

HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.5731 OF 2011

Dated 5th June, 2015

Between:

Boyanalpaly Ranga Rao and others.

..Petitioners.

And:

Manthri Radhamma and others.

..Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.5731 OF 2011

ORDER:

This revision is against order dated 27-7-2011 in I.A.No.70 of 2011 in O.S.No.19 of 2005 on the file of Senior Civil Judge, Nalgonda whereunder trial court refused to mark document filed by the plaintiffs.

Brief facts leading to the revision are as follows:

Plaintiffs filed above suit for perpetual injunction and latter, same was amended for the relief of declaration of title and when the suit was at the stage of recording evidence, plaintiffs filed the above I.A.No.70 of 2011 contending that one document i.e., receipt passed by Kishan Rao, husband of R.Andamma in favour of B.Yashodamma was not marked and the same has to be marked as Exhibit on their side.

This application was resisted by the respondent on the ground that it is not admissible for want of registration and that the plaintiffs made such an attempt in the year 2008 and the trial court once dismissed application filed by the plaintiffs to receive the said document and now again the same document is filed only to protract the proceedings.

Learned trial judge on a consideration of contentions and rival contentions of both parties and on a consideration of provisions of Section 49 of Registration Act, 1908 held that plaintiffs are not entitled for the relief claimed and that the document cannot be marked in view of the bar under Section 49 of the Registration Act, 1908. Now aggrieved by the orders of the trial court, plaintiffs preferred present

revision.

Heard both sides.

Advocate for plaintiffs submitted that lower court has grossly erred in treating the receipt as mortgage deed and the findings of the trial court are not at all correct. He further submitted that as per the proviso to Section 49 of the Registration Act, 1908, the present document is admissible in evidence but the trial court without examining the same, disallowed the relief claimed and therefore, the order of the trial court has to be set aside.

On the other hand, advocate for respondents submitted that a plain reading of the document intended to be marked would clearly reveal that it is a mortgage deed and therefore, it is compulsorily registerable under Section 17 of Registration Act, 1908 and trial court was right in refusing the request of the plaintiffs. He further submitted that when the trial court in the year 2008 itself has refused to receive this document, that order has become final and suppressing the same, plaintiffs again filed the present application and that trial court rightly dismissed it and that there are no grounds to interfere with the orders of the trial court.

Now the point that would arise for my consideration in this revision is whether the order of the court below is legal, correct and proper?

POINT:

The simple point that is involved in this revision is whether the trial court was right in refusing to mark document produced by the plaintiffs.

As seen from the impugned order, the trial court held that this document is not admissible for want of registration as it reveals transaction of mortgage. Now the contention of the plaintiffs is that this document squarely falls within the exception of Section 17 of Registration Act, 1908 and therefore, trial court committed error and the same has to be rectified in this revision.

It will be useful to refer Section 17 and Section 49 of Registration Act, 1908, which reads as follows:

“(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create,

declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

12[(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

PROVIDED that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court 13[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;] or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

14[(xa) any order made under the Charitable Endowments Act, 1890, (6 of

1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.

15[Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered."

Section 49 of Registration Act, 1908, which reads as follows:

"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] 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, 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 affected by registered instrument.]"

From a reading of Section 49, as per the proviso, an unregistered document can be received as evidence for any collateral transaction. Here in the affidavit, nothing is whispered as to the purpose of marking this document except saying that it is very much relevant to prove the case of the plaintiffs. Trial court was right in holding that this document is a compulsorily registerable document as per the provisions of Section 17 of Registration Act, 1908 and according to Section 49 of Registration Act, 1908, an unregistered document can not be received in evidence except for collateral purpose. Nothing is stated in the affidavit filed in support of the petition whether the document is sought to be marked for any collateral purpose.

On the other hand, the averment in the affidavit would show that this document is sought to be marked to prove the claim of the plaintiffs which means that it is not for collateral purpose.

Advocate for respondents cited a ruling of Supreme Court in *BABULAL AGRAWAL Versus FOOD CORPORATION OF INDIA AND OTHERS* () but that decision has no application since there is no material on record or any averment in the affidavit attracting ingredients of proviso of Section 49 of Registration Act, 1908. Respondents specifically contended that a similar request was refused earlier by the trial court and the same is not denied.

On a scrutiny of the material, I am of the considered view that trial court neither committed any error nor any illegality in refusing to mark the document. I do not find any jurisdictional error warranting interference by this court and therefore, this revision is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 5th June, 2015.

Dvs.

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Dvs