



C.R.P.(MD).No.1628 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	17.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1628 of 2023

and

C.M.P.(MD) No.8000 of 2023

1.S.Sudhakar

2.S.Ramesh

3.S.Veerammal

...Petitioners

Versus

1.Ramarajan

2.Palaniyammal

... Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the Fair and Decreetal Order dated 06.04.2023 made in I.A.No.2 of 2022 in O.S.No.39 of 2018 on the file of the District Munsif Court, Keeranur, Pudukkottai District.

For Petitioners : Mr.N.Madhava Govindan

For Respondents : Mr.D.Ramesh Kumar



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ORDER

The above Civil Revision Petition is preferred against the order dated 06.04.2023 made in I.A.No.02 of 2022 in O.S.No.39 of 2018 on the file of the District Munsif Court, Keeranor, Pudukkottai District.

2. The revision petitioners/plaintiffs filed the suit in O.S.No.39 of 2018 on the file of the District Munsif Court, Keeranor, Pudukkottai District for the relief of permanent injunction.

3. According to the revision petitioners/plaintiffs, the suit properties belong to the 1st respondent's father and the 2nd respondent's husband late Raman Mattayar. The said Raman Mattayar obtained a loan of Rs.89,844/- on 23.11.1993 from the 3rd petitioner and the father of the petitioners 1 and 2 namely late Subramanian to repay the loan as well as to meet out the family expanses and executed a Othi varathamam letter to the 1st and 2nd petitioner's father and wife of the 3rd petitioner. The said Othi was not cleared within the period of 6 years by the said late Raman Mattayar. Therefore, in



addition to amount already taken, he received a sum of Rs.27,000/- and gave a oral sale of the suit properties to the 3rd petitioner's husband in the presence of witnesses. For the past 29 years, the suit properties are in possession and enjoyment of the petitioners/plaintiffs.

4. While so, the respondents/defendants were trying to alienate the suit property and therefore, on 28.12.2017, the petitioners issued a legal notice, for which, a reply notice was sent on 12.05.2018. Since the respondents/defendants were trying to trespass into the suit properties, the petitioners filed a suit in which an ex parte order was passed . Thereafter, the petitioners filed an application to set aside the ex parte order and the case was posted for trial. At that time of examination of P.W-1, when the above mentioned documents were about to be marked, the same were rejected by the trial Court. As per the catena of the decisions of Hon'ble Supreme Court, the trial Court ought to have admitted the above documents as oral evidence on the side of the plaintiffs. Aggrieved by this, the petitioners have preferred the present revision petition.

5. The learned Counsel appearing for the revision petitioners would



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contend that since the trial Court did not grant permission to mark the unregistered lease deed dated 23.11.1993 and unregistered sale deed 18.12.1999 as exhibits filed by the petitioners, the same is against the principles of natural justice. He would further contend that the trial Court failed to consider the judgment of the Hon'ble supreme Court in ***Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others*** ***[Civil Appeal No.8441 of 2015 Dated 08.10.2015]***. The petitioners/plaintiffs have intended to mark the above documents only to prove their bona fide case. The trial Court failed to consider the above documents which would affect the rights of the petitioners. The petitioners rely on the above documents only to prove their possession over the property and the same are ought to be admitted in evidence under the third proviso to Section 49 of the Registration Act, as it has been held by the Hon'ble Supreme Court that the unregistered sale deed, even though not admissible in evidence can be looked into for collateral purpose.

6. On the other hand, the learned counsel appearing for the respondents would submit that the unregistered lease deed and unregistered sale deed cannot be admitted in evidence since the very claim of the



petitioners/plaintiffs is based on them. Even for collateral purpose, the unregistered lease deed and unregistered sale deed cannot be admitted. Hence, the trial Court has rightly declined to grant permission to the petitioners for marking the above documents as evidence on the side of the revision petitioners/plaintiffs.

7. Heard learned counsel on both sides and perused the materials on record.

8. The contention of the petitioners herein is that the unregistered lease deed dated 23.11.1993 and unregistered sale deed 18.12.1999 can be admitted in evidence for collateral purpose as provided under second proviso to Section 49 of the Registration Act, in order to prove the possession and enjoyment in the suit property by the petitioners / plaintiffs. It is well settled law that if any transaction requires to be registered in order to give effect to the same, the said documents cannot be relied upon to prove the transaction. However, an unregistered sale deed can be admitted in evidence for the purpose of proving the possession in a suit for perpetual injunction, restraining the defendants from interfering with the possession of



the plaintiff.

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9. The petitioners/plaintiffs have filed the suit in O.S.No.39 of 2018 for perpetual injunction restraining the defendants from interfering with the possession of the plaintiffs and restraining them from alienating the suit properties. Hence, the petitioners/plaintiffs intend to mark the above documents only for the purpose of proving their possession in the suit properties and they have not made any claim based on the above unregistered documents. It is a suit against the respondents for injunction simplicitor and it is not out of place to mention that the suit is not for declaration of title. The last clause of the proviso to Section 49 of the Registration Act, expressly states that the unregistered documents may be admitted as evidence of any collateral transaction not required to be effected by registered instrument. In this case, the petitioners have not sought for declaration of their right and title over the suit property based on the unregistered documents. The relief sought for by them in the suit is injunction simplicitor. They intend to mark the unregistered documents for collateral purpose i.e., to prove their possession over the suit properties.



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10. As the suit filed by the petitioners/ plaintiffs is injunction simplicitor and the unregistered documents sought to be relied on is only to prove their possession over the property, they can be admitted as evidence under the third proviso to Section 49 of the Registration Act.

11. In the result, the Civil Revision Petition is allowed with costs by setting aside the order dated 06.04.2023 passed by the trial Court in I.A.No.2 of 2022 in O.A.No.39 of 2018 on the file the District Munsif Court, Keeranor, Pudukkottai District. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2023

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No



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K.GOVINDARAJAN THILAKAVADI,J.

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Copy to

The District Munsif Court, Keeranor.

Order made in

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and

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