

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.680 of 2010

ORDER :

This Civil Revision Petition is filed challenging the order dt.02.02.2010 in O.S.No.22 of 2008 of the Senior Civil Judge, Mangalagiri, Guntur District.

2. Petitioners herein are legal representatives of the deceased-plaintiff. The 1st respondent is the 1st defendant in the said suit and the wife of the plaintiff. It appears that there were disputes between the parties and it was alleged by the 1st respondent that on 10.01.1972 the plaintiff allegedly executed an agreement settling certain properties on her towards her maintenance. Under the said document possession of certain properties was alleged to have been delivered to the 1st respondent.

3. Plaintiff filed a suit in the year 2000 before the Senior Civil Judge, Guntur for declaration that he is the absolute owner of the plaint schedule property and for recovery of possession of the plaint schedule property from the 1st respondent. He also sought relief of perpetual injunction restraining the respondent therein from allocating the same to the 2nd respondent/2nd defendant or to others.

4. In the plaint, the plaintiff contended that he is the

absolute owner of the plaint schedule property and that in 1972, 1st respondent got put pressure on him to settle some properties in her favour for her maintenance but he did not accept the same since she left his company without any reasonable cause. He contended that elders intervened and convinced him to let the 1st respondent get the proceeds from the plaint schedule property for her living and assured that she would vacate the properties as and when demanded by him, and that it is not his intention to give properties to her towards her maintenance. He contended that out of sympathy for 1st respondent, he let the 1st respondent get proceeds from the property on condition that she should vacate the property as and when demanded by him.

5. Written statement was filed by the 1st respondent opposing the suit claim contending that the plaint schedule properties were given to her absolutely by way of gift by the plaintiff, that he had also promised to execute a registered gift deed in her favour as and when demanded and that she is enjoying the properties as absolute owner. Alternatively, it is also pleaded that she acquired title to the property by adverse possession.

6. Issues were framed. Trial commenced. Plaintiff's side evidence was closed. During the course of evidence of DW1, the witness sought to mark Ex.B1, the Settlement

Deed dt.10.01.1972 allegedly executed in her favour by the plaintiff. This was opposed by the counsel for the plaintiff who contended that it requires registration and it is inadmissible in evidence.

7. Counsel for the 1st respondent refuted the said contention.

8. By order dt.02.02.2010, the Court below overruled the objections of the counsel for the plaintiff and held that document does not require registration and that since it is insufficiently stamped, it can be marked subject to payment of deficit stamp duty, if any.

9. Challenging the same, this Revision is filed.

10. Counsel for the petitioner contended that the Court below erred in holding that the document in question does not require registration. He brought to the notice of the Court the recitals in the said document which indicate that the properties mentioned therein appear to have been conveyed to the 1st respondent towards her claim for maintenance and possession of the property was also delivered to her by the plaintiff. The document also contains a recital that as and when desired by the 1st respondent regular settlement deed would be executed and registered by the plaintiff in favour of the 1st respondent. He therefore

contended that the document is compulsorily registerable in view of these recitals and the Court below ignored these recitals merely because the document contemplated execution of a further document.

11. Counsel for the respondent however contended that there is no transfer of rights in the property to 1st respondent under the document; the said document did not require any registration; and the Court below was correct in overruling the objection of the counsel for the plaintiff in that regard.

12. The recital in the document dt.10.01.1972 which is sought to be marked by DW1 is to the effect that towards the settlement of maintenance claim of the 1st respondent, the properties mentioned in the said document were conveyed with all rights to the 1st respondent and that possession of the said properties was also delivered to her. No doubt there is a recital to the effect that as and when required by the 1st respondent, an appropriate settlement deed would also be executed and registered in her favour.

13. In my opinion merely because such a recital to execute a further document is contained in the document dt.10.01.1972, the effect of the earlier recital that the properties were conveyed with full rights to the 1st respondent, does not get wiped out. Since the document dt.10.01.1972 contains the recitals that the properties

mentioned there in are conveyed with full rights towards the maintenance claim of the 1st respondent and possession of the said properties was also delivered to the 1st respondent, section 17(1)(b) of the Registration Act, 1908 is attracted and the document is compulsorily registerable. However, it is not disputed that a document which is compulsorily registerable and is not registered, can still be received in evidence for a collateral transaction under the proviso under Section 49 of the Registration Act, 1908.

14. Also, admittedly, there is an alternative plea of adverse possession raised in the written statement by the 1st respondent. The basis in the said plea is that since the document in question is not registered, it is void and consequently, possession delivered pursuant there to it, is adverse (See ***Prem Singh and Others v. Birbal and Others***^[1]). Therefore, the document in question may be received in evidence to prove collateral purpose i.e., character and nature of possession of the 1st respondent.

15. In this view of the matter, I am of the opinion that the document in question can be received in evidence only for collateral purpose of proving the nature of possession subject to payment of any deficit stamp duty payable as per law in force. Therefore, the order passed by the Court below is modified to the above extent.

16. Accordingly, the Civil Revision Petition is disposed of.
There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions pending if any,
shall stand closed.

M.S. RAMACHANDRA RAO, J

14th July, 2015.
gra

[\[1\]](#) 2006(5) SCC 353