



CRP No.1614 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.1614 of 2023

E.Muthu

... Petitioner

Vs.

E.Ega

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree in IA No.1 of 2022 in OS No.150 of 2015 dated 28.09.2022 passed by the learned Additional District Munsif, Poonamallee.

For Petitioner : Mr.I.Arockia Selvaraj

For Respondent : Mr.Manoj Sreevalgan



CRP No.1614 of 2023

WEB COPY

ORDER

The civil revision petition is filed to set aside the order and decree in IA No.1 of 2022 in OS No.150 of 2015 dated 28.09.2022 passed by the learned Additional District Munsif, Poonamallee.

2.The petitioner is the plaintiff and the respondent is the defendant in OS No.150 of 2015 on the file of the Additional District Munsif, Poonamallee. The petitioner/plaintiff has filed the suit for permanent injunction against the respondent/defendant. The defendant in the said suit has filed a written statement and contended that he had purchased the property from the petitioner's mother on 29.05.1983. During the examination, defendant has filed the alleged sale deed dated 29.05.1983. The said document is not executed and not written in a stamp paper. It is written in a white paper. It is an unregistered and unstamped sale deed. The said document is marked by the trial court as Ex.B2 on the ground that it is for collateral purpose since the defendant has claimed title over the property



CRP No.1614 of 2023

WEB COPY

and defending the suit against the petitioner/plaintiff. According to the petitioner the said document is inadmissible. Therefore, the petitioner has filed an application in IA No.1 of 2022 to reject Ex.B2 as per the provisions of Section 17 and 49 of Registration Act and Section 35 of Indian Stamp Act. The trial court, by order dated 28.09.2022 had dismissed the said application. Challenging the said dismissal order passed by the trial court, the petitioner has filed the present civil revision petition.

3. Learned counsel for the petitioner submits that the alleged sale deed dated 29.05.1983 marked as Ex.B2 by the trial court is an unstamped and unregistered document. Therefore, he seeks to set aside the order of the trial court passed in IA No.1 of 2022 in OS No.150 of 2015.

4. Learned counsel for the respondent contended that the documents are admissible for collateral purpose. To support his argument, he relied upon the judgment of the Hon'ble Supreme Court in the case of ***S.Kaladevi vs V.R.Somasundaram and Ors. reported in MANU/SC/0246/2010= AIR***



CRP No.1614 of 2023

WEB COPY

2010 SC 1654. Learned counsel for the respondent further contended that though the document is an unregistered sale deed while tendering as a document, it can be received as an evidence and it can be admitted for collateral purpose. Therefore, there is no ground to allow the civil revision petition. Hence, he seeks for the dismissal of the civil revision petition.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. On a perusal of the impugned order, it is noticed that the learned Judge has held that Ex.B2 shall be admissible as evidence only after stamp duty penalty is paid and dismissed the said application filed by the petitioner. It is not disputed that Ex.B2, the alleged sale deed dated 29.05.1983 is written on a white paper. It is also not disputed that it is an unstamped and unregistered sale deed.

7. Section 49 of the Registration Act, 1908 speaks about the effect of non-registration of documents, which are required to be registered. It runs



CRP No.1614 of 2023

as follows:

WEB COPY

"No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been 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. "

8. In view of the above Section, it is very clear that any unregistered document affecting any immovable property and transferring the title over the property is not valid unless it has been registered. In the judgment relied upon by the learned counsel for the respondent, the plaintiff therein had filed the suit for specific performance in pursuance of an oral agreement of



CRP No.1614 of 2023

WEB COPY

sale and also given possession of suit property and executed a sale deed, which was not registered. In that case, being a suit for specific performance, to show the nature of the possession, the plaintiff therein was permitted to let evidence for the collateral transactions since it is not required to be effected by the registered instrument. Therefore, the Hon'ble Supreme Court had allowed to admit in evidence the unregistered sale deed to show the collateral purpose of the transaction between the parties. But in the instant case, the plaintiff has filed the suit for injunction against the defendant on the ground that the defendant is not the owner of the property. On the other hand, the suit is defended by the defendant stating that he has purchased the property from the petitioner/plaintiff's mother by way of a sale deed dated 29.05.1983. Thus, he asserted ownership over the plaint schedule properties. For assertion of ownership, he relied upon the unstamped and unregistered sale deed dated 29.05.1993, which could not be called for a collateral purpose. It being an assertion of ownership and title over the property, the document has to be a registered one as required under Section 17 of the Registration Act since it affects the immovable property.



CRP No.1614 of 2023

WEB COPY

Therefore, the judgment cited by the learned counsel for the respondent is not helpful to support the case of the respondent. Ex. B2, being the alleged sale deed, was written on a white paper, unstamped and unregistered. While so, the Trial Court marking such a document as Ex.B2 for collateral purpose is unsustainable. Therefore, the order passed by the trial court in IA No.1 of 2022 dated 28.09.2022 is hereby set aside. Consequently, Ex.B2 is rejected from evidence. The civil revision petition is allowed. Liberty is given to the defendant to let other evidences to prove his title over the suit schedule property. Consequently, CMP No.10496 of 2023 is closed.

21.02.2024

Index: Yes/No
Internet: Yes/No

mrn



CRP No.1614 of 2023

To

The Additional District Munsif, Poonamallee.



WEB COPY



CRP No.1614 of 2023

V.SIVAGNANAM, J.

(mrn)

CRP No.1614 of 2024

21.02.2024