



C.R.P.(MD)No.3340 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/03/2024

CORAM

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

C.R.P (MD)No.3340 of 2023

S.Ramuthai : Petitioner/Plaintiff

Vs.

1.Tamilnadu Mercantile Bank,
Rep. by its Authorized Officer,
Madurai Main Branch,
No.51, East Avani Moola Street,
Madurai-625 001.

2.Anitha

3.The Sub Registrar (SRO-I),
Madurai South Registration District,
Palace Road,
Madurai-1.

4.The Government of Tamil Nadu,
Rep. through its District Collector,
Madurai District,
Madurai-20.

: Respondents/Defendants

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the Docket order, dated 11/10/2023 passed in Unnumbered OS - of 2023 on the file of the District Munsif Court, Madurai Town.

For Petitioner : Mr.R.Aravindan



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O R D E R

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This civil revision petition has been filed seeking to set aside the Docket order, dated 11/10/2023 passed in Unnumbered OS - of 2023 on the file of the District Munsif Court, Madurai Town.

2.The facts in brief:-

The plaint was presented by the revision petitioner before the District Munsif Court, Madurai Town with the following averments:-

He purchased the property and availed loan from the first defendant by deposit of title deeds as security on 12/12/2022. He put up a wholesale shopping building. The defendant initiated proceedings to recovery proceedings to recover the arrears of loan amount. In the mortgage property, the house was shown as property. The property was sold to the second defendant, but the petition was filed by the first defendant before the Chief Judicial Magistrate in Cr.MP No.443 of 2022 under section 44 of the SARFAESI Act. As mentioned above, the superstructure and occupation of the other persons are not mentioned in the sale deed. On that account, he filed the present plaint to declare that the document dated 04/02/2022 executed in favour of the second



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respondent is void on the fault committed and not binding upon the plaintiff and for permanent injunction.

3.The plaint was returned by the trial court on various dates questioning the maintainability of the plaint stating that recovery proceedings were initiated and thereafter, only the property was sold and so the suit is hit under section 34 of the Act.

4.Challenging the above said this revision is filed.

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.



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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 run like this:-

"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



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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 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.



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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.

10.For the reason stated above, the civil revision petition is **allowed**. The impugned docket order, dated 11/10/2023 made in unnumbered OS No.-of 2023 on the file of the District Munsif, Madurai Town, 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 plaint to the petitioner so as to re-present the same before the trial court. No costs.

08/03/2024

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

The District Munsif,
Madurai Town.



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G.ILANGOVAN, J

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