

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION NO.3334 OF 2015

ORDER:

Heard Mr.B.Srinarayana, learned counsel for the petitioners and Sri V.Sudhakar Reddy, learned counsel for the sole respondent.

Plaintiffs in O.S.No.163 of 2006 in the Court of the Additional Judicial Magistrate of First Class, Kavali, are the petitioners. The revision is directed against the docket order dated 07.04.2015 refusing to mark unstamped and unregistered a deed titled as "Hypothecation of Title Deeds". The document reads as follows.

"I have borrowed an amount of Rs.32,000/- from 1st of you and Rs.13,000/- from 2nd of you and executed promissory notes. As a security for the said debt, the pattadar pass book and title deed of the below mentioned property to which I have possession and rights, have been hypothecated to you today. Till the discharge of the above debt, I will not create any encumbrance on the said property. This is written with my consent today." (emphasis added)

When the document is tendered in incidence, the respondent herein objected to marking of the document on the ground that the instant Hypothecation Deed records a contemporaneous transaction of deposit of title deeds as security/charge for the sum borrowed by the respondent herein and the document for want of registration and stamp duty cannot be taken exhibited for any purpose.

Per contra, the revision petitioners contend that through the subject document, the parties intend to record a past transaction of creation of charge on property covered by title deeds for the sum borrowed and the document is not hit by Section 17 of the Registration Act. It is further contended that the order under revision is too brief and does not satisfy the requirement of a decision while overruling objection.

Learned counsel for the revision petitioners relies upon the decision reported in **Deb Dutt Seal v. Raman Lal Phumra and others.**

The docket order dated 07.04.2015 reads as follows:

“A perusal of the document, its title shows that it is a hypothecation deed, whereas the contents of document and intention of parties show that it is a mortgage and security for the loan obtained by the defendant and it is a suit document.

The basic principle is that the form of transaction is not the final test and the true test is the intention of parties entertaining into a transaction. If the intention of the parties was that the transfer was by way of security, it would be a mortgage. The Privy Council as early as in *Balkishan Das and others Vs. Legge*, 27, Indian Appeals 58, had laid down that, as between parties to the document, the intention to treat the transaction as an out and out sale or as a mortgage has to be found out on a consideration of the contents of document in the light of surrounding circumstances.

The main case of the plaintiff, to create a charge over the property, is based on the said document as a suit document. When the suit document is unregistered and unstamped, in this suit, it cannot be marked for any purpose much less even for collateral purpose. Thus, the objection raised by the defendant's counsel is sustained and document is not marked.

Call on 27.04.2015.”

Learned counsel for the revision petitioners does not dispute that if the document evidences contemporaneous transaction, the same requires registration and should be properly stamped for having legal effect. But it is contended that the document records a past transaction of creation of charge on property covered by Title Deed.

I have carefully perused the Hypothecation Deed dated 01.11.2001. The crucial aspect for consideration is whether the subject document records a past transaction or a contemporaneous transaction and this can be determined by interpreting line three in paragraph No.3 of the document. It reads that as a security for the said debt, this day (on 01.11.2001) defendant claimed to have created hypothecation/charge on properties shown in the document. I have gone through original in vernacular. There is nothing in the subject document to show that it records a past transaction. I am afraid that the submission put forward by the revision petitioners does not accord with the text of deed dated 01.11.2001. The order of the learned Additional Judicial Magistrate of First Class, Kavali, though is very brief and short, but he has referred to the legal objection which comes in the way of marking of the said document and expressed his agreement with the learned counsel for the defendant. The Civil Revision Petition fails and is dismissed. No order as to costs.

Since the suit is of the year 2006, the trial Court is directed to dispose of the suit as expeditiously as possible, preferably within a period of two (2) months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending shall stand dismissed.

(S.V.BHATT, J)

27th October 2015

RRB