THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1172 of 2015

ORDER:

Heard Sri T.P.Acharya, learned counsel for the petitioner and Sri C.Raghu, learned counsel for respondents.

2. This Revision Petition is filed challenging the order dt.23-02-2015 in E.A.No.132 of 2014 in E.A.No.371 of 2006 in E.P.No.19 of 2006 in O.S.No.181 of 2003 of the Additional Senior Civil Judge, Machilipatnam.

3. The said suit had been filed seeking recovery of money by 1st respondent against 2nd respondent on the basis of a mortgage. It was decreed on 10-12-2003. Since the decree was not satisfied, E.P. was filed to sell the mortgage property.

4. In the E.P., the petitioner herein has filed a claim petition under Order 21 Rule 58 CPC. It was numbered as E.A.No.371 of 2006. In the claim petition she contended that the property in question was gifted to her by her husband under registered gift deed dt.10-08-2001 and that her husband has purchased the said property under an agreement of sale dt.15-05-1983 from J.Dr/2nd respondent.

5. While the claim petition was pending, the

petitioner filed E.A.No.132 of 2014 under Order VII Rule 14 CPC seeking permission to file the said agreement of sale dt.15-05-1983 into Court and also prayed to receive it.

6. This application was opposed by 1st respondent on the ground that it is a fabricated document; earlier a memo had been served on her under Order 8 Rule 12 CPC asking her to produce it but she did not do it; that petitioner and 2nd respondent had colluded together and got this application filed; and the said agreement of sale is not binding on 1st respondent and the petitioner had no right over the property. It was also contended that the said agreement of sale is executed on Rs.7/- stamp paper and therefore it requires further stamp duty and penalty and also registration.

7. By order dt.23-02-2015, the Court below dismissed E.A.No.132 of 2014 stating that the agreement of sale dt.15-05-1983 is a possessory agreement of sale; in view of the recitals therein, the entire sale consideration is paid and it would partake the character of an unregistered sale deed; and therefore it requires stamp duty apart from registration. It held that it cannot be marked as exhibit and it cannot be received in the Court.

8. Challenging the same, this Civil Revision Petition is filed.

9. Learned counsel for the petitioner contended that petitioner only wanted the Court to receive the document and the stage of admitting the same in evidence has not yet arisen and this order is premature. He also contended that the petitioner had claimed title to the property and she intends to mark this document for collateral purpose to prove the nature of her possession of the plaint schedule property and that such possession, according to the learned counsel for the petitioner, is adverse possession and confers title on the petitioner.

10. Learned counsel for the respondent refuted the same. He contended that the agreement of sale dt.15-05-1983 cannot be termed as an unregistered sale deed; and there is no plea of adverse possession at all raised in the claim petition filed by the petitioner. Therefore, there is no question of marking such document for collateral purpose of proving the possession of the petitioner. He further contended that in the affidavit filed in support of this I.A., it is the plea of the petitioner that she should be not only permitted to file it but also to receive it for evidence.

11. I have noted the submissions of both sides.

12. The document in question is a possessory agreement of sale dt.15-05-1983 allegedly executed by 2nd respondent in favour of the petitioner's husband one M.Sreerama Krishna Murthy. The petitioner in the affidavit

filed in the application E.A.No.132 of 2014 stated that this document is crucial to prove her claim and that she should be permitted to file it into Court and the Court should receive it in evidence.

13. There is no dispute that this application was filed after she filed affidavit in lieu of chief examination on 11-08-2010. Therefore, the intention of the petitioner was not just that she should be permitted to file it into Court but that the Court should also receive it. The claim petition was admittedly filed in the year 2006. This application is filed in October 2014 after she had filed affidavit in lieu of chief examination on 11-08-2010 in E.A.No.132 of 2006.

14. On a careful reading of the affidavit filed in support of the E.A.No.132 of 2006, it is clear that the petitioner intends that the said document be admitted in evidence in support of her plea that she has title to the plaint schedule property through the said document as well as the gift deed said to have been executed in her favour on 10-08-2001.

15. The Court below observed that the said agreement of sale would partake the character of an unregistered sale deed because the possession had been delivered and the entire sale consideration is said to have been paid under it. This observation, in my opinion, is erroneous. The document in question would continue

to be in agreement of sale and does not become an unregistered sale deed merely because it recites that possession has been delivered and the entire sale consideration was paid under it, when there is no specific recital therein that the executant there of had conveyed title under it.

16. Under Schedule I-A to the Stamp Act, 1899, the stamp duty payable on the said document where property worth Rs.24,500/- is to be conveyed is Rs.50/- as per Article 6-A. Admittedly it was executed on NJ Stamps worth Rs.7/- only. Therefore, the said document is inadequately stamped.

17. Learned counsel for the petitioner states that his client is willing to pay the deficit stamp duty and penalty thereon in order to make good the deficit stamp duty.

18. In view of this request, the Court below may receive the document subject to the payment of deficit stamp duty and penalty but shall treat it only as an agreement of sale and not as an unregistered sale deed. Since admittedly there is no plea of adverse possession in the claim petition raised by the petitioner, question of using that document for collateral purpose does not arise.

19. Therefore the Civil Revision Petition is allowed only to the extent indicated above by setting

aside the order dt.23-02-2015 passed in E.A.No.132 of 2014 and holding that it is open to 1st respondent to raise other objections in regard to the said document and if raised, they shall be considered in accordance with law by the Court below. No costs.

20. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-07-2015
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