IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2025

PRONOUNCED ON : 25.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.No.636 of 2024
and
CMP.No.3160 of 2024

1.Bakkiyam
2.Chinnasamy
3.Gandhi @ Indiragandhi
4.Anjalam
5.Rajiv Gandhi ... Petitioners

Vs.

Narayanan ...Respondent

Prayer:- **Cvil Revision Petition** filed under Article 227 of the Constitution of India to set aside the order of the Principal District Munsif Court, Attur, 21.11.2023 passed in I.A.No.5 of 2023 in OS.No.79/2015.

For Petitioner :M/s.S.P.Chokalingam

For Respondent : M/s.K.Shakespeare

ORDER

The defendants are the revision petitioners before this Court who seek to challenge the order passed by the learned Principal District Munsif, Attur in I.A.No.5 of 2023 in OS.No.79 of 2015.

2. The revision arises against the order allowing an unregistered sale deed dated 17.03.1999 being marked as an Exhibit on the side of the plaintiff.

3. The facts which have culminated in the filing of the Civil Revision Petition are hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

4. Before proceeding to set out the facts a genealogical table would make it easy to understand the relationship between the parties to the proceedings.

Bakkiyam (Mother, 1st Defendant)

Narayanan (Plaintiff)	Chinnasamy (2nd Defendant)	Gandhi @ Indira Gandhi (3rd Defendant)	Anjalam (4th Defendant)	Mallika(died)
				Rajiv Gandhi

(5th defendant)

5. The suit schedule property measures an extent of 0.62 1/2 cents comprised in S.No.178/3, Old Paimash No.46, Vannan Kattu Punjai, totally measuring 1.25 acres in Thumbal Village, Attur Taluk, Salem District. The property has been described within four boundaries together all the easementary rights appurtenant to the property.

6. The plaintiff would contend that the suit properties are agricultural lands. On 11.02.1941, a larger extent of the suit property was purchased by the plaintiff's grandfather Kandansamban from one Pakkini Sahib, son of Babu Sahib. On the demise of Kandansamban, the property devolved on his daughter, the 1st defendant and his son Thangavel. The siblings had partitioned the property equally, with each taking an extent of 0.62 1/2 cents. On 17.03.1999, Thangavel sold his share to the plaintiff under an unregistered sale deed for a total sale consideration of Rs.50,000/-. The plaintiff would submit that he has been in possession and enjoyment of the same since then. The defendants who were totally strangers to the property were attempting to encroach into the suit property. Therefore, the plaintiff has come forward with the suit for declaration and injunction.

7. The 2nd defendant had filed a written statement which was adopted by defendants 1, 3 to 5 interalia denying the various allegations contained in the plaint and putting the plaintiffs to strict proof of the same.

8. The defendants would contend that after the demise of the 1st defendant's father, the entire extent of 1.25 acres was being exclusively enjoyed by the 1st defendant, as her brother Thangavel had left for Bombay at a very young age and never returned. Furthermore, Thangavel had passed away in Bombay 20 years before the filing of the suit, and since then, the property in its entirety has been enjoyed and possessed solely by the 1st defendant.

9. On 27.10.2009, the 1st defendant had settled 30 cents on the 2nd defendant under a registered document and on 27.10.2003 she had further allotted 6 cents each to the 3rd and the 4th defendant under a registered document. Further, on 28.11.2014, the 1st defendant had settled 6 cents to the 5th defendant under a registered document. That apart, 55 cents were already sold and 2 cents had been gifted to Pazhani, son of Thangavel. The remaining extent of 23 cents was in the possession and enjoyment of the 1st defendant over which neither the plaintiff nor defendants 2 to 5 have any right. The defendants therefore sought to have the suit dismissed.

10. After the evidence of P.W.1, the plaintiff had taken out an application to exhibit the sale deed dated 17.03.1999 and permit the plaintiff to mark the sale deed in evidence after considering the objections. The plaintiff would contend that the said document is required to prove his possession to the suit property.

11. A counter has been filed in the above application inter alia contending that the document cannot be received in evidence as there is a clear bar under Section 17(1)(b) and 49(c) of the Registration Act as also Section 54 of the Transfer of Property Act.

12. After hearing the parties, the learned District Munsif, Attur, had allowed the application. Challenging the same, the petitioners are before this Court.

13. M/s.SP.Chockalingam, learned counsel appearing on behalf of the revision petitioners would submit that the order is per se erroneous since the document in question is one that is compulsorily registrable under Section 17 of the Registration Act and by operation of the provisions of Section 49 (c) of the Registration Act, the said document cannot be received in evidence. He would submit that the very document was pressed into service only to prove that the plaintiff is the owner of the property in question though the plaintiff had pleaded that it is for the collateral purpose of showing possession.

14. In support of his submissions, the learned counsel has relied on the judgements reported in ***(2009) 3 MLJ 409 - Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, (2022) 7 SCR page 226 - Balram Singh Vs. Kelo Devi*** and ***Manu/SC/1257/2023-Shakeel Ahmed Vs. Syed Akhlaq Hussain.*** He would, therefore submit that the impugned order dated 21.11.2023 has to necessarily be set aside.

15. Per contra, M/s.K.Shakespeare, learned counsel appearing on behalf of the respondent would submit that the document is sought to be marked only for the purpose of proving the collateral purpose of proving possession and even as per the proviso to Section 49 (c) of the Registration Act, the document can be used for the collateral purpose.

16. He would rely upon the judgement reported in ***(1920) SCC Online Mad 192 - Rama Sahu Vs. Gowro Ratho*** and would submit that the document can be admitted in evidence for the collateral purpose of proving the nature of the document and for explaining the nature of possession. In the above said judgement of the Full Bench, the question before the Bench was whether an unregistered lease deed for a period of 6 months was admissible in evidence. Ultimately, the Bench had answered that the same was admissible to prove the character of possession. He would therefore submit that the order under revision requires no reconsideration.

17. Heard the learned counsels on either side.

18. The issue that engages the attention of this Court is *“whether a document which is compulsorily registrable can be* *received into evidence by simply paying the deficit Stamp Duty and penalty ignoring the provisions of Sections 17 and 49 (c) of the Registration Act and Section 54 of the Transfer of Property Act".* Since the issue involves these provisions, it would be useful to extract the same.

19. Section 17 (i) of the Registration Act list out the documents which are compulsorily registrable. Section 17(i) would read as follows:-

> *(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*
>
> *(a) instruments of gift of immovable property;*
>
> *(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or*

extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in

immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

20. Section 49 of the Registration Act would read as follows:-

49. Effect of non-registration of documents required to be registered.—No document required by section 17 1 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall — (a) affect any immovable property comprised therein, or (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 (4 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 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

21. Section 54 of the Transfer of Property Act defines a sale and how the sale is required to be made. Section 54 of the Transfer of Property Act would read as follows:-

> *54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

22. Since the discussion involves receiving documents not duly stamped it would be necessary to extract Section 35 of the Indian

Stamp Act. Section 35 of the Indian Stamp Act would read as follows:-

Instruments not duly stamped inadmissible in evidence, etc. — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped

receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the

Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

23. Therefore, a combined reading of these provisions would clearly show that a deed under which there is a transfer of ownership in exchange for consideration and such consideration is over a sum of Rs.100/-, Section 54 of the Transfer of Property Act clearly provides that the same can only be done by a registered instrument. Section 17 of the Registration Act sets out documents that have to be compulsorily registered. From a reading of Section 17(1)(b) it is clear that a sale deed has to be registered. Therefore, Section 17(1)(b) of the Registration Act and Section 54 of the Transfer of Property Act make it clear that a sale deed exceeding of sum of Rs.100/- can only be effected by a registered document. The effect of non-registration has been set out in Section 49 of the Registration Act, which clearly states that a document will not admitted in evidence if it affects rights to property. The proviso to Section 49 would state that an unregistered document may be received in evidence in two circumstances (a) if it is evidence of a contract in a suit for specific performance or (b) where it is sought to be produced for proving a collateral transaction. Section 35 of the Indian Stamp Act, would state that an instrument which is chargeable with duty cannot be admitted in evidence unless the instrument is stamped. The proviso to this Section would state that it could be admitted in evidence on payment of duty with which it is chargeable or where it is insufficiently stamped, permit the party to make up the duty with penalty.

24. The learned counsel for the respondent/plaintiff would state that the document is sought to be produced to prove possession. However, the plaintiff has come to Court with a definite case seeking declaration that he is the absolute owner of the suit property on the basis of this unregistered sale deed. Therefore, the unregistered document that is sought to be produced and marked is for the primary purpose to show ownership as the suit is one for declaration.

25. The Court below has been nudged into allowing the application on the premise that the same is sought to be marked to prove the collateral purpose, namely, whether the defendant or the plaintiff was in enjoyment of the suit schedule property.

26. The learned Supreme Court Judges in the case reported in ***(2009) 3 MLJ 409 - Avinash Kumar Chauhan Vs. Vijay Krishna Mishra,*** after considering the provisions of the Stamp Act, Section 35 and Section 36 as also Section 17 and Section 49 of the Registration Act and the various judgements in this behalf had ultimately observed that there is no prohibition under Section 49 of the Registration Act to receive an unregistered document and evidence for a collateral purpose and under such circumstances the documents so tendered should be duly stamped or comply with the provisions of Section 35 and if it is not stamped, it cannot be even received as an evidence for a collateral purpose.

27. In the case reported in ***(2022) 7 SCR page 226 - Balram Singh Vs. Kelo Devi***, the learned Judges had observed as follows:-

> *"Having conscious of the fact that the Plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the Plaintiff filed a suit simplicitor for*

permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the Plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. Therefore, the Plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the Defendant specifically filed the counter-claim for getting back the possession which was allowed by the learned trial Court. The Plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The

Plaintiff cannot get the relief by clever drafting"

28. In the judgement reported in ***Manu/SC/1257/2023-Shakeel Ahmed Vs. Syed Akhlaq Hussain.***, the learned Judges had observed that it is a settled law that no right title and interest in immovable property can be transferred or conferred without a registered document. Referring to some of the judgements in this behalf the learned Judges had observed as follows:-

> *"The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the Respondent could not have maintained the suit for possession and mesne profits against the Appellant, who was admittedly in possession of the property in question whether as an owner or a licensee."*

29. In the case on hand, though an argument is advanced that the unregistered document is sought to be marked only for the purpose of proving possession, however, considering the fact that the suit is one for declaration of title and the plaintiff claims right to the property on the basis of this very unregistered document, it cannot be stated that the document is sought to be produced only for proving the collateral purpose and possession.

30. Therefore, from the reading of the above judgements, it is clear that where a document is sought to be produced in evidence is one that under law is compulsorily registrable (Section 17(1)(b) of the Registration Act) then such a document cannot be received in evidence as set out in Section 49 of the Registration Act. The proviso to Section 49 of the Registration Act will not also come to the rescue of the plaintiff since it clearly states that the exemption is only where it is a contract for a specific performance or where it is sought to be produced for a collateral purpose. Even when it is sought to be produced for a collateral purpose, it can be received in evidence only when it is duly stamped as contemplated under Section 35 of the Indian Stamp Act. If the document is sought to prove the primary purpose which in the instant case is title then the document cannot be received in evidence even if it is duly stamped under Section 35 of the Indian Stamp Act.

32. Therefore, the Civil Revision Petition stands allowed and the order passed by the Principal District Munsif Court, Attur in IA.No.5 of 2023 in O.S.No.79 of 2015 dated 21.11.2023 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.03.2025

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Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

To
1.The Principal District Munsif Court, Attur,

P.T. ASHA. J.,

(shr)

CRP.No.636 of 2024
and
CMP.No.3160 of 2024

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