

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

C.R.P.No.2097 of 2010

ORDER:

This Revision Petition is filed challenging the Order dt.23-03-2010 in O.S.No.3620 of 2006 of the III Additional Junior Civil Judge, Ranga Reddy District refusing to mark the document dt.26-05-2004 during the cross examination of D.W.1 by the petitioner/plaintiff herein on the ground that the said document is compulsorily registerable document and it is insufficiently stamped.

2. Heard Sri Mir Masood Khan, learned counsel for the petitioner and Sri M.Vijay Kumar Goud, learned counsel for the respondents.
3. The petitioner herein is the plaintiff in the suit. He sought relief of perpetual injunction against the respondents to restrain them from interfering with his peaceful possession and enjoyment of the plaint schedule property.
4. Learned counsel for the petitioner contends that the suit being one for perpetual injunction, the possession of the plaintiff in respect of the land on the date of filing of the suit is a crucial fact to be gone into in the suit. He contends that the document in question would establish the possession of the plaintiff/petitioner and that his client would be willing to pay the adequate stamp duty and penalty as determined by the Court below so that the objection as to inadequacy of the stamp duty on the document would not stand in the way of the petitioner marking the said document. He further contended that under the proviso to Section 49 of the Registration Act, 1908 even if the document is unregistered, it can still be received in evidence for collateral

purposes and can be relied on by the petitioner for the limited purpose of explaining his possession of the property.

5. Learned counsel for the respondents on the other hand contends that the order of the Court below is correct and does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. He pointed out that the petitioner intends to mark this document during the cross examination of D.W.1 and this cannot be permitted.
6. The Court below has considered the contents of the document dt.26-05-2007 sought to be marked by the petitioner through D.W.1 and observed in the impugned order that it is inadmissible in evidence on the ground that it is insufficiently stamped and it is not registered. It held that it is a compulsorily registerable document as per Section 17 of the Registration Act, 1908.
7. Learned counsel for the petitioner does not dispute these findings.
8. Section 49 of the Registration Act states:

“Section 49 - Effect of non-registration of documents required to be registered.

No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 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 unregistered document affecting immovable property and required by this Act or the Transfer of Property Act,

1882 (4 of 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 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]”

9. As per the above provision, although a document required by Section 17 of the Registration Act, 1908 or by any of the Transfer of Property Act, 1882, to be registered, cannot be received in evidence of any transaction affecting of such property unless it has been registered, it can still be received as evidence of any collateral transaction not required to be effected by a registered instrument.
10. In **Rayadurgam Pedda Reddeppa (died) and Others Vs. Rayadurgam Narasimha Reddy (died) and Others**, this Court has held that a document compulsorily registerable but not registered can still be relied upon by a party for the limited purpose of explaining his possession of the property. Similar view has been taken in **St. Mary's Educational Society, rep. By its Secretary Mrs. Y. Mary and Others Vs. Dr. Qutubuddin Ahmed and Others**.
11. As regards the objection as to the document being inadequately stamped, in view of the offer of the learned counsel for the petitioner that the petitioner is willing to pay the adequate stamp duty and penalty thereon as per the provisions of the Indian Stamp Act, 1899, subject to the petitioner paying the requisite stamp duty and penalty as per the provisions of the said Act, I am of the opinion that the Court below may consider receiving the document in question for the limited purpose of explaining the point as to possession of the property. However, the question whether the document can be marked through

D.W.1 or through any other person is not being decided in this Revision Petition and the said issue is left open to the trial Court to be decided in accordance with law.

12. Therefore, the Order dt.23-03-2010 in O.S.No.3620 of 2006 of the III Additional Junior Civil Judge, Ranga Reddy District is set aside to the limited extent that it held it to be inadmissible. The Court below is directed to consider receiving the document after the petitioner pays the adequate stamp duty and penalty as per the provisions of the Indian Stamp Act, 1899 for the limited purpose of proving his alleged possession of the plaint schedule property.
13. Accordingly, the Civil Revision Petition is allowed to the above extent. No costs.
14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-06-2015

kvr