



CRP.Nos.2893 & 2896 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 08.07.2025

Order pronounced on : 01.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.2893 & 2896 of 2022
& CMP.Nos.15732 & 15735 of 2022

CRP.No.2893 of 2022:

Ananda Nayagi

..Petitioner

Vs.

1.Kannikumari
2.The Sub Registrar,
Ambattur,
Chennai -600 053.

..Respondents

CRP.No.2896 of 2022:

P.Velu Solomon

..Petitioner

Vs.

1.V.Venkatesan
2.The Sub Registrar,
Ambattur,
Chennai -600 053.

..Respondents

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the docket order dated 11.07.2022 passed in



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O.S.No.324 & 323 of 2013 respectively in rejecting the mark unregistered sale deed as Exhibit A-1 and consequently to direct the lower court to mark the said unregistered sale deed as Exhibit A-9 on the side of P.W.1.

For Petitioner : Mr.V.Sundarraman in both CRPs

For Respondents : Mr.V.Manisekaran for R1 in both CRPs

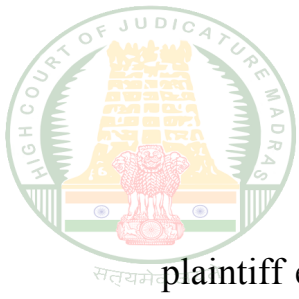
Mr.A.Anandan
Government Advocate for R2 in both CRPs

COMMON ORDER

These revisions have been filed by the plaintiff in OS.No.323 of 2013 and O.S.No.324 of 2013 on the file of the Subordinate Court, Poonamallee. The suits have been instituted seeking the relief of specific performance.

2.Heard Mr.V.Sundarraman, learned counsel for the petitioner, Mr.V.Manisekaran, learned counsel for the 1st respondent and Mr.A.Anandan, learned Government Advocate for the 2nd respondent in both the revisions.

3.It is the case of the plaintiff that the property was originally owned by the Slum Clearance Board and subsequently, the same came to be allotted to the 1st defendant. Even before the 1st defendant became the absolute owner, the



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plaintiff entered into an agreement to purchase the said property allotted to the 1st defendant on the understanding that the 1st defendants in both the suits would execute registered Sale Deed in favor of the plaintiff. On receipt of the entire sale consideration, an unregistered Sale Deed was executed by the respective 1st defendants in both the suits, in favor of the respective plaintiffs in the said suits. At the time of examination, the learned Subordinate Judge has refused to mark the said unregistered Sale Deeds on the ground that it is not collateral transactions and the plaintiffs rely upon the said Sale Deeds as evidence of completed sale transactions. The Trial Court therefore refused to mark the said unregistered Sale Deeds in favor of the revision petitioners, finding that the said documents are hit by Section 49 of the Registration Act including its proviso.

4.The learned counsel for the revision petitioners would submit that the documents which are sought to be marked, though styled as Sale Deeds evidencing payment of entire sale consideration, they are to treat only as agreements of sale, since the suits have been instituted only for the relief of specific performance, to direct the 1st defendant in the suits, to execute and register the Sale Deeds conveying the very same property, which is subject



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matter of the said unregistered Sale Deeds. He would therefore state that the bar under Section 49 of the Registration Act or the proviso thereunder would not apply to the facts of the present case.

5.In support of his contention, the learned counsel to the petitioner also relies on the following decisions:

1.S.Kaladevi vs V.R.Somasundaram and Others (2010 (3) MWN (Civil) 556).

2.Muruganandam vs Muniyandi (died) through LRs in Civil Appeal.No.6543 of 2025 dated 08.05.2025.

3.R.Nagappan vs T.Muthusamy and Others in CRP(NPD).No. 94 of 2022 dated 24.01.2022.

Relying on the said decisions, the learned counsel for the petitioner would state that the documents, though styled as sale deeds are certainly admissible in evidence. He would therefore pray for the revisions being allowed.

6.Per contra, the learned counsel for 1st respondent, Mr.V.Manisekaran would submit that the unregistered Sale Deeds are sought to be relied on by the revision petitioners to establish the sale transaction itself and therefore, there is



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a bar to receive the said documents and consequently the documents being inadmissible in evidence, there is no infirmity in the order of the Trial Court refusing to mark the said documents.

7.In support of his contention, the learned counsel for the 1st respondent would place reliance on the following decisions:

- 1.*Thangamuthu and Ors Vs. A.Jeyaraj (MANU/TN/5156/2019).*
- 2.*Vasantha Ammal vs Gunasekaran (2011 SCC Online Mad 75).*
- 3.*S.Kaladevi vs V.R.Somasundaram and Ors (2008 SCC Online Mad 1274).*
- 4.*Ammamuthu Ammal (Died) and Others vs Devaraj and Others (2010 SCC Online Mad 6127).*
- 5.*S.Venkatachalam and Others vs Kamalathal and Another (2019 (2) CTC 88).*
- 6.*K.B.Saha & Sons Pvt., Ltd., vs Development Consultant Ltd., (2008 (5) CTC 260).*

Placing reliance on the said decisions, the learned counsel for the 1st respondent would pray for dismissal of the revisions.

8.I have carefully considered the submissions advanced by the learned counsel on either side.



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9. Admittedly, the suits have been instituted for specific performance to direct the 1st defendant to execute Sale Deeds, conveying the suit property to the plaintiffs. The cause of action for the suits is on the basis that the 1st defendant in the said suits had executed unregistered Sale Deeds after receipt of the entire sale consideration with the promise to execute a regular registered Sale Deed, after the Slum Clearance Board executes Sale Deed in their favour. Therefore, even according to the plaintiffs in the suits, the unregistered Sale Deeds were not treated as regular Sale Deeds. The said unregistered Sale Deeds were attempted to be marked during the course of evidence. The Trial Court has found that the document is not being relied as a proof of any collateral transaction, but as a evidence of a completed sale transaction and therefore, there is a bar to receive the said documents under Section 49 of the Registration Act as well the proviso to Section 49.

10. The Honorable Supreme Court, in *S. Kaladevi's case* (referred herein supra), had an occasion to deal with a very similar issue and referring to Section 49, the Honourable Supreme Court held that an unregistered Sale Deed of an immovable property of value of more than Rs.100 and more can be



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admitted in evidence, as evidence of a contract, in a suit for specific performance. It was further held that an unregistered Sale Deed can also be admitted as evidence of collateral transaction and when such unregistered Sale Deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, then the document can be received in evidence, subject to the rider that an endorsement should be made by the Court that it should be received only as evidence of an oral agreement of sale under proviso to Section 49.

11.This decision was followed by our Court in *Nagappan's case* (referred herein supra). In fact, recently in *Muruganandan's case* (referred herein supra) as well, The Honorable Supreme Court has followed the ratio in *Kaladevi's case* and held that an unregistered Sale Deed can be used as a proof of an oral agreement of sale under Section 49 of the Registration Act, subject to proof, relevancy and validity of the document, and it can always be contested by the defendants.

12.Though the learned counsel for the 1st respondent has relied on six decisions, one of them, I find, is the decision in *Kaladevi's case*, decided by our



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Court which was subsequently overturned by the Honorable Supreme Court in *S.Kaladevi's case*.

13.In the decision of *Thangamuthu's case*, the suit was one for declaration and consequential permanent injunction. Therefore, this Court held that the document was inadmissible and the order of the Trial Court was set aside.

14.In *Vasantha Ammal's* case also, the suit was one for partition and not a suit for specific performance. In *Ammamuthu Ammal's* case as well, the issue was with regard to a family arrangement which was found to be inherently bad for want of registration and this court therefore held that same cannot be cured by paying deficit stamp duty and penalty.

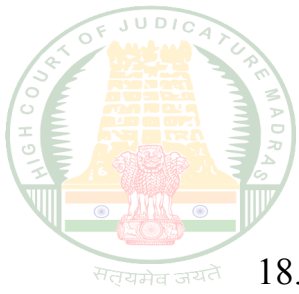
15.In *S. Venkatachalam's* case, this Court was again dealing with introduction of an unregistered partition cum release deed and in such circumstances, this Court held that the said document cannot be received in evidence.



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16. In *K.B.Saha's case*, the Honourable Supreme Court held that a document which requires to be registered is not admissible in evidence and can be used only as evidence of any collateral purpose as provided in the proviso to Section 49. The phrase 'collateral transaction' was also held to be a transaction independent of, divisible from the transaction that requires registration and the said collateral transaction should be one which does not create, extinguish title, interest, right in any immovable property. The document in question before the Honourable Supreme Court was a lease deed which was not registered and in such circumstances, the Honourable Supreme Court held that in view of the bar under Section 49 of the Registration Act, the said unregistered lease deed cannot be used even for collateral purposes, since one of the parties to the lis wanted to rely on a particular clause in the said lease agreement.

17. I do not see any of the decisions that have been relied on by the learned counsel for the 1st respondent applying to the facts of the present case, which is admittedly arising under suits for specific performance.



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18.The decision of the Honourable Supreme Court in *S. Kaladevi's case*, setting aside the findings of this court would in fact squarely apply to the facts of the present case. The revision petitioners do not intend to rely on the said unregistered Sale Deeds as completed sale transactions for the simple reason that the very relief in the suit is for execution of sale deeds based on the assurance given by the 1st defendant in and by the said unregistered documents. The decision of the Honourable Supreme Court has also been subsequently followed with approval very recently in *Muruganandam's case* as well.

19.Therefore, the revision petitioners are entitled to mark the unregistered Sale Deeds as exhibits on their side. However, as observed by the Honourable Supreme Court in *Kaladevi's case*, the Trial Court shall receive the said unregistered Sale Deeds in evidence, making an endorsement that it is received only as evidence of oral agreements of sale. The question of payment of deficit stamp duty would consequently arise since, I am permitting the said unregistered Sale Deeds to be received as evidence on the side of the plaintiffs. Even if the said unregistered Sale Deeds are to be received in evidence for collateral purpose and in proof of an oral agreement of sale between the parties, the revision petitioners are bound to pay the deficit stamp duty payable on the



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said unregistered Sale Deeds. The Trial Court has to refer the said unregistered Sale Deeds for ascertaining the stamp duty, including any penalty that is payable on the said documents as on the relevant date of the execution of the said documents and subject to payment of the said stamp duty along with penalty, the revision petitioners can be permitted to mark the documents on their side, during the course of chief examination of PW1.

20. With the above observation and direction, the Civil Revision Petitions are allowed and the docket orders dated 11.07.2022 passed in O.S.No.324 & 323 of 2013 on the file of the Subordinate Court, Poonamallee, are set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

01.08.2025

Speaking/Non-speaking order

Index : Yes/No

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To

1. The Subordinate Court, Poonamallee.

2. The Sub Registrar,
Ambattur,
Chennai -600 053.

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P.B.BALAJI.J.

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Pre-delivery order made in
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& CMP.Nos.15732 & 15735 of 2022

01.08.2025