

(2008) 11 MAD CK 0097

In the Madras High Court

Case No : C.R.P. (PD) No. 261 of 2008 and M.P. No. 1 of 2008

S. Kaladevi

APPELLANT

Vs

V.R. Somasundaram, S. Priya and S. Soundarajan

RESPONDENT

Date of Decision : 13-11-2008

Acts Referred:

Citation : (2009) 2 MLJ 361

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Manoharn, for the Appellant;

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The civil revision petitioner/petitioner/plaintiff has filed this revision petition as against the order dated 11.12.2007 in

regard to the marking of plaint first document viz., the unregistered sale deed dated 27.02.2006 in O.S. No. 17 of 2007 passed by the Principal

Sub Court, Gobichettipalayam.

2. The trial Court, in its order dated 11.12.007, has inter alia opined that the unregistered sale deed dated 27.02.2006 being the first item of

document mentioned in the plaint is not a one to be marked.

3. The learned Counsel for the revision petitioner/plaintiff contends that the document has been sufficiently stamped but the same has not been

registered and this fact has not been taken note of by the trial Court and further that the procedure of deciding the admissibility of a document in

the interlocutory stage has been deprecated in various decisions and that the trial Court has not taken into account of the fact that the respondents

have entered into an oral sale agreement on 27.02.2006 agreeing to sell their

property for a sum of Rs. 1,83,000/- and after receiving the entire amount, arrangements were made to register the sale deed on the same day and that a sale deed was made ready and all the parties were present before the Sub Registrar Office, Punjaipuliyampatti and the Registrar has refused to register it on the ground that there was an order of attachment over the properties as per the order made in I.A. No. 346 of 2004 in O.S. No. 234 of 2004 and the said issue has been settled amicably, but the respondents took a different stand and has refused to register the sale deed and there is no legal impediment to mark the document for a collateral purpose and therefore, prays for allowing the revision petition in the interest of justice.

4. The learned Counsel for the revision petitioner relies on the decision in *Bipin Shantilal Panchal v. State of Gujarat and Anr.* (2001) 3 SCC 1

wherein the Hon"ble Supreme Court has observed that "it is an archaic practice that during the evidence-collecting stage, whenever any objection

is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. Such

practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be

recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings." He also cites the decision in *Bondar*

Singh and Others Vs. Nihal Singh and Others, wherein the Hon"ble Court has observed as follows:

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 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.

5. Yet another decision in *Venugopal @ Alagarsamy (died) and Others Vs. Bajanai Alagarsamy and Karuppiyah @ Sambal*, wherein this Court

has observed that "validity unregistered documents inadmissible in evidence but may be considered for collateral purpose."

6. It is well settled that the pivotal question whether a document is admissible in evidence or not depends upon the nature and contents of the

documents and also the facts and circumstances of each case, in the considered opinion of this Court. However, the moot question to be

considered is whether the document by itself creates or extinguishes rights in immovable property worth more than Rs. 100/-. In finding out the true nature of document, the contextual facts will also be borne in mind.

7. At this stage, this Court points out that in the decision K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd., wherein the Hon"ble

Supreme Court has inter alia observed that "a collateral transaction should be one which does not create, extinguish title, interest, right or interest

etc. in immovable property and once the document cannot be admitted in evidence for want of registration any important Clause in such document

cannot be used for collateral purpose etc. Moreover, if a document is inadmissible in evidence for want of registration, none of its terms can be

admitted in evidence and that to use a document for the purpose of proving an important Clause will not be using it as a collateral purpose, in the

considered opinion of this Court." In as much as the unregistered sale deed dated 27.02.2006 cannot be admitted in evidence for want of

registration the contents of the said document cannot be employed for any collateral purpose and in that view of the matter, the order passed by

the trial Court in refusing to mark the aforesaid document as exhibit is perfectly valid in law and viewed in that perspective, the civil revision petition

fails and the same is hereby dismissed.

8. For the foregoing reasons, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. The order passed by the trial

Court dated 11.12.2007 in refusing to mark the unregistered sale deed dated 27.02.2006 as exhibit is affirmed by this Court for the reasons

assigned in this revision. Consequently, connected miscellaneous petition is also dismissed.