



C.R.P. (MD) No. 3278 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 3278 of 2023
and
C.M.P. (MD) No.16900 of 2023

Vellaisamy

... Petitioner/
Defendant

-VS-

Sakunthala

... Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.09.2023 made in I.A.No. 2 of 2023 in O.S.No.29 of 2017 on the file of the District Munsif Court, Paramakudi and allow the civil revision petition.

For Petitioner : Mr.D.Senthil

For Respondent : Mr.I.Sabeer Mohammed

ORDER

The Civil Revision Petition is directed against an order dated 27.09.2023 made in I.A.No.2 of 2023 in O.S.No.29 of 2017.



2. By the said order, the interlocutory application filed by the respondent was dismissed. The prayer in the said interlocutory application is to recall D.W. 1 for marking the unregistered sale-deed. The said application is dismissed on the ground that an unregistered document cannot be admitted in evidence since the document is a sale-deed and is compulsorily registrable as per Section 17 of the Registration Act. Aggrieved thereby, the present Civil Revision Petition is filed.

3. The learned Counsel appearing on behalf of the petitioner would submit that the plaintiff is claiming title to the suit property and as a consequence thereof is praying for recovery of possession.

4. The defendant is resisting the suit, *inter alia*, pleading adverse possession. In order to prove the collateral purpose of possession, they are relying upon the unregistered sale-deed. Earlier, when the defendants had filed I.A.No.498 of 2019 with a prayer to collect the registration charges and stamp duty for the very same document, a similar objection was taken by the respondent plaintiff and the Court specifically overruled the said objection stating that even though the document is compulsorily registrable, even an unregistered document can be marked for a collateral purpose. Therefore, when



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such a finding is made in the previous I.A.No.498 of 2019 by order dated 16.06.2020 and the same having become final, the Trial court ought not to have passed the present order.

5. The learned Counsel appearing on behalf of the respondent would submit that even if on an earlier occasion, such a permission is given, once the sale-deed is compulsorily registrable, in the present interlocutory application also the Trial court was right in disallowing the claim of the petitioner defendant.

6. I have considered the rival submissions made on either side and perused the material records of the case. There is no quarrel over the proposition that a document which is compulsorily registrable cannot be marked in evidence. However, in the instant case, when the very same plea is taken in the selfsame proceedings when the document was sought to be introduced by filing an application for impounding and payment of deficit stamp duty and charges, the trial court overruled the same by stating that the document can be marked for a collateral purpose. In effect that the document cannot be relied upon for proving the title. However, for the collateral purpose of proving the possession, it can be relied upon is the finding of the Trial Court.



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The learned Counsel appearing on where the petitioner would also rely upon the Judgment of a Coordinate Bench of this Court in C.R.P (PD) No.4305 of 2022 into (*V.Ramesh. v. V.Nagaraj*). Considering the fact that in the instant case itself, an earlier order is passed on 16.02.2020 by the Trial court and the same having become final, a contra decision cannot be arrived at in the present interlocutory application, which is only a consequential interlocutory application for recalling the D.W.1 to mark the said document. However, it would be open for the respondent petitioner to register its objection that an unregistered document cannot be marked and based on the objection being recorded, arguments can be advanced whether the same can be relied upon for any purpose at all and if so, whether the purpose is collateral purpose etc., which can be gone into at the time of arguments.

7. With the said liberty preserved to the respondents, the Civil Revision Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

25.07.2024

NCC : Yes/No

PKN



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To



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D.BHARATHA CHAKRAVARTHY, J.

PKN

1. The District Munsif Court, Paramakudi.

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