

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.878 of 2015

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ORDER:

The first defendant in O.S. No.114/2006 is the petitioner in the present Civil Revision Petition. The respondents 1 to 4 herein filed O.S. No.114/2006 on the file of the Court of Principal Junior Civil Judge, Gadwal, seeking a declaration of their title in respect of land of an extent of Ac.1.13 guntas and Ac.1.12 guntas in Survey Nos.106/Ga1 and 106/Ga2 respectively situated in Gonpad village, Gadwal Mandal, Mahaboobnagar District.

During the course of PW1's evidence, the respondents 1 to 4 herein filed I.A. No.392/2014 for marking an unregistered sale deed dated 05.01.1959 and the said application was allowed by order dated 29.01.2015. Challenging the said order, the present Civil Revision Petition is filed by the first defendant.

A reading of the unregistered sale deed shows that the sale consideration was received under the document and the possession of land was handed over to the vendees. The document was executed on 05.01.1959 on a stamp paper of Rs.3/-. The application was filed by the plaintiffs on the ground that the said document was validated by the then Tahsildar, Gadwal, and their names were mutated in the revenue records, but in the appeal preferred by the petitioner herein, the appellate authority has remanded the matter to the Tahsildar, Gadwal, who cancelled the mutation and directed the parties to approach the Civil Court. The appeal against the said order of the Tahsildar is pending before the R.D.O, Gadwal, and in those circumstances, they sought marking of the said document as a suit document. Counter affidavit was filed stating that in I.A.No.145/2006 the then learned Junior Civil Judge opined that the purchase as claimed by the petitioners was void as permission for alienation of the land was not taken and the sale was not validated under Section 50B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act and when C.M.A. No.12/2007 was preferred before the Court of the learned Senior Civil Judge, Gadwal, he upheld the order of the learned Junior Civil Judge holding

that the document was hit by the provisions of Section 47 of the Hyderabad Tenancy and Agricultural Lands Act. It was stated that such document cannot be admissible in evidence and cannot be marked.

The trial Court allowed the application with the following observations:

“During the trial petitioners sought marking agreement of sale dated 5.1.1959 respondents raised objection marking the said document since already the said document which was cancelled as such the document cannot be received in marking the document on behalf of the petitioner which is unregistered sale deed is not admissible in evidence and peruse the pleadings and contents and recital of the document and proviso to section 49 of the Act to carves out two exceptions for admissibility of the unregistered documents. Under the said proviso, an unregistered document, which is compulsory registerable, is still admissible in evidence under circumstances (1) if such document is filed in a suit for specific performance and (2) the same is sought to be filed as evidence of any collateral transaction not required to be effected by registered instrument.

For the above reasons and recitals unregistered immovable property which is right to obtain in their document it will execute create, declare, assign, limit or extinguish any right, title or interest would mean that the agreements of sale of immovable property of the value of Rs.100/- and upwards falling in the two exceptions referred to above are not liable for registration. In the absence of any findings that the suit document does not fall in the two exceptions referred to above and the same is sought to be marking in evidence for collateral transaction kept marking the original sale deed agreement of sale is admissible in evidence. Accordingly this Court just and feel received the unregistered document and mark on behalf of petitioners preferred the document is admissible. Accordingly this point is answered in favour of petitioners and against the respondents.”

The trial Court should have seen that this is not a suit for specific performance and the affidavit filed in support of the application indicates that it was not filed for collateral purpose. Since it is a suit for declaration of title and the plaintiffs' case rests on the said document, the trial Court cannot mark an improperly stamped and unregistered document. In the circumstances, the order passed by the learned Principal Junior Civil Judge, Gadwal, dated 29.01.2015 is set aside and the Civil Revision Petition is allowed. However, this will not prevent the plaintiffs from taking appropriate proceedings/filing appropriate applications in accordance with law. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

19.11.2015

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