

O.S.No.173/2021

Dated:19.08.2025

Today the matter was posted for marking of further documents. The learned counsel for defendants 1 and 2 had earlier filed an application under Order VIII Rule 3A CPC, which was allowed. Pursuant to the said order, on the last hearing, Ex.B1 to Ex.B13 were marked on the side of defendants 1 and 2.

While marking one of the documents dated 02.05.1985, described as a sale deed, the learned counsel for the 3rd defendant strenuously objected to its marking. The learned counsel for defendants 1 and 2, however, submitted that it was only a sub-lease deed, and further contended that the nomenclature of a document is not conclusive and that both parties have admitted the property belongs to the 3rd defendant-mutt.

This Court, upon a careful perusal of the document dated 02.05.1985, finds that it is in fact a sale deed, and that too an unregistered one. On reading the document in its entirety, there is no reference or whisper regarding the mutt, nor does it contain anything suggesting a lease or sub-lease. The Hon'ble Supreme Court in *Namburi Basava Subrahmanyam v. Alapati Hymavathi and Ors* reported in AIR 1996 SUPREME COURT 2220 has held that the nomenclature of a document is not decisive; rather, the Court must consider

the recitals as a whole to determine whether the document confers any present and irrevocable interest in the property. Applying this principle, the document in question clearly purports to be a sale deed.

Even as per the defendants' own case, if it were to be considered a lease, it is a permanent agricultural lease exceeding one year, in which case registration is mandatory. The Hon'ble High Court in *Backiyam v. Narayanan* in CRP.No.636 of 2024 has categorically held that an unregistered deed cannot be relied upon even for collateral purposes.

In terms of Section 17(1)(b) of the Registration Act, documents creating rights in immovable property are compulsorily registrable. Section 49 of the Registration Act further provides that such unregistered documents cannot be received in evidence. The proviso to Section 49 is also of no assistance here, as it applies only in cases of specific performance or for collateral purposes, and even then only if the document is duly stamped as mandated under Section 35 of the Indian Stamp Act. In the present case, the document is sought to be relied upon for the primary purpose of establishing title, which is impermissible.

Accordingly, this unregistered sale deed dated 02.05.1985 cannot be marked in evidence.

Sd/-K.N.Guru
Additional District Munsif,
Tenkasi.