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C.R.P.(MD)No.41 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.41 of 2022

and

C.M.P.(MD)No.220 of 2022

1.P.Rengasamy (Died)

2.Maniammal

3.S.Vasanthi

4.R.Rajaram

5.M.Saroja

6.R.Ravi Murugan

.. Petitioners

Versus

1.A.Sahila Begum

2.S.Parithufathima

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to call for the records relating with the Executable order and Fair order, dated 23.11.2021, made in I.A.No.703 of 2018 in O.S.No.10 of 2016, on the file of the Sub Court, Theni and set aside the same.

For Petitioners

: Mr.R.Suriya Narayanan

ORDER

The first petitioner is the defendant before the Sub Court, Theni, in O.S.No.10 of 2016. The said suit was filed for recovery of money from the first petitioner on the strength of an unregistered lease deed, dated 19.03.2008. Under these



circumstances, the respondents filed I.A.No.703 of 2018 to receive the said document to decide the suit claim in the above suit. In the said proceeding, the first petitioner had also filed a counter statement.

2. The Trial Court, by the impugned fair and decretal order, dated 23.11.2021, disposed of the said application filed for receiving the above said unregistered lease deed, dated 19.03.2008. Challenging the said order, the petitioners have come forward with the present Civil Revision Petition.

3. The learned counsel for the petitioners submitted that the Trial Court has committed a grave error in allowing the application, as admittedly the document is not registered and therefore, it cannot be received as an evidence under Section 17 of the Registration Act, 1908. A reference is made to a decision of the Punjab and Haryana High Court in **Gurdial Singh Kehar Singh and others vs. Kartar Singh and others** reported in (1964) AIR (Punjab) 141 [Second Appeal No.759 of 1961, decided on 05.11.1963], wherein the Division Bench of the Punjab and Haryana High Court has held as follows:-

"9.Keeping in view the plain language of Sub-sections (c) and 2(xi) of Section 17 of the Indian Registration Act and the rule of law as laid down in the authorities cited by the learned Counsel for the Appellants we (sic) that a receipt for payment of money under a mortgage (other than an endorsement on a mortgage deed) issued by the mortgagee mentioning not



only the payment of the full mortgage amount but also the extinction of the mortgage requires registration. The reference is answered accordingly."

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4. I have considered the arguments advanced by the learned counsel for the petitioners and also the decision cited by him.

5. The Punjab and Haryana High Court has rendered the said decision in the context of Section 17(1) and 17(2) of the Registration Act, 1908. However, it has not discussed about Section 49 of the Registration Act, 1908. Proviso to Section 49 of the Registration Act, 1908 makes it clear that an unregistered document affecting immovable property and required by the Registration Act, 1908 or the Transfer of Property Act, 1882 (IV 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 (I of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

6. In my view, the Trial Court has not committed any error while allowing I.A.No.703 of 2018. The present Civil Revision Petition is therefore without merits and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.



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7. Considering the fact that the suit is of the year 2016, this Court directs the Trial Court to expedite the trial, if the trial has not commenced and dispose of the suit as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

10.04.2023

To

The Sub Judge,
Theni.



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C.SARAVANAN, J.

smn2

Order made in
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10.04.2023