

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

CIVIL REVISION PETITION No.950 of 2013

ORDER:

Heard the learned counsel for petitioners and learned counsel for respondent.

2. This Civil Revision Petition is filed questioning the order dt.11-12-2012 in I.A.No.558 of 2012 in O.S.No.15 of 2008 of the Principal Junior Civil Judge, Rayachoty.

3. The petitioners herein are defendants in the suit. The suit was filed against petitioners for declaration of title and perpetual injunction by respondent.

4. The petitioners have filed an application under Order VII Rule 14 C.P.C. seeking leave of the Court to file certain documents, one of which was the original sale deed dt.02-06-1944 executed by one Melepati Narappa and other in favour of Thotti Modin Sab. The provision of law was wrongly mentioned as Order VII Rule 14 CPC in the original application instead of Order VIII Rule 1 A(3) CPC.

5. It is contended in the said application that the petitioner earlier engaged an advocate at Kadapa by name Sri A.M.Madhava Rao, but due to old age, he was unable to come to Rayachoty and conduct the case and he died in March, 2012; the petitioners then engaged another advocate at Rayachoty, who after going through the bundle

came to know that some documents were not filed by the advocate on behalf of petitioners. Petitioners contend that these documents were necessary to prove their case and therefore leave be granted and the documents be received.

6. Counter affidavit was filed by respondents contending that the document dt.02-06-1944 is a fabricated and forged with ante-date and that the vendor under the said document was not at all alive by 02-06-1944 since he died in 1926 itself. It was also contended that the said document is an unregistered document and it is inadmissible in evidence. It was further contended that the other documents are brought up documents nominally for the purpose of litigation long after Exs.A-2 to A-4.

7. By order dt.11-12-2012, the Court below allowed the application partly by allowing all documents to be marked by petitioners except the document dt.02-06-1944. It held that the said document is rejected “for want of registration of stamp duty”. It placed reliance on the judgment in **Saleem Bee Vs. Syed Abdul Nayeem and others**^[1].

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

9. The learned counsel for petitioners contend that the Court below ought to have permitted marking of the said

document for collateral purpose as permitted by proviso to Section 49 of the Registration Act, 1908 and could not have refused to mark it for that limited purpose. She relied upon the judgment of the Supreme Court in **Bondar Singh and others Vs. Nihal Singh and others**^[2] and **Doma Govinda Raju and another Vs. Vanimisetti Papa Rao and others**^[3].

10. The learned counsel for respondent, on the other hand, contended that the order of the Court below is correct and that this Court ought not to interfere with it in exercise of its power under Section 227 of the Constitution of India.

11. I have noted the submissions of both sides.

12. A look at the document dt.02-06-1944 indicates that it purports to transfer title to the property Melepati Narappa and other in favour of Thotti Modin Sab. It is written upon a stamp paper of 12 annas. No objection was raised by the respondent on the ground that the document is insufficiently stamped. Therefore, under Section 36 of the Indian Stamp Act, 1899, he is precluded from raising that contention and the said objection is deemed to be waived.

13. The only issue that remains is with regard to effect of non- registration of the said document. Admittedly, a

document transferring title to property is required to be registration under Section 17(1)(b) of the Registration Act, 1908. Section 49 of the Registration Act, 1908 prohibits receipt of document which requires registration under Section 17 of the said Act to be received as evidence of any transaction affecting such property unless it has been registered. However, proviso to Section 49 of the said Act permits it to be received as evidence of any collateral transaction not required to be affected by registered instrument. In **Bondar Singh** (2 supra) and **Doma Govinda Raju** (3 supra), it has been held that it is permissible to rely upon an unregistered sale deed in order to prove possession and that for the said collateral purpose only, a document can be received in evidence.

14. Having regard to the principle laid down in the above decisions, I am of the opinion that the sale deed dt.02-06-1944 sought to be produced by defendants can be received in evidence subject to condition that it can be relied upon by defendants only for proving their possession, which is collateral to the main transaction of the sale. It cannot be relied upon by the Court below as evidence of sale which is the main purpose of the document. The decision in **Saleem Bee** (1 supra) relied upon by the Court below relates to impounding of a document which is insufficiently stamped. Since the objection relating to insufficiency of stamp has not been raised by the respondent in the counter filed by him,

the said decision has no application to the facts of the case and Court below erred in placing reliance therein.

15. Therefore, this Civil Revision Petition is allowed, and the order dt.11-12-2012 in I.A.No.558 of 2012 in O.S.No.15 of 2008 of the Principal Junior Civil Judge, Rayachoty is set aside to the extent that the Court below held that the document dt.02-06-1944 cannot be received in evidence; the Court below is directed to receive the said document and consider it only for collateral purpose i.e. proving the possession of petitioners/defendants and not as evidence of transfer of title under it. No costs.

16. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2015

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[\[1\]](#) 2008(5) ALT 420

[\[2\]](#) (2003) 4 SCC 161

[\[3\]](#) 2012 (5) ALD 257