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CRP No.2219 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2219 of 2019
and CMP No.14358 of 2019

1.M.Kotteswaran
2.Meenakumari

.... Petitioners

Vs

A.Prakash
Respondent

...

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 25.01.2019 in O.S.No.67 of 2018 on the file of learned Additional District Judge, Dharmapuri.

For Petitioners : Mr.R.Selvakumar

For Respondent : Mr.R.Thirugnanam

ORDER

This Civil Revision Petition arises against an order passed by the learned Additional District Judge, Dharmapuri in O.S.No.67 of 2018 dated 31.01.2019.



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2. A suit for specific Performance of an agreement of sale dated 10.11.2014 was presented in O.S.No.67 of 2018. To the said plaint, a written statement was presented, raising several pleas. The learned Additional District Judge, without an application under Order 14 of Civil Procedure Code, framed an issue whether a suit for Specific Performance is maintainable on the basis of an unregistered document. He concluded that the suit for Specific Performance is not maintainable and therefore, he has dismissed the suit without even a plea raised by the defendant or an application for rejection of plaint. This issue was tried in the absence of any evidence. Against the said order, the present revision is filed.

3. This Court had entertained a doubt as to whether the revision is maintainable. Mr.R.Selvakumar would point out that the very same issue had been raised before this Court on 21.06.2019. Thereafter, the matter was listed before this Court on 04.07.2019. On 04.07.2019, this Court had recorded that the revision is maintainable.

4. It is pertinent to point out that the Court under the Civil Procedure



Code has a jurisdiction to frame the issue suo-motu and answer the same.

However, the said issue framed should be put to both sides. Thereafter the Court should hear the arguments and pass orders. Whether a suit for Specific Performance can be maintained is not an issue which was raised by the defendant, but the Court, suo-motu had framed the issue and answered it against the plaintiff. The entire judgment deals only with maintainability. The learned Judge could have framed it as a preliminary issue, as required by Civil Procedure Code. Instead of doing so, he had adopted a very unique procedure of framing an issue suo-motu and answering the same.

5. The advantage of framing a preliminary issue is that the Court will get the assistance of both the parties in order to answer the issue. Unfortunately, the said procedure had not been followed in this case. I would have ignored the procedural lacuna in this case had it not been for the substantive error that had been committed by the Court below.

6. Mr.R.Thirugnanam, learned counsel appearing for the respondent would attempt to sustain the judgment stating that under Section 17(1)(g) of the Registration Act, any instrument relating to a sale of immovable property above



the value of Rs.100/- requires registration. I pointed to him the proviso which was appended to Section 49 of the Registration Act, which reads as follows:-

49. Effect of non-registration of documents required to be 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.

7. This proviso makes it very clear that even if a document is unregistered, it can be received as evidence in a contract in a suit for Specific Performance. If not for Specific Performance also, it can still be received for collateral purposes. Therefore, the finding of the learned Judge that no suit for Specific Performance lies on the basis of an unregistered agreement of sale is erroneous.

8. Similar view had been taken by this Court in the case of ***R.Ananda Padmanabhan (deceased) and others vs R.Vadivel Gounder (deceased) and***



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Others (2019) 4 MLJ 598 (DB).

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9. In the light of the settled position laid down by the Division Bench of this Court, I am constrained to interfere with the order dated 31.01.2019. Accordingly, the judgment and decree dated 25.01.2019 in O.S.No.67 of 2018 passed by the learned Additional District Judge, Dharmapuri is set aside. The matter is remitted to the learned Additional District Judge, with a request to proceed with in accordance with law.

10. Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

Index:Yes/No
Speaking order/Non-speaking order
sr

To
The Additional District Judge, Dharmapuri



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V.LAKSHMINARAYANAN,J.

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