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C.R.P.No.1646 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P.No.1646 of 2020

and

C.M.P.No.10144 of 2020

Dr.Nandhini

... Petitioner

Versus

1.A.Latheef

2.Mrs.Madhura Palaniswamy

3.U.Sundar Rajan

4. Vasantha Lakshmi

..Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the order and decreetal order made in I.A.No.441 of 2018 in O.S.No.98 of 2018 dated 24.09.2019 on the file of the Additional District Judge, Kancheepuram District at Chengalpet.

For Petitioner :Mr.V.Chandraprabu

For Respondent 1 :Mr.S.R.Chandrasudan

For respondent 2 to 4 : Served



C.R.P.No.1646 of 2019

ORDER

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The Civil Revision Petition has been filed against the order dated 24.09.2019 in I.A.No.441 of 2018 in OS.No.98 of 2018 on the file of the Additional District Judge, Kancheepuram District @ Chengalpet.

2. The petitioner herein is the first defendant and the first respondent herein is the plaintiff and the respondent Nos.2 to 4 are the defendant Nos.2 to 4 in the suit in OS.No.98 of 2018. The suit is filed for the relief of specific performance, declaration and for permanent injunction. The petitioner/first defendant filed a petition in I.A.No.441 of 2018 seeking to reject the plaint filed by the first respondent/plaintiff. After elaborate hearing, the Trial Court dismissed the said petition holding that no valid reasons and merits to reject the plaint in the light of the guidelines laid down by the Apex Court and High Courts. While dismissing the petition, the Trial Court observed that the issues raised in the petition could not be decided at this juncture and they could be answered only after considering and conducting detailed trial based on the material facts and records and other related issues. Aggrieved by the order of the Trial Court in dismissing the petition filed under Order VII Rule 11(a)(d)



of CPC to reject the plaint filed by the plaintiff, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submits that the proviso to Section 49 of the Registration Act can be pressed into service only in cases where the unregistered agreement affects immovable property. In the case on hand, the sale agreement is an unregistered document, therefore, by virtue of the amended Section 17 of the Registration Act, the unregistered agreement will not affect the immovable property covered by it. Therefore, provision of Section 49 cannot be pressed into service in the present case. To substantiate the arguments, the learned counsel for the petitioner has placed reliance on the decisions of the Apex Court in ***Yellapu Uma Maheswari and Others vs. Buddha Jagadheeswararao*** and others reported in MANU/SC1141/2015 and ***J.K.Industries Ltd. And others vs. Chief Inspector of Factories and Boilers*** and others reported in 1996 6 SCC 665.

4. The learned counsel for the petitioner submits that the Court below



has dismissed the petition filed by the petitioner relying on the decision of the Apex Court in ***R.Hemalatha vs. Kasthuri*** reported in 2023 3 MLJ 178 SC and contends that in fact in the said judgment, the Apex Court has not considered the issue of what happens when there is a conflict between the proviso and the main proviso. On this point, he relied upon the judgment in ***J.K.Industries Ltd. and others***, wherein the Hon'ble Apex Court at paragraph 34 and 35 has held as under:

“34. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of addition to the main provision which is foreign to the main provision itself.

35. Indeed, in some cases, a proviso, may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision and if it is so, it would be ultra-vires of the main provision and struck down. As a general rule in construing an enactment containing a proviso, it is proper to construe the



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C.R.P.No.1646 of 2020

provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justify its necessity.”

5. The learned counsel further contends that the proviso may be an exception to the main provision, though it cannot be inconsistent with what is expressed in the main provision and if it is so, it would be *ultra vires* of the main provision. In the light of the judgment in ***J.K.Industries Ltd. and others***, the present proviso to Section 49 is in direct conflict with Section 17(1)(8) of the Registration Act, which makes the agreement of sale for immovable property as a compulsory instrument.

6. On the other hand, the learned counsel for the first respondent/plaintiff submits that the proviso of Section 49 is called out for exception to Section 17 of the Registration Act. Therefore, the agreement of sale is relied upon insofar as the suit for specific performance.

7. The learned counsel for the respondent contends that the Trial Court



has considered the issue in proper perspective and rightly dismissed the petition filed for rejection of the plaint by following the decision in ***R.Hemalatha vs. Kasthuri*** and as such no interference is required into the order passed by the Trial Court in the present Revision Petition and sought to dismiss the revision petition.

8. Having heard the submissions of the respective counsels and upon careful examination of the materials available on record, at this juncture in my opinion it is necessary to look into Section 17 and 49 of the Registration Act, which is extracted hereunder:

9. The amendment introduced in Section 17 reads as follows:-

17. Documents of which registration is compulsory.....(1-A) “The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such



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C.R.P.No.1646 of 2020

documents are not registered on or after such commencement, then, they shall have no effect for the purpose of the said Section 53-A”.

10. Section 49 of Registration Act reads as follows:-

“49. Effect of non-registration of documents required to be registered- *No document required by section 17 (or by any provision of the Transfer of Property Act, 1882 (IV 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 (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”.



11. A combined reading of Section 17(1A) and Section 49 of Registration Act would make it clear that Section 17(1A) of Registration Act imposed embargo on the Courts from receiving unregistered agreement in evidence only for the purpose of Section 53-A of Transfer of Property Act, 1882. Therefore, unregistered sale agreement cannot be used in evidence to press the relief under doctrine of part performance. However, by virtue of proviso to Section 49, unregistered sale agreement can be received in evidence in a suit for specific performance. In fact the said proposition of law was clarified by a Division Bench of this Court in ***K.Manoharan vs. T.Janaki Ammal*** reported in 2012 3 CTC 205.

12. This Court has gone through the judgments relied on by the learned counsel for the petitioner. This Court is having great respect towards the proposition of law laid down in those judgments. Those judgments are not applicable to the facts and circumstances of the present case. The judgment of the Hon'ble Apex Court relied on by the learned counsel for the first respondent in ***R.Hemalatha Vs Kashthuri*** is clearly applicable to the facts of the present case. By following same, a learned Single Judge of this Court



C.R.P.No.1646 of 2024

dismissed C.R.P.No.29 of 2024 by order dated 24.01.2024 wherein an identical issue arose. In the light of these two orders, this Court did not find any illegality or infirmity in the order passed by the Court below.

13. Accordingly, the Civil Revision Petition is dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.

10.07.2024

Index:Yes/No.

Internet:Yes/No.

pvs

To

The Additional District Judge,
Kancheepuram District,
Chengalpet.



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BATTU DEVANAND J.,

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