

Unregistered agreement to sell property is admissible in evidence in a suit for specific performance.

A 2 (two) judge bench of the Supreme Court of India (“**Supreme Court**”) has in *R. Hemalatha v. Kashthuri*¹ held that an agreement to sell property which is not registered under the provisions of the Registration Act, 1908 (“**Registration Act**”) can be admitted as evidence in a suit seeking specific performance of such agreement.

Brief Facts

In 2013, R. Hemalatha (“**Appellant**”) and Kashthuri (“**Respondent**”) executed an agreement to sell an immovable property (“**Agreement**”). The Respondent i.e., the original Plaintiff instituted a suit in the trial court seeking specific performance of the Agreement against the Appellant i.e., the original Defendant.

Before the trial court, the Appellant/original Defendant contended that the state of Tamil Nadu by way of the Tamil Nadu State Amendment of 2012 (“**State Amendment**”) to the Registration Act *inter alia* inserted sub-section (g) to Section 17(1) of the Registration Act which required an agreement relating to the sale of immovable property above a value of INR 100 (Indian Rupees one hundred) to be compulsorily registered. Thus, given that the Agreement for sale was unregistered, the same could not be admitted in evidence. Considering this position, the trial court *inter alia* held that the unregistered Agreement was not admissible in evidence.

Aggrieved by the order of the trial court, the Respondent/original Plaintiff filed a revision petition before the High Court of Madras (“**Madras HC**”). The Madras HC referred to the proviso to Section 49 of the Registration Act and held that an unregistered agreement was admissible as evidence in a suit for specific performance. Accordingly, the Madras HC set aside the order of the trial court and directed that the unregistered Agreement be received in evidence in the suit filed for specific performance.

The Appellant/original Defendant challenged the order of the Madras HC before the Supreme Court *inter alia* on the ground that the unregistered Agreement could not be admitted in evidence given the insertion of sub-section (g) to Section 17(1) of the Registration Act by the State Amendment. It was further contended that in light of the deletion of the explanation to Section 17(2) of the Registration Act by the State Amendment, which provided for exemption of certain documents from registration, the unregistered Agreement cannot be admitted as evidence. The Respondent/original Plaintiff *inter alia* submitted that the proviso to Section 49 of the Registration Act stipulated that an unregistered document affecting the immovable property may be received as evidence of a contract in a suit for specific performance under the Specific Relief Act, 1877².

¹ 2023 SCC OnLine 381

² References to the Specific Relief Act, 1877 under the Registration Act, 1908 are to be read as references to the Specific Relief Act, 1963.

Issue

Whether an unregistered agreement for sale of immovable property could be received in evidence in a suit filed for specific performance in view of the State Amendment effected by the state of Tamil Nadu.

Analysis and findings

While dismissing the appeal, the Supreme Court *inter alia* observed - The Tamil Nadu Amendment Act, 2012 amended Section 17 of the Registration Act to require registration of instruments relating to the sale of immovable property. However, no corresponding change was made to the proviso to Section 49 of the Registration Act which allows unregistered documents affecting immovable property (otherwise required to be registered under the Registration Act or Transfer of Property Act, 1882) to be received as evidence in a suit for specific performance.

JSA Comment

While this judgment was delivered in the context of a state amendment which required an agreement for sale of property to be registered, the Supreme Court has clarified the broader proposition that an unregistered agreement for sale of property may be admitted in evidence.

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Our clients comprise a broad cross-section of Indian and International, Institutional & private entities, including Developers, Real Estate advisers, Banks, Real Estate Funds, high net worth Investors, Governments, Major Retailers, Hotel owners & operators and others.

We are primarily involved in legal and regulatory issues for various types of Real Estate projects, including in relation to construction and development of hotels, malls, residential & commercial complexes, warehouses, IT & Industrial Parks and Special Economic Zones. We have been involved in conducting legal due diligence in relation to such projects and have drafted/ reviewed various types of documents including transaction documents such as (a) Shareholders/ Subscription/ Share Purchase Agreements; (b) Development Agreements; (c) Joint Venture Agreements and other related documents/ agreements.

During the course of our practice, we have also been involved in the drafting/ reviewing of (a) Agreements for Sale; (b) Conveyance Deeds; and (c) Lease Deeds.

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