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C.R.P.(MD)No.148 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/02/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.148 of 2024

Thangaraj : Petitioner/Plaintiff

Vs.

Balasaraswathy : Respondent/Defendant

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the docket order, dated 02/01/2024 made in unnumbered OS Filing No.1144 of 2023, CNR:TNTH010057492023 on the file of the Principal District Judge, Theni to number it and to proceed with the same in accordance with law.

For Petitioner : Mr.R.Surianarayanan

O R D E R

This civil revision petition has been filed seeking to set aside the docket order dated 02/01/2024 made in unnumbered OS Filing No.1144 of 2023, CNR:TNTH010057492023 on the file of the Principal District Judge, Theni to number it and to proceed with the same in accordance with law.



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The facts in brief:-

The plaint was presented by the petitioner before the trial court setting out the following facts:-

The property belongs to the respondent herein namely Balasaraswathy by way of purchase. He appointed one Natarajan as a power agent, on 04/02/2004. Natarajan entered into various othi deeds in favour of various persons. Later, he entered into a sale agreement with the petitioner and received a sum of Rs.18,00,000/-, on 30/09/2016. Total sale consideration was fixed at Rs.20,00,000/-. It was reduced into writing on the same itself. The respondent herein agreed to discharge the encumbrance and thereafter, informed the petitioner for execution of the sale deed. But later failed. Natarajan was also died, on 08/10/2016. So he approached the respondent herein seeking to execute the sale deed. When that was not complied, he sent a notice. Later, filed the impugned plaint before the trial court.

3.That plaint came to be returned by the trial court on various dates setting out various defects. Apart from that with regard to the merits, a specific query was raised by the trial court as to how the suit is maintainable after the bar of limitation. Apart from



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that, it has also been stated that it is only an unregistered sale agreement; In view of the amendment by the Tamil Nadu State in section 17 of the Registration Act, the plaint cannot be entertained.

4. Against the repeated returns of the plaint by the trial court, this civil revision petition is preferred.

5. Heard the learned counsel appearing for the petitioner.

6. The learned counsel appearing for the petitioner straightaway by relying upon the decision of the Hon'ble Supreme Court, apart from that various orders of the coordinate branch of this court, would submit that the matter was resolved by the Hon'ble Supreme court in the case of ***R. Hemalatha Vs. Kashthuri (2023(2) CTC 839***). Since there is no corresponding amendment to section 49 of the Registration Act, there is no bar for filing of the unregistered sale agreement in the case of specific performance.

7. Since the issue has been settled by the Hon'ble Supreme Court, I need not elaborate the same. The concluding portion of the above said decision runs like this:-



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“12. At this stage, it is required to be noted that the proviso to [Section 49](#) came to be inserted vide Act No.21 of 1929 and thereafter, [Section 17\(1A\)](#) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to [Section 49](#) is provided under Section [17\(1A\)](#) of the Registration Act. Otherwise, the proviso to [Section 49](#) with respect to the documents other than referred to in [Section 17\(1A\)](#) shall be applicable.

13. Under the circumstances, as per proviso to [Section 49](#) of the Registration Act, an unregistered document affecting immovable property and required by [Registration Act](#) or the [Transfer of Property Act](#) 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, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to [Section 17\(1A\)](#) of the Registration



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Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per [Section 17\(1A\)](#) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to [Section 49](#) of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of [Section 49](#)."

8. So in view of the above settlement of law, there is no prohibition for the civil court to entertain the suit for specific performance on the basis of the unregistered sale agreement.

9. Regarding the limitation point raised by the trial court, it ought not to have been decided by the trial court on the administrative side. Since limitation is the mixed question of law and facts, it must be decided only on the judicial side. So that portion of the return order is not valid under law.



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10. For the reason stated above, the civil revision petition is **allowed**. The docket order, dated 02/01/2024 made in unnumbered OS Filing No.1144 of 2023, CNR:TNTTH010057492023 on the file of the Principal District Judge, Theni, is set aside. There shall be a direction to the trial court to entertain and process the plaint filed by the petitioner and proceed in accordance with law. The Registry is directed to return the original impugned order to the petitioner so as to re-present the same before the trial court. No costs.

12/02/2024

Index:Yes/No
Internet:Yes/No
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To,

The Principal District Judge,
Theni.

G.ILANGOVAN, J

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