



O.S.A.No.274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

O.S.A.No.274 of 2022

A.Harikrishnan .. Appellant

v.

G.Samidurai .. Respondent

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the judgment and decree of the learned single Judge dated 22.04.2022 passed in Application No.1801 of 2022 in C.S.No.377 of 2021 on the file of this Court.

For Appellant :: Mr.R.R.Mohanaraja

For Respondent :: Mr.T.K.Kulasekaran
for M/s A.Sumathi



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JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR,J.)

This original side appeal is directed against the order of the learned single Judge dated 22.04.2022 in Application No.1801 of 2022 in C.S.No.377 of 2021, dismissing the application filed by the appellant, who is the fourth defendant in the suit under Order VII, Rule 11(a) and (d) to reject the plaint.

2. Brief facts that are necessary for the disposal of this appeal are as follows:-

(i) The fourth defendant in the suit in C.S.No.377 of 2021 is the appellant in this appeal. The appellant herein earlier filed a suit in C.S.No.116 of 2017 for the following reliefs:-

(a) to order the defendants 1 to 3 therein to perform their part of the contract by accepting the remaining payment and conveying the suit property to the plaintiff by executing a sale deed;

(b) to grant permanent injunction restraining the defendants 1 and 3 from alienating the suit property or creating any encumbrance



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in respect of suit property in favour of any third party;

(c) to order the settlement deed in Document No.2732 of 2016 dated 27.10.2016 as null and void and for costs.

It is stated that by order dated 10.04.2017 in O.A.No.168 of 2017 in C.S.No.116 of 2017, the learned single Judge granted an order of interim injunction initially for a period of four weeks, which was extended subsequently to be in force until further orders vide order dated 25.10.2018. The said suit was later transferred to the file of IV Additional City Civil Court and re-numbered as O.S.No.2384 of 2020 for want of pecuniary jurisdiction and the same is pending.

(ii) During the pendency of the said suit, the respondent herein filed a suit in C.S.No.377 of 2021 before this Court against the defendants therein including the appellant herein seeking the following reliefs:-

(a) declaration declaring the agreement of sale dated 05.09.2014, registered as Document No.2297 of 2014 in the office of the Sub-Registrar, Adyar, Chennai executed by the 3rd defendant as power of attorney of the 2nd defendant in favour of the 4th defendant in respect of the plaint mentioned property as null and void and not binding on the plaintiff.

(b) to order directing the 1st defendant to perform her part of the



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contract of the agreement of sale dated 27.10.2016 entered between the plaintiff and the 1st defendant by clearing the encumbrances and to register the sale deed in the name of the plaintiff or his nominees by accepting the remaining payment of Rs.93,75,000/- and conveying the plaintiff mentioned property and in default the Hon'ble Court to register on behalf of the 1st defendant.

(c) to grant a permanent injunction restraining the defendants 1 to 4 from creating any encumbrances in respect of the suit property including any alienation in favour of any third party.

(d) for costs of the suit.

The appellant, the fourth defendant in C.S.No.377 of 2021 filed an application in A.No.1801 of 2022 under Order VII, Rule 11 of Civil Procedure Code to reject the plaint in C.S.No.377 of 2021. The learned single Judge has dismissed the said application by order dated 22.04.2022. Hence the appellant has preferred this appeal.

3. This Court, while admitting the appeal, prima facie found that the unregistered sale agreement which is the subject matter of the suit is inadmissible and hence granted interim stay of further proceedings of the suit in C.S.No.377 of 2021, by order dated 14.10.2022. Today the matter is



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posted for final hearing.

4. Heard both sides.

5. This Court finds that the suit in C.S.No.377 of 2021 filed by the respondent is on the basis of an unregistered agreement dated 27.10.2016 and the whole transaction is recorded in a single page with the signatures of 1st defendant and two others. Moreover, as observed by this Court earlier while granting the interim order in this appeal, the plaintiff and defendants 1 to 3 are sailing together against the appellant and the suit may be collusive one. However, the question is about the maintainability of the suit. The learned counsel appearing for the respondent has produced a judgment of the Hon'ble Supreme Court in the case of *R.Hemalatha v. Kashthuri*, 2023 *LiveLaw (SC)* 304 for the proposition that an unregistered agreement of sale is admissible in evidence in a suit for specific performance to prove agreement, holding that the proviso is an exception to the first part of Section 49 of the Registration Act. Considering the fact that the



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appellant/fourth defendant has already filed the written statement in the suit in C.S.No.377 of 2021, leaving it open to the appellant to raise all the contentions that are available to him including the defence questioning the genuineness of the sale agreement dated 27.10.2016, which is the subject matter of the above suit, this appeal is dismissed. Further, this Court is inclined to direct the learned single Judge to dispose of the suit one way or the other, preferably within a period six months, after the commencement of trial, on merits and in accordance with law. Consequently, C.M.P.No.17737 of 2022 is closed. No costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (K.R.S.,J.)
28.08.2024

SS

To

The Sub Assistant Registrar (O.S.)
High Court, Madras



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S.S.SUNDAR, J.
AND
K.RAJASEKAR, J.

SS

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