



C.R.P.No.29 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.29 of 2024 and
C.M.P.No.115 of 2024

S.Rajasekar

... Petitioner

Vs.

R.Dhamodaran

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the impugned order dated 27.04.2023 passed by the 1st Additional District and Sessions Court at Cuddalore in I.A.No.265 of 2022 in O.S.No.316 of 2021.

For Petitioner

: M/s.P.R.Thiruneelakandan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking rejection of the plaint.



2. The respondent herein filed a suit seeking specific performance of agreement dated 09.06.2020. The petitioner herein filed an application for rejection of the plaint on the ground that the agreement in question was unregistered one. The Court below by relying on the judgment of the Hon'ble Apex Court in the case of ***R.Hemalatha Vs Kashthuri in Civil Appeal No.2532 of 2023 dated 10.04.2023*** held that in a suit for specific performance of agreement, unregistered sale agreement can be received as evidence and dismissed the petition filed by the revision petitioner for rejection of the plaint. Aggrieved by the same, he is before this Court.

3. The learned counsel appearing for the petitioner by taking this Court to Section 17 and 49 of Registration Act submitted that proviso to Section 49 of Registration Act can be pressed into service only in cases where the unregistered agreement affects immovable property and in the case on hand, the sale agreement is unregistered document. Therefore, by virtue of amended Section 17 of Registration Act, an unregistered agreement will not affect the immovable property covered by it and therefore, proviso to Section 49 cannot be pressed into service in the present case.



WEB COPY



C.R.P.No.29 of 2021.

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

5. 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



WEB COPY



C.R.P.No.29 of 2021.

*(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”.*

6. 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. The said position of law was clarified by Division Bench



C.R.P.No.29 of 2024.

of this Court in *K.Manoharan Vs T.Janaki Ammal reported in 2012 (3) CTC*

205, by holding that an agreement holder cannot claim benefit of part performance under unregistered sale agreement.

7. In fact, the Court below while dismissing the application filed by the petitioner relied on the recent judgment of the Hon'ble Apex Court in the case of *R.Hemalatha Vs Kashthuri in Civil Appeal No.2532 of 2023 dated 10.04.2023* wherein it was held that unregistered sale agreement can be admitted in evidence in a suit for specific performance as per the proviso to Section 49 of Registration Act. Therefore, I do not find any illegality in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

24.01.2024

Index : Yes
Internet : Yes
nr

5/6



WEB COPY



C.R.P.No.29 of 2024.

S.SOUNTHAR , J.

nr

To

The learned 1st Additional District and Sessions Court,Cuddalore.

CRP.No.29 of 2024 and
C.M.P.No.5149 of 2016

24.01.2024

6/6