISCUSSION:-

14.Before endeavoring to discuss the issue on hand, it is necessary to reproduce the Sections for a proper appreciation of the arguments of the learned counsels. Section 17 of the Act as it now stands is herein below setout:-

"*17.**Documents of which registration is compulsory.—***

> ***(1)*** *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*
>
> *(a) instruments of gift of immovable property;*
>
> *(b) other non-testamentary instruments 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;*
>
> *(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;*
>
> *(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*
>
> *(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates 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;*

(f) instruments of agreement relating to construction of building as referred to in clause (i) under Article 5 of Schedule I to the Indian Stamp Act, 1899 (Central Act II of 1899);

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

(h) instruments of Power of Attorney relating to immovable property other than those executed outside India;

(i) instruments evidencing an agreement relating to the deposit of title deeds;

Provided that the State Government may, by order published in the Official Gazette exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 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 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (l) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another

document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871(XXVI of 1871), or the Land Improvement Loans Act, 1883 (XIX of 1883); or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884(XII of 1884), or instrument for securing the repayment of a loan made under that Act; or

(x-a) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

...................(explanation omitted)

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered."

15.Likewise, Section 49 of the Act as it now stands is extracted herein below:-

*"4**9.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:

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."

16.Section 54 of the Transfer of Property Act defines the sale as follows:-

*"**54."Sale" defined.—**''Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made.—** Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

***Contract for sale.—** A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.

17.A brief narration of the history of Sections 17 and 49 of the Act would make useful reading. The Privy Council in the year 1926 was called upon to answer the question as to whether a contract of sale, which required registration, could be registered in order to be received in evidence, in terms of Section 49 of the Act. The learned Judge had extracted Section 17 of the Act as it stood in the year 1877, which made it compulsory that certain instruments should be registered. Section 17 as it then stood was extracted by the learned Judges as follows:-

"17-(2) Instruments (other than an instrument of gift) which purport or operate to create, declare, assign limit or extinguish, whether in present on 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.

(3) Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment limitation or extinotion of any such right, title or interest."

18.Section 49 of the Act had declared that where an instrument was compulsorily registrable under Section 17, the same cannot be received in evidence in any civil proceedings by any civil Court, unless it is registered. Thereafter, the Act had undergone a change and the Indian Registration Act of 1908 was enacted, where an addition was made to Section 17 in the form of Section 17 (2) of the Act, which read as follows:-

"Nothing in Clauses (b) and (c) of this section applies to (h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign limit or extinguish any such right, title or interest."

19.This change gave rise to questions as to which of the category of agreements fell under Section 17(b) of the Act and whether registration could be excused in respect of agreements falling under Section 17 (2) (v) of the Act. The learned Judges had observed as follows:-

"Their Lordships do not think it necessary to review these cases or to decide whether one of them will agree with what was said by Lord Buchmaster in Hemanta Kumari Debi Vs. Midnapur Zamindari Co. They will assume without deciding that taking the terms of Act of 1877 (alone the terms of which were repeated totidem verbis, though not with the same numbering of the paragraphs, in the Act of 1908, which is the Act which rules this case) the judgment of the Courts below were right in holding that the present agreement was an agreement to sell and not a sale, and was consequently exempted under Section 17 (2) (v), which corresponds with Section 17 (b) of 1877."

20.The learned Judges however observed that in none of the earlier judgments, the Courts had taken note off Section 55 (b) of the Transfer of Property Act, 1882 and the learned Judges were of the opinion that Section 55(b) would apply to a case of an agreement of sale, where a buyer has paid earnest money. The Bench observed that the agreement created in interest in immovable property, which was compulsorily registrable under Section 17 and since the agreement of sale, which was the subject matter of that case, was not registered, the Bench opined that the document could not be received in evidence.

21.Thereafter, this issue fell for the consideration of a Full Bench of this Court. In the Judgment of ***Muruga Mudaliar (deceased) and others Vs. Subba Reddiar*** reported in ***64 LW 18 : 1951 ILR 473***, the Full Bench had been called upon to answer a reference, which in the words of the learned Single Judge referring the matter read as follows:-

"In these circumstances, I direct that the papers be placed before the Chief Justice for appropriate orders being passed in regard to the reference of the question whether an agreement of lease in writing required to be registered but unregistered may be used as evidence of the agreement in a suit for damages for its breach, to a Full Bench preferably

consisting of more than three Judges as already observed by me."

22.The **Hon'ble Chief Justice Rajamannar.**, concurring with the view of **The Hon'ble Mr.Justice.Satyanarayana Rao**, the author of the judgment of the majority in the Bench, had observed as follows with reference to the proviso to Section 49, which was inserted by Act XXI of 1929.

"It is true that the proviso to Section 49, of the Indian Registration Act, inserted by Act XXI of 1929 does not in terms apply to a suit for damages. But I fail to see any principle or policy which justifies the admission of an unregistered document as evidence of a contract in a suit for specific performance but at the same time requires its rejection as evidence of a contract in a suit for breach of that contract. I venture to think that the omission to provide for the reception of such a document in a suit for damages was due to the fact that such a provision was unnecessary as a suit for damages was not concerned in any manner with a right, title or interest to or in immovable property, that is to say, was not one affecting immovable property."

23.**Hon'ble Mr.Justice Satyanarayana Rao** had pointed out the incongruity of the view taken by the Privy Council in ***Dayal Singh Vs. Indar Singh*** reported in ***1926 (24) LW 396*** as follows:-

"The proviso was added by the amending Act, Act XXI [21] of 1929. Until the decision of the Judicial Committee in Dayal Singh v. Indar Singh, 53 I. A. 214 : (A. I. R. (13) 1926 P. C. 94) it was considered that an agreement for the sale of immovable property containing an acknowledgment of receipt of part of the purchase price paid by the buyer as earnest money did not require registration. The decision in Dayal Singh's case, 53 I. A. 214 ; (A.I.R. (13) 1926 P.C. 94), however, revolutionized the law, notwithstanding the clear provision in Section 54, T. P. Act, that a contract for the sale of immovable property does not by itself create any interest or charge on such property. This decision was pronounced in 1926. Immediately it was realised by the Legislature that this view was erroneous and caused great hardship with the result that an Amending Act, Act II [2] of 1927, was passed by which an explanation was added to Section 17 in these terms :

"A document purporting or operating to effect a contract for the Bale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money."

This provision, as the language clearly indicates, is retrospective in its operation and the law, therefore, as it *stood before 1926 was restored by the timely intervention of the Legislature."*

24.The Bench had observed that an agreement of sale of immovable property as such does not create an interest in an immovable property and would therefore not come within the term "affecting such property". The Bench therefore opined that the agreement can be used in evidence in a suit for specific performance to establish an agreement of sale by virtue of the proviso to Section 49. Ultimately, the Full Bench answered the question in the affirmative. **The Hon'ble Mr.Justice Panchapagesa Sastry**, who had penned a dissenting note, had also observed as follows:-

> *"It is well established that a suit for specific performance is in its origin and nature entirely different from a suit for recovery of damages for breach of the contract. Specific performance is asked for on the footing of the continued existence of the contract while damages are claimed on the basis of a breach of contract accepted by the party as a breach. The claim for specific performance requires continued readiness and willingness on the part of the plaintiff to perform the contract which he is keeping alive and trying to get enforced. Although a brief reference was made in the course of the argument to Section 19, Specific Relief Act, which empowers a person to ask for compensation for breach in addition to or in substitution for specific performance it was realised that a suit merely asking for damages on the footing of an accepted breach of contract cannot be described as a suit for specific performance. Section 29, Specific Relief Act, which bars a suit for compensation for breach of contract after the dismissal of a suit for specific performance is also significant in this connection. Moreover, with respect to agreements to lease, the suit contemplated by the proviso to Section 49 would appear to be the suit provided for by Section 27A, Specific Relief Act. It is, however, unnecessary to come to a definite conclusion as regards this last question."*

25.A paradigm shift has now taken place by virtue of the amendment to Section 17 by Act 48 of 2001 and by the Act 29 of 2012. A perusal of the statement of objects and reasons to the Act 29 of 2012 would imply that the amendment has been introduced by the State of Tamil Nadu by reason of the fact that instruments of agreement relating to sale of the immovable property, instruments of power of attorney relating to immovable property and instruments evidencing agreement of deposit of title deeds, which were not registrable, were resulting in a loss to the exchequer as the public were executing these documents on white paper or on stamp paper of nominal value. The legislature had also taken note of the fact that an inadequately stamp document was invalid in law and could therefore not be admitted as evidence until they were adjudicated.

Therefore, the amendment to the Registration Act was introduced. The Bill amended Section 17 of the Registration Act by substituting sub Section f and introducing sub Sections g to I. The amending Act also omitted the explanation to sub Section 2 of Section 17. By reason of this amendment under clause 17 (1) (g), all instruments of agreement relating to the sale of immovable property of a value of Rs.100/- and upwards were compulsorily registrable. However, a corresponding amendment has not been carried out to Section 49 or its proviso.

26.Therefore, after its enactment in the year 1908, Section 17 of the Act underwent two amendments. Under the Central Amendment Act 48 of 2001, sub-Section 1-A was introduced. A reading of the above provision would imply that in an agreement of sale, in which the purchaser has been put into possession and such purchaser seeks to exercise his right of part performance on the strength of the document, such documents shall compulsorily be registered on and after the commencement of the Amended Act, that is; with effect from 24.09.2001.

27.Thereafter, Clauses f to i had been introduced by the Act 29 of 2012 to Section 17 (1) of the Act and for the purpose of this revision, we are only concerned with Section 17 (1) (g) of the Act, which stipulates that any agreement of sale for a value of over Rs.100/- in upwards was compulsorily registrable. Likewise, an amendment was brought about by the Central Act 48 of 2001 to Section 17 (2) (v) of the Act, where the word 'any document' was substituted by the words 'any document other than the documents specified in sub-Section 1 (A)'. Therefore, by this amendment, the legislature had consciously removed agreements, where possession had been given to the purchaser under the document out of the purview of the provisions of Section 17 (2) (v) of the Act. Likewise, the explanation to Section 17 (2) of the Act has been omitted by the Tamil Nadu Amendment Act 29 of 2012.

28.Coming to Section 49 of the Act by Act 21 of 1929, the proviso was introduced to Section 49. Under the Act as it then stood after the insertion, any document, which was compulsorily registrable under Section 17, could not be received in evidence, if it has not been registered. The proviso however ushered in an exception. The exceptions were as follows:-

a) it could be received in evidence of a contract in a suit for specific performance;

b) as evidence of part performance of a contract for the purpose of Section 53 (A) of the Transfer of Property Act; and

c) as evidence of any collateral transaction, which is not required to be effected by a registered document.

29.Thereafter, under the Central Amendment Act 48 of 2001, the second exception, namely receiving it as evidence of a part performance of a contract was deleted. This deletion was to bring it in conformity with the provisions of Section 17 (1) (A) and Section 17 (2) (v) of the Act. Therefore, the proviso to Section 49 as it now stands is that an unregistered document affecting immovable property, which is compulsorily registrable, can be received as evidence for the following reasons:-

a) as evidence of a contract in a suit for specific performance and

b) as evidence of any collateral transaction, which transaction is not required to be effected by a registered instrument.

30.The learned counsel for the respondent had 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.

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 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.

31.A learned Single Judge of the Andhra Pradesh High Court had an occasion to consider a similar issue in a judgment reported in ***2016 SCC Online Hyd 429 (R.Suresh Babu Vs. G.Rajalingam and 2 others)***, where an amendment had been brought about by the State of Andhra Pradesh under Andhra Pradesh Act 4 of 1999, wherein, Section 17 (1) (g) was introduced, which is *in pari materia* with Section 17 (1) (g) of the Act as it now stands in the State of Tamil Nadu, by virtue of the Amendment Act 29 of 2012. Like in the case of Tamil Nadu, no amendment was brought out to Section 49 even in the State of Andhra Pradesh. The learned Judge had considered the amendment Act of Tamil Nadu, Andhra Pradesh and Uttar Pradesh and the learned Judge had observed that in Uttar Pradesh, a corresponding amendment was brought about to Section 49, which is not the case both in Andhra Pradesh as well as Tamil Nadu. Ultimately, the learned Judge has held as follows:-

> "*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.*"

32.The above judgment has been quoted with approval by a learned single Judge of this Court in the case of D.Devarajan Vs. Alphonsa Mary and another reported in (2019) 2 CTC 290. The learned Judge has ultimately observed as follows:-

> "*12.However, the consequence of non-registration does not operate as a total bar to look into the contract, as the proviso to Section 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 therein.* "

33.In the light of my discussions regarding Section 17 and 49 of the Act and the effect of the amendments to the proviso to Section 49, I am of the view that the learned 3rd Additional District Judge, Trichy has committed an error in answering the preliminary issue against the plaintiff. Consequently, the Civil Revision Petition is allowed. The order made in I.A.No.159 of 2017 in O.S.No.199 of 2014 on the file of the learned 3rd Additional District Judge, Trichy dated 04.04.2017 is set aside and the document shall be received in evidence, considering the fact that the suit in question is a suit for specific performance, which falls within the first exception carved out in the proviso to Section 49 and since the proviso to Section 49 is not repugnant to the amendments that has now been brought out into Section 17 of the Act. This Court would also like to place on record its appreciation of the arguments that have been placed on the subject succinctly by both the counsels. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

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To

The 3rd Additional District Judge,Trichy.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-3387[F] dated 01/02/2022)

C.R.P.(MD) No.1877 of 2017
01.02.2022

RK(11/02/2022) 15P 3C