



C.R.P.No.3530 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3530 of 2019

Shanthi

... Petitioner

-Vs-

1.D.Lakshmi

2.P.Selvi

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 05.03.2019 in I.A.No.13971 of 2018 in O.S.No.6207 of 2012 passed by the Hon'ble IV Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.Kumar
For Respondents : Mr.S.Arivalagan - for R1
R2 - Dismissed vide court order
dated 02.08.2023

ORDER

This Civil Revision Petition arises against the order passed by the learned IV Additional Judge, City Civil Court, Chennai in I.A.No.13971 of 2018 in O.S.No.6207 of 2012 dated 05.03.2019.

2. O.S.No.6207 of 2012 is a suit for specific performance of alleged agreements of sale dated 23.12.2009 and 12.05.2010. The plaintiff pleaded that, after having entered into the agreement, the first defendant, who is the owner of



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the property had alienated the property in favour of the second defendant by way of a registered document in Doc.No.964 of 2012 on the file of the Sub Registrar Office, Anna Nagar. Therefore, she sought for a declaration that the said document is null and void. In the alternative, the plaintiff also pleaded for a direction to the first defendant to return the advance amount of Rs.10,50,000/- together with interest at the rate of 24% per annum. The defendant entered appearance and she filed a detailed written statement. Thereafter, the parties were pushed for trial.

3. The plaintiff examined herself and marked Exs.P1 to P17. Ex.P1 is the sale agreement dated 23.12.2009 and Ex.P17 is the agreement dated 12.05.2010. At the time of marking of the said documents, there was no objection on the part of the first defendant that the documents are unstamped and require stamp duty. Consequently, the said documents were received and exhibited as aforesaid.

4. Thereafter, the first defendant took out an application in I.A.No.13971 of 2018 seeking for a direction under Order XIII Rule 8 of Civil Procedure Code to impound the agreements dated 23.12.2009 and 12.05.2010. The ground on which she wanted the documents to be impounded was that, after the enactment of Section 17(1A) of the Registration Act, an unregistered agreement cannot be received in evidence. This application was resisted by the plaintiff by filing a detailed counter. The learned trial Judge, after analyzing the petition came to the conclusion that the petition does not deserve consideration and dismissed the said



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petition. Hence, the present revision.

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5. I heard Mr.A.Kumar for the civil revision petitioner and Mr.S.Arivalagan for the respondents.

6. Mr.Kumar, drawing my attention to the amendment under Section 17(1A) of the Registration Act, argues that as the agreements are unregistered, they cannot be received in evidence. He urges that on account of his personal inconvenience, he could not be present in Court on the date on which the documents were marked and the plaintiff had marked the documents in his absence. He pleads that the order of the trial Judge is erroneous and requires to be revised. He further contends that between the date on which order was passed in I.A.No.13971 of 2018 and before a stay was granted by this Court on 06.11.2019, the learned Judge has closed the evidence of the plaintiff and posted it for the evidence of the defendants.

7. Per contra, Mr.Arivalagan invites my attention to Section 17(1A) of the Registration Act and points out that only if a party seeks for part performance under Section 53A of the Transfer of Property Act, he is not entitled to rely upon an unregistered document. In case the plaintiff seeks for a mere specific performance of the contract of sale, then Mr.Arivalagan urges that he is entitled to introduce the documents in terms of proviso to Section 49 of the Registration Act.



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8. I have carefully considered the submissions made by both sides and have perused the materials placed on record.

9. The power to impound a document is given under Section 33 of the Indian Stamp Act. Under the said provision, if during the course of evidence, a Court or Tribunal or an authority empowered to record evidence comes across a document which bears insufficient stamp duty, it is the duty of the Court or Tribunal or authority recording evidence, to impound the document and send it to the Collector for proceeding under Section 40 of the Indian Stamp Act.

10. The agreement is on a Rs.20/- stamp paper. Therefore, it is not a case where the document is unstamped and thereby invites the wrath of Section 35. Even if I were to treat the agreement as under valued, since the plaintiff has been permitted to exhibit the documents as Exs.A1 and A17, as they were exhibited by virtue of Section 36 of the Indian Stamp Act, he is not entitled to re-agitate the issue before the Court all over again. As pointed out by the Supreme Court in **Javer Chand -Vs- Pukhraj Surana (1962) 2 SCR 333** even if a document has been received and exhibited in error, still Section 36 operates and therefore, it is not open to the adversary party to seek for "unmarking" of the exhibit. I should add here that there is no provision in the Civil Procedure Code enabling the Court to unmark a document under Order XXIII Rule 3 (See **Banganga Co-operative**



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Housing Society -Vs. Vasanti Gajanan Nerurkar (2015) 5 Bom CR 813].

The Court may reject a document, which it considers as irrelevant or inadmissible, but there is no provision to unmark a document which has already been exhibited. As Section 36 of the Indian Stamp Act applies, there is no necessity to impound the documents.

11. Nonetheless, since Mr.Kumar has urged that Section 17(1A) of the Indian Registration Act is applicable to the facts of the case, I have to deal with the said issue. In terms of Section 17(1A), an agreement of sale, which **parts with possession** of a property to the agreement holder, requires compulsory registration. In case a party parts with possession under a document and the same is unregistered, then the party seeking benefit under the agreement cannot rely upon the document for the purpose of part performance of the contract under Section 53A of the Transfer of Property Act. Section 17(1A) does not prohibit the receipt of the document in a suit for specific performance. All that it bars is for a party to claim the benefit as pointed out above. In any event, in terms of proviso to Section 49 of the Registration Act, an unregistered agreement of sale can be received in evidence in a suit for specific performance. This is clear from a combined reading of Section 17(1A) and Section 49 of the Registration Act (See **R.Hemalatha -vs- Kasthuri [2023] SCC Online SC 381**). That being the position, I find absolutely no merits in the revision. It requires only one order to be passed and that is an order of dismissal. The Civil Revision Petition is dismissed.



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12. At this stage, I have to consider the plea of Mr.A.Kumar on account of the fact that he was pursuing this revision and before an interim order of stay could be passed, the learned Trial Judge has closed the evidence on the plaintiff's side. In a suit for specific performance, it is essential that the plaintiff be cross examined by the defendant. I put it to Mr.Arivalagan that the defendant be given a chance to cross examine the plaintiff. Mr.Arivalagan fairly and readily agreed to the same. By consent, the plaintiff shall appear before the Court on **10.12.2024** and the first defendant shall cross examine the plaintiff on that date without fail. In case the learned Judge, during the course of trial, gets an impression that either party is trying to prolong the litigation, he shall ensure that the matter is proceed without any impendence. The suit has been pending for more than 12 years. Therefore, the learned Judge is required to give all necessary attention to the suit and dispose it off as expeditiously as possible.

20.11.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The IV Additional Judge
City Civil Court, Chennai.



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V. LAKSHMINARAYANAN, J.

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