

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.1049 OF 2015

ORDER:

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

2. The petitioner herein is the defendant in O.S.No.98 of 2011 pending on the file of the Court of Junior Civil Judge, Pakala (for short, trial Court). The respondent herein is the plaintiff in the said suit. For the sake of convenience, the parties shall be referred to as they are arrayed in the trial Court.

3. The plaintiff filed the said suit for permanent injunction in respect of an extent of Ac.0-59 cents out of Ac.7-14 cents in survey No.1064/6 and an extent of Ac.0-10 cents out of 0.82 cents in survey No.1098/2H within specific boundaries of Pakala Village and Mandal, Chittoor District. During the course of evidence, the plaintiff filed an agreement of sale dated 07.08.1995 and wanted to mark the same. At that stage, an objection was taken by the defendant by filing a memo stating that the said document was not sufficiently stamped and it should be impounded by the competent authority. The plaintiff also filed objections stating that since the suit is not a suit for declaration of title or for specific performance and it is only a suit for permanent injunction, the suit agreement dated 07.08.1995 can be marked for collateral purpose. The trial Court rejected the memo filed by the defendant, by its order dated 18.12.2014. Challenging the same, the present Civil Revision Petition is filed.

4. The document dated 07.08.1995 recites as if it is a possessory agreement of sale. The plaintiff also filed subsequently stating that the possession of the suit property was delivered to the plaintiff under the said document. Those relevant facts should have been taken into consideration by the trial Court while deciding the objection raised by the defendant, but the trial Court considered

the proviso to Section 49 of the Registration Act, 1908 and rejected the memo by holding as follows:

“ I gone through the perusal of the submissions made by both counsel and unregistered agreement of sale dated 7.8.1995 filed by the plaintiff. It is an admitted fact that the main suit is coming for marking of documents and cross examination of P.W.1 and P.W.1 chief affidavit filed. By that time, defendant has filed the present memo stating that the said document is not marked, because, there is no value in the eye of law.

In that circumstances, on perusal of the section 49 proviso of Registration Act, 1908, it deals the fact of non-registration of the document, which are required to be registered. It amounts that unregistered document cannot be received in the evidence. But, this proviso covered out an explanation to that effect that such document i.e unregistered agreement of sale can be received in evidence for collateral purpose. The purpose can be only to collateral when it is other than one which the documents purports to deal if the document is an unregistered agreement of sale. So that, the said document which was presented by the Plaintiff is an unregistered agreement of sale dated 7.8.1995 is stamped. So that, the same was taken into consideration for collateral purpose.

In a decision reported in **2013 (1) ALT 461 between Dangu @ Kadamenda Yellaiah (died) per LRs and others –Vs- Ch.Sridhar Reddy and another** held that **unregistered sale deed was received for collateral purpose only. Except suit for declaration of the title of the property. In that cases said unregistered cannot be received even for collateral purpose.** In the present suit, the plaintiff filed the suit seeking permanent injunction. So that, the said agreement of sale has to be received for collateral purpose.

The further contention of the plaintiff is that, he is denying execution of the said unregistered sale deed. The said fact was decided at the time of trial, but not at this stage. Accordingly memo is answered.

In the result, memo is rejected.”

5. The trial Court has not properly considered the case and the objections raised by the defendant for marking the document. This is a case of insufficient payment of stamp duty on the agreement dated 07.08.1995 keeping in view the nature of the document. The proviso to Section 49 of the Registration Act, 1908

does not attract at this stage. The trial Court should see the nature of the document and pass an appropriate order in the facts and circumstances of the case. Since the order of the trial Court is, on the face of it, a misdirection on point of law, this Court is constrained to set aside the impugned order dated 18.12.2014 and remand the matter to the trial Court for passing appropriate orders in accordance with law within a period of 30 days from the date of receipt of a copy of this order, after hearing the learned counsel for both the parties.

6. The Civil Revision Petition is, accordingly, allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 05.11.2015

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