

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 261 of 2015

O R D E R:

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The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 21.11.2014 passed in I.A.No.1588 of 2014 in O.S.No.25 of 2003 on the file of the Senior Civil Judge, Adoni, wherein and whereunder an application filed under Rule 50 of Civil Rules of Practice and Section 151 of C.P.C. to de-exhibit Ex.A1 agreement of sale dated 15.07.1999 was dismissed.

The facts in issue are as under:

Respondent No.1 herein filed a suit for specific performance of contract against defendant No.1 basing on an agreement of sale dated 15.07.1999. In the said suit PW.1 was examined and got marked Ex.A1. During pendency of the suit, defendant No.1 died and defendant Nos.2 to 5 were brought on record as legal representatives of the deceased defendant No.1. An additional written statement was also filed by them. Subsequently, defendants filed I.A.No.1588 of 2014 seeking de-exhibit Ex.A1 agreement of sale dated 15.07.1999 on the ground that the same is un-registered, insufficiently stamped and inadmissible in evidence.

A counter came to be filed by the plaintiff contending that though Ex.A1 is un-registered, but as per Section 17 and 49 of the Registration Act, un-registered document can be received in evidence in a suit for specific performance. The said

agreement is sufficiently stamped and Ex.A1 already marked, at this stage the objection raised by the defendants is unjust and non-maintainable.

After analyzing the material on record, the trial Court dismissed the petition. Challenging the same the present revision is filed.

Learned counsel for the petitioners submits that the trial Court ought to have de-exhibited Ex.A1 agreement of sale dated 15.07.1999 as it was un-registered, insufficiently stamped and inadmissible in evidence. He relied on the judgment of this Court in ***Boggavarapu Narasimhulu v. Sriram ramanaiah and others***^[1].

Learned counsel for the first respondent submits that it is very clear from the proviso to Section 49 of the Registration Act, that the unregistered document can be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as an evidence of any collateral transaction not required to be affected by registered instrument.

Section 49 of the Registration Act reads as under:

Effect of non-registration of documents required to be registered: No document required by Section 17 or by any provisions of the Transfer of Property Act, 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 un-registered document affecting immovable property and required by this Act, or the Transfer of Property Act, 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, or as evidence of any collateral transaction not required to be effected by registered instrument.

From a reading of the said Section, it is clear that the unregistered document can be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as an evidence of any collateral transaction not required to be affected by registered instrument.

Section 17 of the Registration Act describes the documents, which have to be compulsorily registered. Section 49 of the Registration Act contains the consequence of non-registration of the document and its effect.

In ***Dadi Reddy Sivanarayana Reddy v. Kasi Reddy Chinnamma***^[2] wherein the Apex Court observed as under:

“A document produced for inspection of the Court cannot be admitted in evidence under Section 49 © of the Registration Act, if it, requires registration and under Section 17 of the said Act.

Any document by whatever name called not creating, declaring, assigning, limiting or extinguishing any right, title or interest, but merely creating right to obtain another document does not require registration under Section 17 (1) of the Registration Act.

As a necessary corollary a document of contract for sale of immovable property creating right to

obtain another document shall not require registration by reason of the payment of earnest money or whole or part of purchase money by the purchaser.

In any event, the prohibition under Section 49 © of the Registration Act does not apply to an unregistered document effecting immovable property in a suit for specific performance under the Specific Relief Act or as evidence of any collateral transaction not required to be effected by registered document.

Insofar as the question of stamp duty is concerned, the document sought to be marked is engrossed on two stamp papers worth Rs.50/- each. The petitioners herein did not raise any objection with regard to its admissibility at the time of marking the said document as Ex.A1. Therefore, the trial Court rightly dismissed the application for demarking of the document holding that the application was filed under wrong provision of law and the same was done with a view to delay the proceedings. Hence, I find no merit in the revision and the same is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. However, it is left open to the petitioners to raise objection with regard to the genuineness, admissibility and relevancy of the document in question at the time of arguments. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

09.03.2015

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[\[1\]](#) III (2014) CLT 412 (AP)

[\[2\]](#) 2001 (1) ALT 524