

R. Hemalatha vs Kashthuri on 10 April, 2023

Author: M. R. Shah

Bench: Krishna Murari, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2535/2023

(@SLP (C) No. 14884/2022)

R. HEMALATHA

... APPELLANT(S)

VERSUS

KASHTHURI

...RESPONDENT(S)

JUDGMENT

M. R. Shah, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Madras at No.1877 of 2017 dated 01.02.2022 by which the High Court has allowed the said revision application preferred by the respondent herein by quashing and setting aside the order passed by the learned Trial Court passed in I.A. No.159 of 2017 in O.S. No.199 of 2014 by further directing that the document in question shall be received in evidence in the suit for specific performance, the original defendant has preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under:

2.1 That the respondent herein is an original plaintiff (hereinafter referred to as "original plaintiff") instituted civil suit being O.S. No.199 of 2014 for specific performance of the Agreement to Sell dated 10.09.2013. After the chief examination of the plaintiff as PW1, on the application filed by the appellant – original defendant, a preliminary issue was framed by the learned Trial Court on the admissibility of the Agreement dated 10.09.2013 in evidence. It was the case on behalf of the defendant that in view of the Tamil Nadu Amendment Act No.29 of 2012 to the Indian Registration Act, under which the instruments of agreement

relating to sale of immovable property of the value of Rs.100/□and upwards is compulsorily required to be registered, the said unregistered document shall be inadmissible in evidence.

On the other hand, relying upon Section 49(a) and (c) of the Act, it was submitted that an unregistered Agreement to Sell can be admitted as evidence of a contract in a suit for specific performance. The learned Trial Court held the preliminary issue in favour of the defendant and against the plaintiff by observing that the unregistered Agreement dated 10.09.2013 shall not be admissible in evidence. 2.2 Feeling aggrieved and dissatisfied with the order of the learned Trial Court, the plaintiff preferred the present revision application before the High Court. By the impugned judgment and order, the High Court has allowed the revision petition relying upon Section 49 of the Registration Act by setting aside the order passed by the learned Trial Court and directed that the agreement in question be received in evidence considering the fact that the suit in question is a suit for specific performance, which falls within the first exception carved out in the proviso to Section 49.

2.3 The impugned judgment and order passed by the High Court directing to receive the unregistered Agreement to Sell in evidence in a suit for specific performance, the original defendant has preferred the present appeal.

3. Learned counsel appearing on behalf of the appellant herein – original defendant has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in directing to receive the unregistered agreement in evidence. 3.1 It is submitted that it is an admitted position that the Agreement to Sell dated 10.09.2013 which is the foundation or basis of the suit is an unregistered Agreement to Sell and therefore cannot be exhibited in evidence for the main purpose in the suit, in view of the Tamil Nadu Amendment to Section 17 of the Registration Act making an Agreement to Sell to be compulsorily registered with effect from 01.12.2012.

3.2 It is submitted that the “explanation” attached to sub□clause (2) of Section 17 which also relates to Agreement to Sell has been omitted. It is submitted that said explanation was inserted by Amendment Act, 1927, to overcome the judgment of the Privy Council in the case of Dayal Singh vs. Indar Singh, (1926) 24 LW 396. It is submitted that in that case, an advance paid under an Agreement to Sell being a charge on the property as per Section 55(6)(v) of the Transfer of Property Act was held to create an interest and hence, unregistered Agreement to Sell cannot be admitted in evidence. The explanation remedied the situation and save the Agreement to Sell from the requirement of compulsory registration.

3.3 It is submitted that Section 54 of the Transfer of Property Act states that an Agreement to Sell by itself does not create any interest in or charge on the property. As per Section 17(2)(v) of the Registration Act with reference to Section 1(b) and (c), that an agreement/document simplicitor merely creating a right to obtain another document, was saved from compulsory registration. It is submitted that thus prior to the amendment of 2012 and after the amendment, an Agreement to Sell simplicitor or reciting payment of earnest money was not required to be registered. For these savings, an Agreement to Sell would also have required registration, as it is a document affecting

immovable property. It is submitted that now after the 2012 amendment, an Agreement to Sell for Rs.100/□or upwards is to be compulsorily registered. An agreement recital for payment of advance is also to be compulsorily registered as the “explanation” in Section 17(2) introduced by 1927 amendment after Dayal Singh’s case, has been omitted by the present amendment. The advance amount and sale consideration are part and parcel of the transactions between the parties. 3.4 It is submitted that as per Section 49(a) and

(c) of the Registration Act, a document requires to be registered, if not registered shall not affect the immovable property comprised therein and shall not be received as evidence of any transaction affecting such property. It is submitted that prior to 2012 amendment, when an Agreement to Sell was not required to be registered, Section 49(a) and (c) had no operation in relation to an Agreement to Sell. So an unregistered Agreement to Sell had no restriction in being received as evidence of any transaction affecting such immovable property or affecting immovable property as such. Thus, the terms of the document and the transaction embodied in it could be relied on in its entirety in any proceeding in the pre□amendment era. It is submitted that however now after the amendment, Section 49(a) and

(c) of the Registration Act which are both substantive law and rule of evidence, apply to an unregistered Agreement to Sell and it shall not affect immovable property and shall not be received as evidence of transaction affecting immovable property.

3.5 It is further submitted by the learned counsel for the defendant that if the interpretation of the Hon’ble High Court given in the impugned order is followed, then the same would render the Amendment Act, 2012 otiose and meaningless, simply because the situation before the said amendment was exactly as has been laid down in the impugned order. The legislative intent behind making an Agreement to Sell, a compulsorily registrable document has been completely ignored by the Hon’ble High Court.

3.6 It is submitted that after introduction of a specific provision relating to Agreement to Sell in Section 17(1)(g) of the Act, and in the absence of any amendment in Section 17(2) to include clause (g) also within its fold, Section 17(2)(v) will only operate in relation to documents covered under the general provision of Clauses (b) and (c) of sub□section (1). It is submitted that in that sense Section 17(2)(v) will apply to all other agreements to mortgage, to lease, to release, to exchange etc. but will not apply to an Agreement to Sell. 3.7 Making above submissions, it is prayed to allow the present appeal and quash and set aside the impugned order passed by the Hon’ble High Court and to restore the order passed by the learned Trial Court.

4. While opposing the present appeal, learned counsel appearing on behalf of original plaintiff has heavily relied upon the proviso to Section 49 of the Registration Act which specifically provides that an unregistered document affecting the immovable property and required by the Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter□I of the Specific Relief Act or as evidence of any collateral transaction not required to be affected by registered instrument.

4.1 It is submitted that as rightly observed and held by the Hon'ble High Court though Section 17(1) of the Registration Act has been amended by the Tamil Nadu Act, 2012 by inserting Section 17(1)(g), making the Agreement to Sell/ Agreement affecting any immovable property compulsorily required to be registered, there is no corresponding amendment to Section 49 more particularly proviso to Section 49 of the Registration Act. 4.2 It is further submitted that even the object and purpose of Tamil Nadu Amendment Act, 2012 more particularly inserting Section 17(1)

(g) is required to be considered which has been elaborately dealt with and considered by the Hon'ble High Court in the impugned judgment and order. It is submitted that a perusal of statement of objects and reasons to the Act No.29 of 2012 would suggest that primarily the amendment has been introduced by the State of Tamil Nadu by reason of the fact that instruments of agreement relating to sale of immovable property, instruments of power of attorney relating to immovable property and instruments evidencing agreement of deposit of title deeds, which were not registrable were resulting in loss to the exchequer as the public were executing these documents on white paper or on stamp paper of nominal value.

4.3 With the above submissions and heavily relying upon the proviso to Section 49 of the Registration Act, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel appearing on behalf of respective parties at length. The short question posed for the consideration of this Court is effect of Section 17(1)(g) of the Registration Act applicable to the State of Tamil Nadu by which Section 17(1)(g) of the Registration Act has been inserted and instruments of agreement relating to sale of immovable property of the value of Rs.100/□and upwards is made compulsorily registrable and whether such unregistered agreement relating to sale of immovable property can be received in evidence in a suit for specific performance?

6. While answering the aforesaid issues and appreciating the submissions made by learned counsel appearing on behalf of the respective parties, Section 17 of the Registration Act, 1908, as applicable prior to the Registration (Tamil Nadu Amendment) Act, 2012 and Section 17 post Amendment Act, 2012, are required to be referred to which are as under.

7. Section 17 of the Registration Act, 1908, post Tamil Nadu Amendment Act, 2012 reads as under :

“17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non□testamentary instruments which purport or operate to 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;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to 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:] Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this subsection any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. [(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.] (2) Nothing in clauses (b) and (c) of subsection (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in subsection (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or

proceeding]; or

(vii) any grant of immovable property by [Government]; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or [(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]”

8. By Tamil Nadu Amendment Act, 2012, Section 17(1)(g) has been inserted and “explanation” to Section 17(2) has been omitted. Section 17(1)

(g) as inserted by Tamil Nadu Amendment Act, 2012, reads as under :

“17(1)(g) instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards.”

9. Thus, on and after the Tamil Nadu Amendment Act, 2012, as per Section 17(1) (g), instrument of agreement relating to sale of immovable property of the value of Rs.100/ and upwards is required to be registered compulsorily. However, despite the same and despite the “explanation” to sub section (2) of Section 17 has been omitted, there is no corresponding amendment made to Section 49 of the Registration Act. Section 49 of the Registration Act is as under :

“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 (4 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 (4 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 (3 of 1877) , *** or as evidence of any collateral transaction not required to be effected by registered instrument.]”

10. Thus, as per proviso to Section 49, an unregistered document affecting the immovable property and required by Registration Act 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, or as evidence of any collateral transaction not required to be effected by registered document.

11. At this stage, the primary statement of objects and reasons to the Tamil Nadu Amendment Act, 2012, is also required to be referred to and considered. The primary statement of objects and reasons seem to suggest that amendment has been introduced by the State of Tamil Nadu bearing in mind the loss to the exchequer as public were executing the documents relating to sale of immovable property etc. on white paper or on stamp paper of nominal value.

12. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act No.21 of 1929 and thereafter, Section 17(1A) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act 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, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in

evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.

14. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed. It is accordingly dismissed. There shall be no orders as to costs.

.....J. (M. R. SHAH)J. (KRISHNA MURARI) New
Delhi, April 10, 2023