

(1998) 01 MAD CK 0062

In the Madras High Court

Case No : C.R.P.No. 2194 of 1997 and C.M.P.No. 11101 of 1997

Rangaraj(a) Sakkararaj and others

APPELLANT

Vs

Guruvammal and others

RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Registration Act, 1908 — Section 17(1), 49, 50

Citation : (1998) 2 CTC 266 : (1998) 3 LW 523 : (1998) 2 MLJ 110

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : M/s. M. Kandasamy, for the Appellant; Mr. K. Rajkumar, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners filed a suit in O.S.No. 200 of 1991 on the file of the learned Additional District Munsif, Sankarankoil seeking a decree for

permanent injunction restraining the respondents not to put up any construction in the II item in plaint II schedule property, and to remove the

construction put up in the plaint III schedule property and also to restore the drainage, to the plaint IV scheduled property, by way of mandatory

injunction. The said suit was contested by the defendants 1 and 2 by filing written statement. In the course of evidence of P.W. 1, the unregistered

agreement dated 27.9.1962 was sought to be marked and the same was objected by the respondents. So, the court below refused to mark the

said document on the ground that the said document had not been registered. Aggrieved against the said order dated 23.9.1997, the petitioners

have filed the above Revision.

2. The petitioners filed the suit based on the agreement dated 27.9.1962.

According to the petitioners/plaintiffs, the respondents had put up steps to reach the house and also constructed the drainage as mentioned in the agreement and they have been enjoying the same. It is not in dispute that the said agreement is not registered. It cannot also be disputed that the parties agreed to put steps and to have the drainage in the common path way, under the agreement. In the written statement the defendants have categorically stated that there was no such panchayat as alleged by the petitioners and the said agreement is a concocted one. The court below refused to receive the said document and mark the same only on the ground that the said document will come within the scope of Section 17 of the Registration Act and so it cannot be marked as an evidence for want of registration.

3. In the memorandum of grounds filed in the Revision, it is stated that the petitioners sought to mark the document only for the collateral purpose as to the enjoyment of the suit land among the petitioners and respondents.

3 -(A). The only question that arises for consideration in this case is whether the document in question will come under the mischief of Section 17 of the Registration Act, and, even Section 17 of the said Act attracts, whether the petitioners can rely on the document for collateral purpose as alleged by them.

4. The learned counsel appearing for the petitioners has submitted that the first defendant was permitted to put up steps in the common passage, and, one Bangaruammal under whom the plaintiffs are claiming rights in the suit property, was permitted to have drainage in the common passage.

According to the plaintiffs/petitioners, pursuant to the said agreement, the first defendant constructed steps and the said Bangaruammal put up the drainage and had been enjoying the same. On the basis of the abovesaid facts, the learned counsel appearing for the petitioners has submitted that the document in question that is sought to be marked need not be registered as it does not create any specific rights on the parties. The said document regulates the rights to enjoy the common property. In support of his submission, the learned counsel has sought aid to the decision in

Mithilesh Kumar Vs. Manohar Lal, wherein the Apex Court has held as follows:-

It is to be seen that the agreement is not in the nature of registered document. Admittedly, in the sale deed the appellant had conveyed to the

respondent absolute right, title and interest in the property and open land was sold to the respondent. Subsequently, in respect of that property, the

latter had executed an agreement limiting his right to construct the house in the manner and subject to the restrictions envisaged in the agreement.

The question is whether that document is capable of valuation? It is seen that what is material for the purpose of compulsory registration u/s 17(1)

is that the document must 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 should these two conditions be satisfied before insisting

upon instrument for compulsory registration u/s 17(1)(b) of the Act. Section 49 or Section 50 prohibit use of the terms in the document which was

not registered for any purpose under law. It is seen that there is restrictive clog on the exercise of the right over his property which the respondent

had undertaken for constructing the house or wall over the property purchased. Though argument is in relation to the same property, the subject-

matter of the sale deed dated 25.6.1964, the undertaking given by the respondent is as to the exercise of his right over the property. It is incapable

of valuation. Resultantly, its value cannot be construed to be hundred rupees or more. Under those circumstances, the agreement entered into by

the respondent with the appellant is not a compulsorily registrable document u/s 17(1)(b) of the Registration Act

In the present case the document in question is only in respect of a common property, and, according to the petitioners/plaintiffs, they have been

exercising their rights over the said property as mentioned in the said document. Only in order to establish the same the petitioners sought to mark

the said document. Therefore it cannot be said that they want to enforce their rights under the said document. Moreover, as held by the Apex

Court, the said document is incapable of valuation. Since the said document cannot be valued, the agreement sought to be marked is not a

compulsory document to be registered u/s 17(1)(b) of the Registration Act.

5. The learned counsel appearing for the respondents has submitted that in the absence of any pleading to the effect that the petitioners are going to

rely on the said document for collateral purpose, and in view of the fact that the defence taken by the respondents/defendants that the alleged

agreement is a concocted one, the court below is correct in refusing to mark the said document. In support of his submission, the learned counsel

has relied on the decision in Ruckmangathan Vs. Ramalingam, , wherein, S.S. Subramani, J., has found that the defendant either in the written

statement or in the application to permit him to mark the document, has not stated that he wants to prove the document for collateral purpose.

Moreover, the said document therein is a sale deed. So, the learned Judge has rightly come to the conclusion that if the sale could not be proved,

for the purpose of establishing the possession, cannot be said to be for collateral purpose. With respect to the objection raised regarding the

genuineness of the document, the learned judge has found that the Courts below therein have not appreciated the said fact, in spite of the specific,

plea raised before them. So, the said decision cannot be relied on to the facts of the present case. In the present case, as held earlier, the said

document need not be registered as it does not create any rights or the same is incapable of valuation. Merely because the respondents raised an

objection that the document in question is not a genuine one, the court cannot simply throw away the same without considering the said issue on

merits. That stage is yet to be reached in the present case. Only after marking the document in question, by giving opportunity to the parties, the

court below can go into the question at the appropriate stage.

6. In view of the above, the order of the court below dated 23.7.1997 in O.S.No. 200 of 1991 cannot be sustained and the same is hereby set

aside. The court below is directed to receive and mark the agreement dated 27.9.1962 and proceed with the suit in accordance with law. With the

above observations, this revision is allowed. No costs. Consequently, C.M.P.No. 11101 of 1997 is closed.