

T. Chakrapani Vs K. Adimoolam

Court: Madras High Court

Date of Decision: Dec. 8, 2014

Acts Referred: Registration Act, 1908 " Section 17, 49, 49(c)

Citation: (2015) 1 CTC 359 : (2014) 5 LW 835

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandra Babu, J.

The petitioner is the plaintiff and the respondent is the second defendant.

2. The petitioner filed the suit in O.S. No.54 of 1996 on the file of the District Munsif Court, Thirukalukundram, for declaration of his title to the

suit property and for permanent injunction restraining the defendants from in any manner interfering with his exclusive use, possession and

enjoyment of the suit property.

3. According to the petitioner/plaintiff, the suit property is classified as ""Grama Natham"" and is in his exclusive possession and enjoyment for

several years, wherein, he has put up a house and paying house tax, etc. It is his case that the defendants have no manner of right or title to the suit

property.

4. The respondent/second defendant filed written statement contending that the first defendant is the owner of 11-3/4 cents in the suit property and

sold away 0.06-3/4 cents by way of unregistered sale deed, dated 11.10.1989 to the second defendant, and therefore, he is in possession and

enjoyment of the said land from the date of purchase. The first defendant, by filing separate written statement, also accepted the said position.

5. Pending suit, the second defendant filed I.A. No.176 of 2005 seeking permission to mark the said unregistered sale deed, dated 11.10.1989 as

secondary evidence for collateral purpose to prove his possession over the said property. The said application was resisted by the plaintiff. The

trial Court allowed the application holding that no prejudice would be caused to the plaintiff by allowing the second defendant to mark the said

document, since the admissibility of the said document can be considered at the time of trial. Challenging the said order, the plaintiff has filed the

present Civil Revision Petition.

6. Learned counsel for the petitioner/plaintiff contended that the unregistered sale deed cannot be marked even for collateral purpose, since the

second defendant claims title through the said document. In support of his contention, he relied on the decisions of this Court reported in

Ruckmangathan Vs. Ramalingam, and K. Mokkamayan Vs. P. Pushparani and Rajangam .

7. Per contra, learned counsel for the respondent/second defendant submitted that the disputed document is sought to be marked only to prove the

factum of possession of the second defendant over the said property and not to declare his title and therefore, for such purpose, the unregistered

document can be marked. In support of his contention, he relied on a decision of the Honourable Supreme Court reported in Bondar Singh and

Others Vs. Nihal Singh and Others, .

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

9. In this case, the plaintiff seeks the relief of declaration of his title to the suit property and for permanent injunction restraining the defendants from

interfering with his possession and enjoyment of the suit property. According to the plaintiff, the suit property is a ""Grama Natham"" and is in his

exclusive possession and enjoyment for several years. Therefore, the plaintiff has to prove the contentions raised in his pleadings by way of material

evidence.

10. On the other hand, the second defendant claims that he is in possession of 0.06-3/4 cents, having purchased the same from the first defendant

by way of unregistered sale deed. Therefore, in the suit for declaration and permanent injunction, the second defendant wants to prove his

possession by way of marking the said unregistered sale deed. It is needless to say that such purpose is only for collateral purpose in the said suit,

as it is the categorical contention of the plaintiff that he is the owner of the property and is in possession and enjoyment of the same. For marking

such unregistered document for collateral purpose, proviso to Section 49 of the Registration Act paves the way for a party who seeks to mark the

same and the same reads as under:

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.

11. A careful perusal of the proviso to Section 49 of the Registration Act quoted above, would show 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.

12. Learned counsel for the petitioner relied on the decisions of this Court reported in K. Mokkamayan Vs. P. Pushparani and Rajangam and

Ruckmangathan Vs. Ramalingam, in support of his submission that such unregistered document cannot be marked even for collateral purpose. But,

this Court, in the recent decisions reported in Ravi Bharathi Vs. P. Balasubramani, and R. Munusamy Vs. G. Krishtappillai, , followed the decision

of the Honourable Supreme Court reported in Bondar Singh and Others Vs. Nihal Singh and Others, now cited by the learned counsel for the

respondent, wherein, the Honourable Supreme Court, while considering the said issue, observed as follows in paragraph 5:

5. The main question as we have already noted is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated

9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor interest of the plaintiff, is an admitted document in the

sense its execution is not in dispute. The only defence set up against said document is that it is unstamped and unregistered and therefore it cannot

convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey

title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in

evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the

plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or

unauthorised.....

(emphasis supplied)

13. Thus, in view of the said decision of the Honourable Supreme Court reported in Bondar Singh and Others Vs. Nihal Singh and Others, , I find

that the contentions of the petitioner cannot be sustained, as the trial Court has rightly allowed the marking of the said document.

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