



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.869 of 2021
and
C.M.P.(MD)No.4731 of 2021

K.Sekar

... Petitioner

-VS.-

1.E.Sheela

2.S.Simsonrajan

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the the fair and decreetal order dated 12.03.2021 passed in I.A.No.2 of 2020 in O.S.No.93 of 2020 on the file of the Subordinate Court, Lalgudi.

For Petitioner

For R1

For R2

:Ms.K.Divya

:Mr.A.M.B.Mathubalan

for Ms.J.Ananthavalli

:Ms.R.Karhtiga

for Mr.H.Lakshmi Shankar



WEB COPY

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.2 of 2020 in O.S.No.93 of 2020 on the file of the Subordinate Court, Lalgudi, dated 12.03.2021.

2.The Revision Petitioner is the first defendant in the suit. The first respondent, as plaintiff, had instituted a suit in O.S.No.93 of 2020 for specific performance to execute a sale deed, as agreed by the second respondent with the first respondent herein by way of a sale agreement, dated 18.05.2020. On 18.05.2020, the sale consideration was fixed as 3,60,000/- and a sum of Rs. 3,50,000/- was paid as advance.

3.The Revision Petitioner, who is the first defendant, had filed an application in I.A.No.2 of 2020 to reject the plaint under Order VII Rule 11 CPC, by contending that the second respondent/second defendant was a power agent appointed by the Revision Petitioner/first defendant. According to the Revision Petitioner/first defendant, the second respondent/second defendant was appointed as power agent on 19.04.2004. As the second



respondent/second defendant did not make any attempt to perform his duty based on the power, the Revision Petitioner/first defendant had issued a notice to the power agent, namely, the second respondent/second defendant to intimate that he is intending to terminate the power given in his favour. On 09.06.2020, the second respondent/second defendant had issued a reply to the Revision Petitioner/first defendant. After issuing the notice on 03.06.2020 and after receiving the reply from the second defendant/power agent, on 09.06.2020, the cancellation deed was registered on 16.06.2020.

4. In the meanwhile, the first respondent/plaintiff in the suit, who is now arrayed as the first respondent, asking the second respondent/second defendant, who is the power agent, to perform the sale deed, based on the agreement, dated 18.05.2020. The Revision Petitioner/first defendant contended that though it is a suit for specific performance filed by the plaintiff/first respondent, the second respondent/second defendant with ante dated stamp duty had entered into an agreement on 08.05.2020 with the first respondent/plaintiff.



WEB COPY

5.The trial Court had discussed all these facts and had dismissed the application by relying upon a celebrated judgment of the Hon'ble Supreme Court reported in **(2004) 9 SCC 512** between ***Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success and*** had referred the following paragraphs:

“Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed.

A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit.”

6.Aggrieved by the same, the present Civil Revision Petition has been filed by the first defendant in the suit.



WEB COPY

7.The main contention of the Revision Petitioner/first defendant is that there is no cause of action in the suit instituted by the first respondent/plaintiff. The learned Counsel for the Revision Petitioner contended that it is not in dispute with regard to the cause of action, as held by the Hon'ble Supreme Court, it is a bundle of facts, but when the termination notice was issued to the second respondent/second defendant on 03.06.2020 and a reply was given on 09.06.2020 and based on that, the power of attorney document was cancelled on 15.06.2020, on the basis of the pre-dated stamp paper, an agreement was entered into between the first and second respondents.

8.The learned Counsel further contended that the trial Court in the order passed in I.A.No.2 of 2020, had referred to Section 53A of the Transfer of Property Act. However, the learned Counsel for the petitioner contended that the effect of Section 53A of the Transfer of Property Act could be effected only after the sale deed, whereas, the present suit is filed based on an agreement of sale, which is not a registered document. In view of the same, the observation made by the trial Court is not in accordance with Section 53A of the Transfer of Property Act.



WEB COPY

9.The learned Counsel for the petitioner further submitted though the law is settled with regard to the cause of action and with regard to Section 17 of the Registration Act, *de horse* of the findings rendered by the trial Court while deciding the application in I.A.No.2 of 2022, there were several observations made as against the Revision Petitioner/first defendant. The learned Counsel for the petitioner vehemently contended that the observations, which find place in the order passed in the interlocutory application, will be detrimental in the decision making process.

10.It has been heavily refuted by Ms.R.Karthiga, learned Counsel for the first respondent contending that the observation made by the trial Court is based on records and documents filed thereto.

11.The objection of the Counsels on either side could be decided only based on the full fledged trial upon hearing the witnesses on either side, who will be subjected to cross examination and marking relevant documents. Unless and until, such a full fledged exercise has been carried out during the



WEB COPY

trial, the observations made by the trial Court while deciding I.A.No.2 of 2020 may not be taken into consideration. The trial Court is directed to consider all the contentious issues, which are raised before this Court or before the Court while the arguments advanced in I.A.No.2 of 2020.

12.The learned Counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in **(2023) 10 SCC 725** between **R.Hemalatha vs Kashthuri**, wherein, the Hon'ble Supreme Court had held as follows:

“21.Thus, on and after the Tamil Nadu Amendment Act, 2012, as per Section 17(1)(g), instrument of agreement relating to sale of immovable property of the value of Rs 100 and upwards is required to be registered compulsorily. However, despite the same and despite the “Explanation” to sub-section (2) of Section 17 has been omitted, there is no corresponding amendment made to Section 49 of the Registration Act.

.....

23.Thus, as per the proviso to Section 49, an unregistered document affecting the immovable property and required by the Registration 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 document.

24.At this stage, the primary Statement of Objects and Reasons to the Tamil Nadu Amendment Act, 2012, is also required to be referred to and considered. The primary Statement of Objects and Reasons seems to suggest that amendment has been introduced by the State of Tamil Nadu bearing in mind the loss to the exchequer as public were executing the documents relating to sale of immovable



WEB COPY



property, etc. on white paper or on stamp paper of nominal value.

.....

26. Under the circumstances, as per the proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by the 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(1-A) of the Registration 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(1-A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon the 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.”

13. By relying on the aforesaid judgment, the learned Counsel for the petitioner contended that as the document is inadmissible in natural before the trial Court, numbering of the suit is not in consonance with the above judgment. It is not in dispute with regard to the settled position of law. As the entire document is resting upon the unregistered agreement, which has been seriously disputed by the learned Counsel for the first respondent/plaintiff, who contended that the suit instituted by the first respondent/plaintiff is a case, where cognizance ought not have been taken by the trial Court.



WEB COPY

14. In view of the above discussion, the order passed in I.A.No.2 of 2020 in O.S.No.93 of 2020 by the learned Subordinate Judge, Lalgudi, dated 12.03.2021, needs no interference and the same is confirmed. As the suit is of the year 2020, the trial Court is directed to conclude the trial within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

13.12.2024

Internet	:Yes/No
NCC	:Yes/No
Index	:Yes/No

cmr

To

The Subordinate Judge, Lalgudi.



WEB COPY



N.SENTHILKUMAR, J.

cmr

C.R.P.(MD)(PD)No.869 of 2021

13.12.2024