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C.R.P.(PD)No.4305 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.(PD).No.4305 of 2022

and

C.M.P.No.22626 of 2022

V. Ramesh

... Petitioner/plaintiff

vs.

V. Nagaraj

... Respondent/defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.11.2022 in I.A.No.2 of 2022 in O.S.No.103 of 2018 on the file of the Principal District Munsif's Court, Kanchipuram.

For Petitioner : Mr. A. E. Ravichandran

For Respondent : Mr. S. L. Sudarsanan

ORDER

This Civil Revision Petition has been preferred as against the order passed in I.A.No.2 of 2022 in O.S.No.103 of 2018 on the file of the Principal District Munsif's Court, Kanchipuram, wherein, the respondent herein has filed a petition before the Trial Court, to reject the unregistered Sale deed, dated 08.02.1999 and the same was allowed.



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2. Aggrieved by the said order, the respondent therein has preferred this Civil Revision Petition.

3. The brief facts of the petition filed by the petitioner before the Trial Court are as follows:

The petitioner is the defendant in the suit and the main suit was filed by the respondent who is brother of the petitioner for relief of permanent injunction. The petitioner/defendant filed written statement on 22.10.2018. The respondent/plaintiff, along with the plaint has filed two documents as Document Nos.3 and 4, dated 11.09.1998, the Cancellation of Mortgage deed and unregistered Sale deed, dated 08.02.1999. The above said documents are inadmissible in the eye of law. At the time of trial, the respondent/plaintiff wanted to mark the said unregistered Sale deed and the same was objected, since it was unregistered document. The said document cannot be looked into for collateral purpose. Therefore, he filed a petition under order XIII Rule 3 of C.P.C for rejection of inadmissible document.

4. The gist of counter filed by the respondent are as follows:



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The respondent being the plaintiff has filed a suit for relief of permanent Injunction and he is the owner of the suit property in pursuance of the registered Sale deed, dated 11.04.1990. Out of income of the respondent/plaintiff, the suit property was purchased by him for valuable consideration. But on instigation of his parents, the petitioner/defendant's name was added because, he was minor at that time. The respondent/plaintiff only discharged the mortgage loan for purchase of property. While so, in the year 1999, the mother of the petitioner and the respondent, namely, Thulasiammal has sold the minor defendant's half share of property to this respondent/plaintiff for valuable consideration through unregistered Sale deed. Eventhough entire consideration was paid by the respondent/plaintiff, but the said Thulasiammal, evading registration by one and then pretext. Bonafide believe words of the mother Thulasiammal, this respondent has not insisting immediate registration of Sale deed. In pursuance of the Sale deed, this respondent/plaintiff becomes absolute owner of the suit property and enjoying absolutely. The said unregistered Sale deed was produced as document before the Trial Court and the petitioner/defendant had raised objection for marking of unregistered document. The respondent/plaintiff did not seek relief of declaration in pursuance of the unregistered Sale deed and the said document is only to show



his absolute possession of the property. It is pertinent to note that at the time of numbering the suit itself, the Trial Court has directed to pay the stamp duty, penalty in respect of unregistered Sale deed and this respondent/plaintiff has also paid the stamp duty, penalty as per the directions of the Court. Therefore, the said document can be received for collateral purpose as per the Proviso of Section 49 of the Registration Act. Therefore, the petition is liable to be dismissed.

5. Before the Trial Court, no oral or documentary evidence adduced on both sides. After hearing both sides, the Trial Court has allowed the petition and rejected the documents.

6. Aggrieved by the said order, the respondent/plaintiff has filed the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner would contend that the petitioner being the plaintiff has filed the suit as against the respondent for the relief of permanent injunction in respect of the suit property. The suit property was purchased by the petitioner/plaintiff through Sale deed, dated



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11.04.1990. At the time of purchase of property, the respondent/defendant who was minor at that time was also included in the Sale deed and thereafter, in the year 1999, the mother of the respondent/defendant namely Thulasiammal had sold the minor's half share property through unregistered Sale deed. After executing the Sale deed, the mother of the petitioner and the respondent has evaded to register the Sale deed, however, the petitioner is in possession and enjoyment of the property. Therefore, the said document of unregistered Sale deed, dated 08.02.1999, though the unregistered Sale deed cannot be received as evidence, it can be received as evidence for collateral purpose, which is for proving possession of property. But the Trial Court has failed to consider the same and erroneously allowed the petition filed by the petitioner and held that the unregistered Sale deed, dated 08.02.1999, cannot be marked as exhibit.

8. To support his contention, the learned counsel for the petitioner relied on the Judgments in

(i) ***Sita Ram Bhama vs. Ramvatar Bhama*** reported in **2018 (15) SCC 130**.

(ii) ***Bipin Shantilal Panchal vs. State of Gujarat and Another*** reported in **2001 (3) SCC 1**.



(iii) ***K.Kasinathan and Another vs. N.Umasankar*** reported in **2020**

(1) CTC 246.

(iv) ***S.Kaladevi vs. V.R.Somasundaram and Others*** reported in **2010**

(5) SCC 401.

(v) ***Arulsigamani and Another vs. S.Vaiguntha Rajan and Another*** reported in **2000 (1) CTC 12** and

(vi) ***In Re: Interplay between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*** in ***Civil Appeal No.1599 of 2020*** before the Hon'ble Supreme Court.

9. The learned counsel appearing for the respondent/defendant would contend that the petitioner/plaintiff has filed a suit before the Trial Court for relief of permanent injunction as against the respondent/defendant for the relief of permanent injunction and that the petitioner and the respondent are blood brothers. The petitioner herein has filed two documents as Document Nos.3 and 4 which are unregistered Mortgage Cancellation Deed and unregistered Sale deed.

9.1. In the written statement, the respondent/defendant has clearly



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denied that there was no such documents and those documents were created and forged and thereby they are inadmissible in evidence. At the time of commencing of trial, the petitioner/plaintiff wanted to mark the unregistered Sale deed but the respondent/defendant has objected the same since it was unregistered and the same is compulsorily registered under Section 17 of the Registration Act. Therefore, the respondent/defendant has filed a petition under Order XIII Rule 3 of C.P.C to reject the inadmissible document and the Trial Court has correctly allowed the petition by holding that since the unregistered Sale deed had not been registered, it cannot be permitted to mark as exhibit. Therefore, the said documents cannot be looked into even for collateral purpose. The non-registration of compulsorily registered document is incurable. Though the petitioner/plaintiff has paid the Stamp duty, penalty, the non-registration cannot be cured and the said document cannot be looked into for any purpose and the Trial Court has correctly allowed the petition. Therefore, the present Civil Revision Petition is liable to be dismissed.

9.2. To support his contention, the learned counsel for the respondent relied on the Judgments in

(i) ***Thangamuthu and Others vs. A.Jeyaraj*** reported in **2020 (1)**



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CTC 47.

(ii) *Rajamanickam and 3 others vs. Elangovan and 4 others* reported in **1996 (1) CTC 541.**

(iii) *Ruckmangathan vs. Ramalingam* reported in **1997 (2) CTC 595.**

10. This Court heard both sides and perused the records.

11. In this case, the petitioner has filed the Civil Revision Petition as against the rejection of unregistered Sale deed, dated 08.02.1999, which was produced by the petitioner as document before the Trial Court.

12. According to the petitioner, he is the owner of the suit property and originally the suit property was purchased through Sale deed, dated 11.04.1990 in the name of the petitioner/plaintiff and his brother/respondent/defendant. Thereafter, the petitioner/plaintiff had purchased the property from the respondent/defendant through guardian mother under unregistered Sale deed, dated 08.02.1999. The said document was produced as exhibit before the Trial Court. At the time of trial, the petitioner/plaintiff therein attempted to mark the



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document and the same was objected by the respondent/defendant and thereafter, the respondent/defendant filed a petition in I.A.No.2 of 2022 and the Trial Court allowed the petition by holding that the unregistered Sale deed, dated 08.02.1999 cannot be marked as document.

13. According to the petitioner, though the Sale deed, dated 08.02.1999 was an unregistered one, the suit is only filed for relief of permanent injunction and not for declaration in respect of the title over the suit property, thereby, the said unregistered Sale deed can be received for collateral purpose to prove the possession. The said document can be looked into for collateral purpose as per Proviso of Section 49 of the Registration Act. In this context, the learned counsel appearing for the petitioner has produced the Apex Court Judgment in ***Sita Ram Bhama vs. Ramvatar Bhama*** reported in **2018 (15) SCC 130** has held in paragraph No.14 is as follows:

*“14.After holding the said documents as inadmissible, this Court in **Yellapu Uma Maheswari** case further proceeded to consider the question as to whether the documents B-21 and B-22 can be used for any collateral purpose. In the above context, the Court accepted the submission of the appellant that the documents can be looked into for collateral purpose provided the appellant-defendant to pay the stamp duty together with penalty and get the document impounded. In paras 16 and 17, the following has been laid down*



(SCC p.794)

“16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in **Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy** has held that the whole process of partition contemplates three phrases i.e., severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e., severancy of title, nature of possession of various shares but not for the primary purpose i.e., division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial Court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the Civil Appeal is party allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy.””

14. In **Bipin Shantilal Panchal vs. State of Gujarat and Another** reported in 2001 (3) SCC 1 has held in paragraph No.14 is as follows:

“14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected



document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)”

15. In ***K.Kasinathan and Another vs. N.Umasankar*** reported in **2020**

(1) ***CTC 246*** has held in paragraph No.21 is as follows:

“21.Even the defendant in his oral evidence has admitted that the revenue records stand in the name of the Dhandapani. He would further admit that all the revenue records produced by him are subsequent to the suit. The above evidence would show that the plaintiff's and their predecessor Dhandapani are in continuous possession and enjoyment of the property right from the date of Exhibit A1 namely 8-8-1966 and that they have perfected title by adverse possession. No doubt the learned appellate Judge has disbelieved Exhibit A1 on the ground that there has been some correction in the name of the person in whose name the stamp paper was purchased. I have already extracted the admission of Visalakshi wife of Kunjan as DW2 wherein she had admitted the execution of Exhibit A1 by her husband. Exhibit A1 is also more than 30 years old and has been produced from proper custody. Hence it is entitled to the presumption available under Section 90 of the Evidence Act. The so-called discrepancy pointed out by the lower



appellate court would not have the effect of invalidating Exhibit A1 as evidence of possession. For the foregoing reasons the additional question of law number 1 is answered in favour of the appellants concluding that the plaintiffs have perfected title to the suit property by adverse possession.”

16. In ***S.Kaladevi vs. V.R.Somasundaram and Others*** reported in **2010**

(5) **SCC 401** has held in paragraph No.12 is as follows:

“12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in the suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.”



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17. In *Arulsigamani and Another vs. S.Vaiguntha Rajan and Another* reported in **2000 (1) CTC 12** has held in paragraph Nos.18 and 19 are as follows:

“18. In Naladhar Mahapatra vs. Seva Dibya, AIR 1991 Ori. 166, in para 24, it is held thus,

“....once a document is admitted into evidence, without objection the documents cannot be challenged subsequent stage, but in a case a document which cannot be admitted into evidence due to some prohibition in law, even if it is admitted evidence without objection, the Court can come to a finding that the document though admitted is inadmissible.”

19. From the above decisions it is clear that a document though marked without objection is against any provisions of law, party is not later precluded from contending that the evidence will have to be eschewed from the case.”

18. In *Re: Interplay between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* in *Civil Appeal No.1599 of 2020* has held in paragraph No.258 is as follows:

“258. Avinash Kumar Chauhan v. Vijay Krishna Mishra expounds the meaning of the words 'for any purpose' used in Section 35 of the Stamp Act. These words are to be given natural meaning and effect. They would include collateral purpose, as was held in the decision of the privy Council in Ram Rattan v. Parma Nand. Distinction



was drawn between non-effect of registration of a document in terms of Section 49 of the Registration Act, 1908, which does not bar use of an unregistered document for a collateral purpose. Section 35 is differently worded, and when applicable, bars use of insufficiently stamped instrument for a collateral purpose.”

19. On a careful perusal of the above said Judgments, it is clear that non-effect of registration of the document in terms of Section 49 of the Registration Act, which does not bar use of an unregistered document for collateral purpose. In the case on hand also the petitioner/plaintiff pleaded that he purchased the property through an unregistered Sale deed and he filed the suit only for relief of permanent injunction and not for declaration by claiming title over the property. Therefore, the said document can be received as evidence for collateral purpose to prove the possession of property, subject to proof and relevancy.

20. The learned counsel appearing for the respondent/defendant has argued that since the plaintiff claimed that the property was purchased by him through the Sale deed and though the suit is only for bar injunction he implied claimed the title of the property and thereby it cannot be taken as collateral purpose and thereby, the unregistered Sale deed cannot be received as



document. In this context, the learned counsel relied upon the Apex Court

Judgment in ***Rajamanickam and 3 others vs. Elangovan and 4 others***

reported in ***1996 (1) CTC 541*** has held in paragraphs No.8 and 9 which reads

as follows:

“8. That leaves for consideration the objection raised by the petitioners regarding the non-tamping and non-registration of the partition deed dated 12.11.1953. Considering the defence that had been raised by the defendants in the written statement, it is obvious that they want to establish a case of partition amongst Vaithylinga, Ponnaiah and Palani and the allotment of properties to Thayyalnayagi thereunder, which were enjoyed by her other words, for establishing the allotment of properties to Thayyalnayagi, the respondents have necessarily to make out the partition dated 12.11.1953 and this cannot be characterized as an collateral purpose. On the contrary, the main purpose of marking the document dated 12.11.1953 in evidence is only with a view to establish the partition thereunder and the allotment of properties to Thayyalnayagi, on behalf of whom Pattammal is stated to have enjoyed the same and subsequently settled the properties on her daughter. It is not in dispute that the document is unstamped and unregistered and the purpose of marking the document in evidence, as stated earlier, is only to establish the allotment of properties to Thayyalnayagi and that cannot be done, unless the partition is made out. Under those circumstances, the Court below fell into an error in holding that the document could be received in evidence for collateral purpose, overlooking that the document was attempted to be put in only to establish the partition as put forward in the written statement and nothing else. It is not in dispute that even the Court below had found



in Paragraph 2 of its order that from the terms of the document, it was one of partition and in that the Court below was right. In that event, as pointed out by the Supreme Court in **Roshan Singh v. Zile Singh (AIR 1988 S.C.881 at 885 = 1989 2 L.W. 98)**, when the document purports by itself to effect a division and embodies all the terms of the bargain, it will be necessary to register it and if it is not registered, Section 49 of the Registration Act will prevent its being admitted in evidence, and evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872.

9. Under those circumstances, there is no question of the document being admitted in evidence for the so-called collateral purpose, as done by the Court below. Consequently, the Civil Revision Petition is allowed and the order of the Court below is set aside. There will be no order as to costs.”

21. In **Thangamuthu and Others vs. A.Jeyaraj** reported in **2020 (1)**

CTC 47 has held in paragraphs No.12 and 14 which reads as follows:

“12. It is clear from the Judgments that have been cited on the side of the petitioners that a document, which is compulsorily registrable under the Registration Act, cannot be admitted in evidence, unless, it is registered. If a document is inherently bad for non-registration, it cannot be cured by paying deficit stamp duty and penalty. It is even a settled position of law that such documents cannot be looked into even for collateral purposes.

.....

14. The Judgments that have been cited by the learned counsel for the respondent may not come to his aid, since the Hon'ble Supreme Court in those Judgments has categorically held that in view of Section 35 of the



Stamp Act, 1899, the document, which falls under the said provision, shall not be admitted for any purpose whatsoever. This would also include for collateral purpose.”

22. In ***Ruckmangathan vs. Ramalingam*** reported in ***1997 (2) CTC 595***

has held in paragraph No.11 which reads as follows:

“11. On going through the written statement as well as the application, we find that what the defendant wants to prove is, the factum of sale. He has no case anywhere in the written statement or in the application that he wants to prove a document for collateral purpose. When there is no such case put forward, the lower court, assuming that it could be used for collateral purpose, has gone beyond the case of the parties. When the defendant has a definite case that possession passed on the basis of the sale deed, and if the sale could not be proved, to make use of the document for the purpose of possession, cannot be said as a collateral purpose. From a reading of the written statement, I understand that he claims possession as owner. When the ownership could not be had, when there is no registered deed and possession is also part of that transaction, it cannot be said that it is a collateral purpose as found by the lower court. Whether any ground has been made out to admit the document? It is true that a discretion has been exercised by the lower court and in the normal circumstances, this Court should not interfere. But, when the discretion exercised has seriously affected the rights of the other party, this Court is entitled to invoke its jurisdiction to rectify that mistake. The reason mentioned is that he thought of confronting the plaintiff with the document, and when the plaintiff did not admit the execution of such document, he thought of producing the



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same in Court. He also says that he had to produce the document before the Collector for paying the stamp duty and penalty. Those reasons cannot be said as sufficient cause. The defendant cannot think that his case will be supported by the plaintiff and, therefore, he waited for the production of the document. If that was in his mind, the reason stated by him cannot be recognized by Court. For paying stamp duty and penalty, from 1975 to 1983, what the defendant did for eight years, is also not explained.”

23. On a careful perusal of the above said Judgments, it is clear that if the defendant wants to prove the sale through unregistered Sale deed, it cannot be received as evidence and in the written statement or in the application without any averments in respect of collateral purpose, the said unregistered document cannot be received for collateral purpose. As far as the Judgment in ***Thangamuthu and Others vs. A.Jeyaraj*** reported in ***2020 (1) CTC 47*** is concerned, the learned Judge has not discussed about Section 49 of the Registration Act and only referred Section 35 of the Stamp Act, 1899. Whereas, the Judgments relied on by the petitioner/plaintiff clearly shows that even the unregistered Sale deed which is compulsorily registered can be looked into for the purpose of proving possession not for main purpose of sale of property. In the case on hand also the suit is only filed for permanent injunction and not for declaration of title over the property and thereby, the said document of



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unregistered Sale deed, dated 08.02.1999 can be marked as document under Proviso of Section 49 of the Indian Stamp Act for collateral purpose.

24. The Trial Court has failed to consider the above said aspect and erroneously held that the plaintiff want to mark the unregistered document on his side to prove his possession in the suit property which was objected by the defendant, being an unregistered Sale deed as per Section 17 of the Registration Act and Section 49 of the Registration Act, the above said unregistered Sale deed requires registration, the above said unregistered Sale deed dated 08.02.1999 cannot be looked into for collateral purpose to prove the possession of the property. Hence, the document cannot be permitted to mark as an exhibit at the time of trial.

25. The Trial Court failed to consider that even the inadmissible document can be looked into for collateral purpose provided the party who wants to rely on it, should pay the stamp duty together with penalty and get the document impounded as per law laid down by the Hon'ble Supreme Court in ***Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao*** reported in **2015 (16) SCC 787**.



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26. In the case on hand also the Trial Court already collected stamp duty, penalty from the petitioner/plaintiff and thereafter allowed the petition filed by the petitioner/defendant even before marking of document. Therefore the order passed by the Trial Court is unsustainable and the petitioner/plaintiff is at liberty to file the document for collateral purpose subject to proof and relevancy and it is for the Trial Court to decide whether the said document has been proved in accordance with law, since case is only at the stage of receipt of documents as evidence. Therefore, the order passed by the Trial Court is unsustainable and the same is liable to be set aside.

27. In the result, this Civil Revision Petition is allowed. The order passed by the Trial Court in I.A.No.2 of 2022 in O.S.No.103 of 2018, dated 09.11.2022, on the file of the Principal District Munsif's Court, Kanchipuram is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

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To:

- 1.The Principal District Munsif Judge,
Kanchipuram.
- 2.The Section Officer,
V.R.Section,
High Court of Madras.



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