



CRP. No.4666 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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Dhanraj N.Kochar

...Petitioner

Vs.

Goswami Krishnachandraji (died)

1.Madhusudan Goswami

2.K.Vasanth

3.S.Kalyanasundaram

4.Krishnapriya

5.Muralimanohar

6.Krishnakant

7.Rama Goswami

...Respondents.

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.11.2017 passed in I.A No. 14615 of 2017 in O.S No. 4678 of 1997 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr. Ravi Kumar Paul, Senior counsel

For R2 & R3 : Mr.S.Ramesh

For R1, R4 to R7: No appearance



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ORDER

This petition has been filed to set aside the fair and decreetal order dated 06.11.2017 passed in I.A No. 14615 of 2017 in O.S No. 4678 of 1997 on the file of the XI Assistant City Civil Court, Chennai.

2. The petitioner herein is the plaintiff who filed a suit to direct the defendants 1 to 3 to execute the sale deed as per unregistered sale deed dated 12.05.1988 in favour of the plaintiff in respect of the schedule mentioned property and to deliver the possession of the same and also filed another suit in O.S No. 4678 of 1997 for the relief of declaration that the sale deed executed by the second defendant/power of attorney of first defendant in favour of third and fourth defendant as such is illegal and non est in law. Thereafter, the defendants filed written statement subsequently suit was ripe for trial plaintiff filed proof affidavit along with documents 1 to 7 to mark as exhibits on his side at that time third and fourth defendant filed a memo to take on record the objections of the defendants and not allow the plaintiff to mark unregistered sale deed dated



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12.05.1988(06.06.1988) by stating that said document is styled as sale deed and is an unregistered document and same has been allegedly assigned pending document No. 109 of 1988 and has been returned by the special registrar as not registered. Therefore unregistered sale deed cannot be marked because the same is affected by bar under Section 49 (c) of the Registration Act. Further the plaintiff not filed a suit for specific performance of any agreement for sale so as to plead the exception under Section 49(c) of Registration Act, apart from that the plaintiff not filed the suit within 30 days of the refusal of the registrar as required under Section 77 of Registration Act, thereby he raised objection to mark the sale deed dated 12.05.1988(06.06.1988). For the said memo the plaintiff filed objection stating that sale deed executed by the first and second defendant in his favour which has been presented for the registration before the sub registrar office having received the same the registrar after satisfying himself about payment of sale consideration by the plaintiff to the owners/vendors by way of D.D and cash after collecting registration charges the stamp duty the Registrar affixed the seal of the sub Registrar along with his signatures and completed the registration by keeping as pending registration by giving document number as P109/1988 dated



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06.06.1988, SRO Anna Nagar with endorsement in the sale deed. The concerned sub registrar returned the sale deed for presentation before the appropriate jurisdiction office. Having received the sale consideration original owner first defendant and second defendant not cooperate for registering the sale deed hence filed the suit seeking direction against the defendants therefore the said unregistered document is necessary document on his side to be marked in order to prove his claim hence prayed to reject the said memo.

3.Considering the submissions on either side, the Trial Court held that on perusal of the document it is unregistered sale deed and considering the facts of the case it is not a suit for specific performance therefore the said document cannot be received as evidence as exception clause section 49 (c) of Registration Act. Furthermore, the plaintiff failed to file a suit within 30 days from the date on which order of refusal by the Registrar as per 77 (c) of the Registration Act. Accordingly memo filed by the defendant as such is accepted one thereby trial court refused to mark the document holding that it cannot be marked as exhibits on the side of the plaintiff. Challenging the same the petitioner filed this civil revision petition.



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4.The learned counsel for the petitioner submitted that the Trial Court failed to take note of the fact that main suit was filed by the plaintiff seeking for directing the defendant to register the said unregistered sale deed in his favour as the registered document and to establish his case said unregistered document is necessary one and the same may be received as evidence for any collateral transaction and without properly applying the section 49 of the Registration Act the Trial Court erroneously recorded the memo filed by the defendant as such is unfair and liable to be set aside.

5.By way of reply the learned counsel for the respondent submitted that trial Court rightly concluded that said unregistered document cannot be received as evidence as per Section 49 (C) of the Act since it is not suit for specific performance and also not filed a suit within 30 days as required under Section 77 of the Registration Act. Hence prayed to dismiss this petition.

6. Considering the submissions on either side, it reveals that the petitioner filed suit in O.S No. 5418 of 1986 (originally C.S No. 1497 of 1988) seeking to direct the defendants 1, 2 and 3 to execute and register the sale deed as per sale deed dated 12.05.1998(06.06.1988) as suit for specific performance therefore the said unregistered document dated 06.06.1988 has



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to be marked on his side to prove his claim but plaintiff contended the

Trial Court without appreciating the entire facts of the case not permitted to mark the document. On perusal of the plaint in O.S No. 5418 of 1996 it reveals that originally suit was filed in C.S No. 97 of 1988 before this court then due to jurisdiction the said suit was transferred as O.S No. 5418 of 1996 with a prayer directing the defendants to register the sale deed as per the sale deed dated 12.05.1998(06.06.1988), to prove his claim the said unregistered document was produced on the side of the plaintiff and on perusal of said alleged sale deed it reveals that said document was returned by the registrar with a endorsement in sale deed and kept as pending by giving document number as P109/1988 dated 06.06.1988, SRO Anna Nagar and returned the sale deed for presentation before the appropriate jurisdiction office. No proof that plaintiff took steps to present before appropriate Register officer having jurisdiction. Hence, the said document was not kept for registration as pending document as alleged by the plaintiff, but as per the said endorsement the document was returned by the sub register for proper presentation before appropriate office but the plaintiff not submitted any particulars with regard to that in his pleading and also failed to file a suit within 30 days from the refusal of the registrar as



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rightly pointed out by Court below that as per section 77 (c) of the Registration Act, the party has to approach the Civil court to file suit within 30 days from the date on which refusal to register the document. Admittedly, the plaintiff not filed suit within 30 days of registrar refusal to register the sale deed. Even assuming that plaintiff is having right to file the suit but he was not filed within 30 days nor there is no prime facie that the plaintiff took steps to register the document before the appropriate forum which is having jurisdiction to register the said document. Furthermore, on perusal of the document, it clearly reveals that stamp duty was not paid properly as per the value of the property admittedly as per the schedule description of the property disputed property is situated at Madras. Therefore, the Trial Court rightly concluded that within 30 days the said suit was not filed as per Section 77 (c) of Registration Act. But the counsel for the petitioner replied that it is not suit for registering the suit and also other consequential relief he is entitle to filed comprehensive suit, it is true that before the civil Court relief of delivery of possession can be availed provided that plaintiff should be a lawful owner of the property but case in hand the plaintiff having one unregistered styled as sale deed, so far it was not presented before the registration nor he paid correct value stamp duty.



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Hence, the order passed by the Trial Court needs no interference.

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7. As discussed above, this civil Revision petition is dismissed. No costs. Consequentially, connected miscellaneous petition is closed.

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