



C.R.P. No.4157 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4157 of 2023

R.Kumar

... Petitioner

Versus

1. P.Mageshwari

2. B.Palani

.. Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order of rejection of unnumbered plaint dated 06.10.2023 made in O.S.SR.No.1290 of 2023 on the file of the learned District Munsif cum Judicial Magistrate at Uthukottai.

For Petitioner : Mr.S.Mohan

ORDER

Challenging the impugned order passed in an unnumbered suit in



C.R.P. No.4157 of 2023

O.S.SR.No.1290 of 2023 on the file of learned District Munsif cum Judicial Magistrate, Uthukkottai, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief claimed challenging the order passed by the trial court, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner/plaintiff filed a suit seeking for the relief of specific performance and other consequential relief of injunction against the defendants, who are close relatives and directing them to execute a sale deed as per sale agreement dated 14.06.1985 and to register the same. But the trial judge rejected the plaint stating that the document relied on by the plaintiff dated 14.06.1985 named as sale deed with the value of Rs.11,700/- cannot be taken as a valid document as it was not properly registered as prescribed under Sec.54(1) and (2) of Registration Act, which mandates if the value of immovable property is more than Rs.100/-, it can be admitted in evidence as evidence of a contract and also held that the same cannot be received as document even under Sec.49 of



Registration Act and also held that the alleged document is of the year 1985 and it is an agreement entered between parties, which is more than 37 years old. Based on that, the plaintiff is not entitled to file the present suit, as such it is barred by law. Accordingly, the plaint was rejected. Aggrieved over the same, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner by relying the ratio laid down by the Apex Court in the authority in ***Civil Appeal No. 3192 of 2010 dated 12.04.2010*** in the case of ***S.Kaladevi vs. V.R.Somasundaram and others***, wherein it was held as follows :-

“ Civil – Unregistered sale deed – Admissibility of – Sec.49 of Registration Act, 1908 – Whether unregistered sale deed in a suit admissible for specific performance of contract? - Held. Sec.49 of Act, 1908 states that unregistered sale deed could be received in evidence to prove the agreement between parties though it may not itself constitute a contract to transfer property – By admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract none of provisions of Act, 1908 Act is affected rather court acts in consonance with proviso to Section 49 of Act, 1908 – Appeal allowed.”



C.R.P. No.4157 of 2023

WEB COPY

By referring the aforesaid ratio, the learned counsel would submit that even if the document is an unregistered sale deed, the same can be received as evidence to prove the agreement between parties. But, instead of giving opportunity, the trial judge erroneously rejected the plaint. Hence, he prayed to set aside the findings of trial judge. Furthermore, to substantiate his claim, in respect of limitation, the learned counsel would submit that it is a mixed question of law and fact and the same cannot be rejected as per the ratio laid down by this court in the authority ***in A.S.No.472 of 2017, dated 31.03.2021*** in the case of ***L.Rathanchand Sarma vs. M/s.Vinayaka Exports and Imports and others***, wherein this court in para 13 held as follows :-

*“13. This Court is reminded of the Hon'ble Supreme Court judgment rendered in **Urvashiben vs. Kkrishnakant Manuprasad Trivedi** reported in 2019 (13) SCC 372, wherein it is held as follows:*

“15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for



rejection of plaint in exercise of powers under Order VII Rule 11(d) C.P.C. Equally, it is well settled that for the purpose of deciding application filed under Order VII Rule 11 only averments stated in the plaint along can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Art. 54 of Limitation Act, 1963, prescribes the limitation of three years, for suit for specific performance. The said article reads as under :-

Description of Suit	Period of Limitation	Time from which period begins to run
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order VII Rule 11 of C.P.C. same is to be considered from the facts of each case of 2016, averments made in the plaint for



C.R.P. No.4157 of 2023

the purpose of adjudicating such application.

WEB COPY

5. Considering the above facts and circumstances and on a perusal of records, it would clearly reveals that based on the unregistered sale deed as well as oral sale agreement, the plaintiff approached the court for the relief of specific performance against the defendants, who are close relatives. As per their contentions, since because they are close relatives, the document was executed as unregistered one, but the same can be produced to prove the defence as collateral purpose, but the trial judge failed to consider the same. If any such agreement is entered between parties, it can be proved at the time of evidence and not at the time of filing plaint itself. But, the trial judge before numbering the plaint, instead of numbering it, he discussed elaborately and passed the impugned order, as such is erroneous one, since because the relief claimed in the plaint needs evidence. So, the ratios relied on by the Revision Petitioner in ***Civil Appeal No. 3192 of 2010 dated 12.04.2010*** in the case of ***S.Kaladevi vs. V.R.Somasundaram and others*** and in ***A.S.No.472 of 2017, dated 31.03.2021*** in the case of ***L.Rathanchand Sarma vs. M/s.Vinayaka Exports and Imports and others*** are justifiable



C.R.P. No.4157 of 2023

one for their claim. Accordingly, this Civil Revision Petition is allowed and the findings of trial judge in an unnumbered suit in O.S.SR.No. 1290 of 2023 is set aside. Therefore, the plaint is ordered to be returned within a period of two weeks from the date of receipt of copy of this order and the trial judge is directed to take the plaint on file and number the plaint and dispose the case as expeditiously as possible. No costs.

28.11.2023

Index: Yes/No
Internet: Yes/No
rpp

To

District Munsif cum Judicial
Magistrate,
Uthukottai.



WEB COPY



C.R.P. No.4157 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P. No.4157 of 2023

28.11.2023