IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.07.2023

Coram:

The Honourable Mr.Justice **A.D.JAGADISH CHANDIRA**

S.A.No.456 of 2023
& C.M.P.No.13720 of 2023

1.Kumarasamy
2.Ramayee
3.Gunasundari
4.Velusamy .. Appellants

Vs.

P.Subramaniyam .. Respondent

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 31.03.2022 made in A.S.No.24 of 2019 on the file of Additional District Judge, Namakkal, confirming the judgment and decree dated 31.01.2019 made in O.S.No.293 of 2008 on the file of Sub Court, Tiruchengode.

For Appellants : Mr.M.Guruprasad

JUDGMENT

The unsuccessful defendants, who lost their case before the lower appellate Court as well as trial Court, have filed the present second appeal.

2. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

3. The case of the plaintiff is as under:-

The suit properties are the ancestral properties of the defendants. The respondent/plaintiff and the appellants/defendants are relatives. The defendants entered into an agreement of sale (Ex.A1) with the appellants/ defendants on 01.06.2005 for a sale consideration of Rs.2,05,000/- in respect of suit property and the plaintiff has also paid the sale consideration of Rs.25,000/- as an advance and the possession of the suit property was also delivered to him on that day itself agreeing to execute the sale deed in favour of the plaintiff within six months from the date of receipt of balance sale consideration of Rs.1,80,000/-. Thereafter, though the plaintiff had approached the defendants several times for execution of sale deed, they were not ready to perform their agreement. In such circumstances, the plaintiff has issued notice on 24.11.2005 to the defendants and the same was returned with a postal endorsement 'refused'. Thereafter, the plaintiff has filed O.S.No.293 of 2008 on the file of Subordinate Judge, Tiruchengode, seeking the relief of Specific performance and permanent injunction.

4. Denying all the allegations, the defendants have filed the written statement contending that the suit is false, frivolous and unsustainable both in law and also on facts. The plaintiff has to prove all the allegations averred in the plaint except those specifically admitted herein. The defendants never approached the plaintiff offering to sell the suit properties. It is false that the sale price and the advance amount were fixed by the defendants and the sale agreement, which was duly signed by the plaintiff and the defendants, was reduced into writing on 01.06.2005 and delivery of possession of the suit property was given to the plaintiff. The suit property is an adjacent property to the property of the plaintiff and with a view of purchase the same, the plaintiff approached the defendants, who, in turn, refused to sell the same.

5. The defendants have also filed additional written statement contending that the defendants borrowed a sum of Rs.25,000/- from the plaintiff on 01.06.2005 and agreed to repay the same with interest at the rate of 24% per annum. At the time of availing the loan, the plaintiff demanded the defendants to sign on certain empty stamp papers and as both the parties are relatives, the defendants have signed those blank stamp papers. The defendants had discharged the said loan during the month of September 2005. The value of the suit property in the year 2005 was about Rs.6 lakhs and there is no necessity for the defendants to sell the same for a meager sum of Rs.2,05,000/-. Defendants 2 and 3 had no right in the suit property and as the fourth defendant has a son at that time, he has right in the suit property by birth, but he was not included in the sale agreement. The relief of specific performance is a discretionary remedy and grant of said relief would put the defendants in dire straits and the suit has no merit and is liable to be dismissed.

6. On the above pleadings, the Trial Court framed the following issues:-

1.Whether the suit sale agreement dated 1.6.2005 is true and genuine and whether it is valid?

2.Whether the plaintiff is ever ready and willing to perform his part of the contract?

3.Whether the plaintiff is entitled for the relief of specific performance as prayed for?

4.To what other relief the plaintiff is entitled?

7. Before the Trial Court, the plaintiff had examined himself as PW1 and examined one T.P.Kandhasamy as PW2 and marked Exs.A1 to A10 in support of his case. On the side of the defendants, the fourth defendant was examined as DW1 and examined two more witnesses were examined as DW2 and DW3 and three documents were marked as Exs.B1 to B3. Ex.B1 is the sale agreement made among the plaintiff, his wife with one Seeranga Gounder; ExB2 is the birth certificate of fourth defendant's son viz, Balaji and Ex.B3 is the CSR Receipt No.1461/2011 of Pallipalayam Police Station.

8. On examination of the oral and documentary evidence, the trial Court, by judgment dated 31.01.2019, held that the plaintiff has proved Ex.A1-sale agreement dated 01.06.2005 as true, genuine and valid through oral and documentary evidence and the plaintiff is ever ready and willing to

perform his part of the contract and therefore, he is entitled to the relief of specific performance and permanent injunction as sought for. Challenging the same, the appellants/defendants have filed A.S.No.24 of 2019 before the Additional District Court, Namakkal. The first appellate Court, by judgment dated 31.03.2022, confirmed the judgment and decree of the trial Court. Questioning the correctness of the judgment and decree made by both the Courts below, the appellants/defendants have filed the present second appeal.

9. Mr.M.Guruprasad, learned counsel appearing for the appellants, would submit that the Courts below erred in holding that an unregistered sale agreement can be looked into for proving the possession over the suit schedule property overweighing Section 53A of the Transfer of Property Act, 1882 and Sections 17(1-A) and 49 of the Registration Act, 1908. He would further submit that after the amendment of the Act, sale agreement needs to be compulsorily registered and when the sale agreement in the present case being an unregistered one, the Courts below ought to have dismissed the suit and therefore, the second appeal has to be allowed.

10. Mr.N.Manokaran, learned counsel appearing for the

respondent, would submit that the Courts below have rightly taken into consideration that an unregistered agreement to sell an immovable property shall be admissible in evidence in a suit for specific performance, which falls within the first exception carved out from proviso to Section 49 of the Act. He would further submit that in a suit for specific performance, 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 viz.,

(i) Where it can be used for any collateral purposes, and

(ii) where it can be used as an evidence in a suit for specific performance;

and thereby when the statute itself prescribes a legislative route within its scheme, the relief cannot be denied to the plaintiff and the appeal is liable to be dismissed.

11. Heard the learned counsel appearing for the parties and perused the judgments of the courts below in the light of the question of law raised by the Appellants.

12. Having perused the materials available, this court finds that it

is the case of the plaintiff that suit sale agreement, Ex.A1 dated 1.6.2005 was entered between himself and the defendants in respect of the suit property for a sale consideration of Rs.2,05,000/- fixing the time limit for execution of the sale deed as six months from the date of agreement of sale. It is his further case that he paid an advance sale consideration of Rs.25,000/- while entering into the agreement of sale and thereupon, possession of the suit property was handed over to him. It is his case that the agreement between them was that on payment of the balance sale consideration of Rs.1,80,000/-, the defendants had to execute the sale deed, however, the defendants have not responded to the request of the plaintiff for execution of the sale deed and hence, legal notice had been sent to the defendants and since the defendants to refuse to receive the notice and did not turn to execute the sale deed, the plaintiff had to file the suit.

13. The case of the appellants/defendants is two-fold and they are as under:-

> i) The agreement of sale is an unregistered one and it cannot be considered for grant of relief of specific performance.

ii) The transaction that had taken place between the parties was only a money lending one and hence, the document projected by the plaintiff as an agreement of sale with material alterations causing cloud of suspicion is a fabricated document.

14. A perusal of the judgments rendered by the courts below would reveal that the effect of non-registration of the document has been rightly considered by the courts below and they found that the non-registration of the document does not operate as a bar to the Contract and decreed the suit in favour of the plaintiff on the legal principle that agreement to sell does not confer any right, title or interest over property and it confirms right only to seek enforcement of agreement of specific performance and hence it does not require compulsory registration.

15. The issue of relying on an unregistered document for the purpose of deciding the suit of specific performance is no more *res-integra*. In this regard, it is useful to refer the following recent judgment of the

Hon'ble Apex Court in R.Hemalatha Vs. Kasthuri (2023 SCC Online SC

***381)**.*

"**21**. Section 17 of the Registration Act, 1908, post Tamil Nadu Amendment Act, 2012 reads as under :

"***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) no-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; and

(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:]

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 (48 of 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 (1) 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 [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, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or [(xa) 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.—A document purporting or operating to effect a contract for the sale of immovable 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.]"

22. By Tamil Nadu Amendment Act, 2012, Section 17(1)(g)has been inserted and "explanation" to Section 17(2) has been omitted. Section 17(1)(g) as inserted by Tamil Nadu Amendment Act, 2012, reads as under :

*"**17(1)(g)** instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards."*

23. Thus, on and after the Tamil Nadu Amendment Act, 2012, as per Section 17(1)(g), instrument of agreement relating to sale of immovable property of the value of Rs.100/- and upwards is required to be registered compulsorily. However, despite the same and despite the "explanation" to sub-section (2) of Section 17 has been omitted, there is no corresponding amendment made to Section 49 of the Registration Act. Section 49 of the Registration Act is as under :

> "**49. Effect of no-registration of documents required to be registered.**—No document required by section 17 [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 (3 of 1877) , *** or as evidence of any collateral transaction not required to be effected by registered instrument.]"*

24. Thus, as per proviso to Section 49, an unregistered document affecting the immovable property and required by Registration Act 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 document.

25. At this stage, the primary statement of objects and reasons to the Tamil Nadu Amendment Act, 2012, is also required to be referred to and considered. The primary statement of objects and reasons seem to suggest that amendment has been introduced by the State of Tamil Nadu bearing in mind the loss to the exchequer as public were executing the documents relating to sale of immovable property etc. on white paper or on stamp paper of nominal value.

26. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act No.21 of 1929 and thereafter, Section 17(1A) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

27.Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act 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, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act.

> Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49."

16. Sofar as the contention of the defendants that the agreement of sale is a fabricated one, it is seen that the Trial Court has elaborately considered the same and found that it is only the defendants, who have taken contradictory statements in the written statement and additional written statement. In respect of the sale agreement is concerned, the contention of the defendants is a total denial of execution of such a document. Further, the defendants have taken a stand that the plaintiff, being owner of the adjacent property, approached the defendants for purchasing the suit property and the defendants have refused to sell the same, but, the plaintiff is a financier and wealthy person in the locality and he would indulge into forgery also to achieve his requirement.

17. Such a stand having been taken by the defendants in the written statement, they have come up with a totally new version in the additional

written statement that it is only a money transaction and they had borrowed a sum of Rs.25,000/- from the plaintiff agreeing to repay the same with 24% interest per annum and at that time, the plaintiff had obtained signatures of the defendants in blank stamp papers, which had been used to fabricate the agreement of sale. It is also relevant to note that the pleadings of the parties would reveal that plaintiff and the defendants are relatives. Whileso, the defendants, having portrayed the plaintiff as if a person, who would go to any extent to achieve his goals, it is very much peculiar to understand that they have approached the same plaintiff for financial assistance to the tune of a meagre amount of Rs.25,000/- on an interest at 24% per annum by affixing their signatures on blank stamp papers.

18. In this regard, it is still worse that on 14.9.2003, the first defendant had lent money to the tune of Rs.2,00,000/- to one Madheswaran and Sellamuthu as evidenced by Ex.P7 promissory note and for recovery of the same, a suit in O.S.No.289 of 2005 also came to be filed before the Sub Court, Namakkal as evidenced by Exs.P8 to P10, copy of the plaint, judgment and decree passed in the said suit. Therefore, when the defendants

were that much financially sound to lend money to others at the relevant point of time, the stand taken by them that they had approached the plaintiff for getting a meagre sum as loan and the signatures obtained from them in the blank stamp papers by the plaintiff had been misused to fabricate the agreement of sale is far fetched. The above aspects have been analysed in depth by the courts below while considering the veracity of the agreement of sale and to hold that it is a valid one.

19. Having carefully analysed the materials available on record including the judgments of both the Courts, this Court is of the view that the Courts below have correctly decreed the suit as prayed for and no substantial question of law is involved in the appeal requiring admission.

20. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

> *"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court*

if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

21. In view of the above, no question of law much less substantial question of law arises for consideration. The Second Appeal fails and the same is dismissed at the admission stage itself. No costs. The connected Miscellaneous Petition is closed.

10.07.2023

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To

1.The Subordinate Judge,
Tiruchengode.

2.The Additional District Judge,
Namakkal.

3.The record Keeper,
V.R.Section, High Court,
Madras.

A.D.JAGADISH CHANDIRA,J.

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