

(2014) 11 MAD CK 0425

Madras High Court

Case No: C.R.P. (PD) No. 2870 of 2010 and M.P. No. 1 of 2010

Ravi Bharathi

APPELLANT

Vs

P. Balasubramani

RESPONDENT

Date of Decision: Nov. 19, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 3
- Registration Act, 1908 - Section 17, 17(1A), 49, 49(c)
- Transfer of Property Act, 1882 - Section 53A

Citation: (2014) 8 MLJ 562

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandra Babu

1. The second defendant is the revision petitioner herein. The respondents are the plaintiffs and they have filed O.S.No. 39 of 2006 on the file of Sub-Court, Dharapuram against the petitioner herein and another for specific performance of an agreement of sale, dated 31.8.2005. Pending suit, the petitioner herein filed an application under Order 13 Rule 3 CPC in I.A.No. 205 of 2010 to discard the suit agreement of sale, date 31.8.2005 and from marking the same on the reason that the same was unregistered and not properly stamped. The trial Court rejected the contentions of the petitioner and dismissed the said application. Challenging the same, the present Civil Revision Petition is filed.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The respondents herein filed the said suit for specific performance of the agreement of sale, dated 31.8.2005 by contending that the plaintiffs and the first

defendant entered into the said agreement of sale in respect of the suit property for a sale consideration of Rs. 1,10,000/- and that a sum of Rs. 1,00,000/- was paid and received as advance, agreeing to pay the balance sum at the time of execution of the sale deed, by specifically fixing the time limit as seven months. It is their contention that as per the terms of the agreement, they were put in possession of the suit property and however, the first defendant failed to execute the sale deed inspite of demand and on the other hand, he executed a sham and nominal sale deed in favour of the second defendant on 28.12.2005. According to the plaintiffs, the said sale deed executed on 28.12.2005 by the first defendant in favour of the second defendant is not valid and they are ignoring the same, since the sale deed came to into existence during the pendency of the agreement of sale executed in favour of the plaintiffs on 31.8.2005.

4. The petitioner/second defendant has filed the said application to discard the unregistered sale agreement, dated 31.8.2005 by contending that the same is not admissible in evidence, since even as per the plaintiffs, they were put in possession as part performance of the said agreement and when once such part performance is pleaded in terms of the said agreement, unless such agreement is registered, they cannot seek the relief based on the said agreement.

5. Learned counsel for the petitioner submitted that the suit agreement having not been registered, the same cannot be received and marked as an exhibit. Thus, it is contended by the learned counsel that under Section 53-A of the Transfer of Property Act, if there is part performance, the document referring such part performance is compulsorily registrable. He also relied on Section 17(1-A) of the Registration Act to contend that if such document is not registered, the same is not admissible in evidence, since such document is not sought to be relied on by the plaintiffs for any collateral purpose, on the other hand, the same is the basis for their suit.

6. On the contrary, it is contended by the learned counsel for the respondents that the suit is for specific performance based on the agreement of sale, and therefore, such agreement need not be necessarily registered. It is his further contention that no part performance is claimed, nor the suit is one for bare injunction based on such part performance, and therefore, there is no necessity for applying Section 53-A of the Transfer of Property Act or Section 17(1-A) of the Registration Act, to the facts of this case.

7. The point for consideration in this Civil Revision Petition is as to whether an agreement of sale has to be discarded or rejected to be received as evidence in a suit for specific performance on the ground that the same is not a registered document.

8. The only ground on which the petitioner/second defendant seeks for rejection of the said agreement is that there was a part performance alleged by the plaintiffs

themselves and under such circumstances, the said agreement having not been registered, cannot be received and marked as evidence. In my considered view, such contention of the learned counsel for the petitioner is liable to be rejected, in view of the fact that the said contention is against the statutory provision, namely proviso to Section 49 of the Registration Act, 1908, which reads as follows:

"Section 49: Effect of non-registration of documents required to be registered--No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (IV 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 (IV 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 (I of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

9. The very same provision of law was considered by this Court in a recent decision reported in [R. Munusamy Vs. G. Krishttappillai,](#), wherein this Court followed the decision of the Honourable Supreme Court reported in [Bondar Singh and Others Vs. Nihal Singh and Others,](#). This Court observed in paragraphs 8 and 9 of this said decision as follows:

"8. A careful perusal of the abovesaid provision of law would indicate that a document required to be registered under Section 17 of the Registration Act, 1908, if not registered, it shall not be received as evidence of any transaction affecting such property or conferring such power. Though such an embargo is put under Section 49(c) of the said Act, the proviso made to the said Section however contemplates that such unregistered document affecting immovable property may be received as evidence either in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. Thus, it is evident that the proviso to Section 49 permits receipt of such unregistered document as evidence of any collateral transaction.

9. Keeping the above provision of law in mind, if the facts and circumstances of this case are considered, it would only show that the order passed by the Court below cannot be sustained. The contention of the learned counsel for the respondents, confining his submissions based on Section 49(c) alone, cannot be accepted, especially when the proviso, as discussed supra, permits marking of such document for collateral purpose. The other contention of the learned counsel for the

respondents, namely the proviso to Section 49 of the said Act is applicable only to the suits for specific performance, is also liable to be rejected, since a careful reading of the said proviso would show that the same is applicable not only in respect of the suit for specific performance, but also in respect of the other suits where such document is intended to be marked as evidence for any collateral transaction."

10. In view of the specific provision made under the proviso to Section 49 of the Registration Act, 1908, allowing the unregistered document affecting immovable property, to be received as evidence of a contract in a suit for specific performance, the contentions raised by the learned counsel for the petitioner cannot be sustained and the same is liable to be rejected. The trial Court has rightly rejected the application filed by the petitioner seeking to discard the unregistered agreement of sale, dated 31.8.2005, with which I find no infirmity or illegality.

11. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs. The Miscellaneous Petition is closed.