

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Civil Revision Petition No.432 of 2015

Between:

Satti Venkateswara Reddy

....Petitioner

And

Mallidi Venkata Reddy

....Respondents

JUDGMENT PRONOUNCED ON: 23.11.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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+ CIVIL REVISION PETITION No.432 of 2015

% 23.11.2015

Satti Venkateswara Reddy

...Petitioner

vs.

\$ Mallidi Venkata Reddy

... Respondent

!Counsel for the Petitioner : Sri J.Sreenivasa Rao

^Counsel for the Respondent : Sri Gangadhar Chamarthy

<Gist :

>Head Note :

? Cases referred

1. AIR 1965 Supreme Court 1591
2. 1996 (3) Andhra Law Times 605
3. 2014 (1) Andhra Legal Decisions 13 (SC)

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.432 of 2015

ORDER:

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The defendant in O.S.No.109 of 2010 is the petitioner herein and the respondent/plaintiff filed the said suit on the file of IV Additional District Judge, Tanuku, seeking a preliminary decree for Rs.8,95,101/- against the defendant based on equitable mortgage created in respect of the property of dry land of an extent of Ac.0.10 cents in R.S.No.437/1 and an extent of Ac.0.64 cents in R.S.No.437/2 situated in Penugonda village and Mandal, West Godavari District. When PW.1 was being examined, he wanted to mark the document styled as "Memorandum of Deposit of Title Deed", which was executed subsequent to the execution of promissory note dated 28-03-2008 and the defendant objected to the marking of the same. The defendant raised the objection that the said document is compulsorily registerable as required under Section 17 (1) (c) of the Registration Act. There was no dispute with regard to the document being unregistered. The trial Court overruled the objection by order dated 27-01-2015 and challenging the same, the present Civil Revision Petition is filed.

The document in question was styled as "Memorandum of Deposit of Title Deed" dated 30-03-2008. It states that on 28-03-2008 the executant took a loan of Rs.6,00,000/- on the basis of promissory note and the lender required the lendee to secure the said loan by some immovable property on 29-03-2008 and in furtherance of the said requirement, he wanted to create a security of the property, which was registered under document No.433 of 2003 in favour of

lender and handed over the original document as security with a condition that after payment of full amount under the promissory note, the original document along with the promissory note would be taken back. The document also recites that the lender is entitled to recover the amount against the property given as security. The document in Telugu reads as follows:

“ది తేదీని అనగా ది28.3.2008వ సం॥రం॥తేదీని మీ వద్ద నుండి రు॥6,00,000-00 లు అక్షరాల ఆరు లక్షరూపాయలు మాత్రం వ్యపార పెట్టుబడి నిమిత్తము మీ వద్ద బదులు తీసుకొని సాక్షుల సమక్షములో మీకు ప్రాంశరీ నోటు వ్రాయించి యిచ్చి యున్నాను॥ సదరు ప్రాంశరీ నోటు ప్రతి ఫలము హెచ్చు మొత్తం అయినందున ఏదైనా ఆస్తిని సెక్యూరిటీగా యిమ్ముని మీరు నన్ను ది29.3.2008న సం॥రం॥తేదీని కోరినందున అందుకు నేను అంగీకరించి నా పేరు శ్రీ పెనుగొండ స రి వారి కార్యాలయంలో 433 ఆఫ్ 2003రుగా నా పేరు రెజిస్ట్రీ కాబడిన క్రియ దస్తావేజు గల భూమిని యీ దిగువ సాక్షుల ఎదుట మీకు ప్రథమ హామీగా యిచ్చి యిందుతో పాటు నా ఒరిజినల్ దస్తావేజును మీకు హామీగా యిచ్చి ప్రాంశరీ నోటుబాకి పూర్తిగా చెల్లించిన తరువాత నేను దెపాజిట్టు చేసిన మెమోరాండం యీ ఒరిజినల్ దస్తావేజు మరియు ప్రాంశరీ నోటు తిరిగి నేను తిసుకోగల వాడను॥ అట్లు నేను చేయని యెడల మీకు ప్రథమ హామీగ యిచ్చిన ఆస్తి ద్వారా మీరు యీ బాకీ రాబట్టుటకు మీకు సర్వ అధికారములు యివ్వడమైనది...”

Learned counsel for the defendant relied on various decisions before the trial Court, whereas the learned counsel for the plaintiff relied on the judgment of the Supreme Court reported in **State of Haryana and others v. Navir Singh and another** ((2014 (1) ALD 13 SC). The trial Court by relying on a Division Bench judgment of this Court in **Durga Emporium, Vijayawada v. M/s. Munaga Brothers Cloth Merchants, Cuddapah** (2002 (5) ALD 135 DB) overruled the objection. The trial Court mainly held that the document was executed subsequent to taking of the loan and since it was executed for the past transaction and for the purpose of security for the debt, the document creates only equitable mortgage under Section 58 (f) of the Transfer of Property Act, 1882 and it is not compulsorily registerable document as required under Section 17 (1) (c) of the Registration Act.

The relevant portion of Section 17 of the Registration Act, 1908 reads as follows:

“17. Documents of which registration is compulsory-

...

(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.....”

With regard to deposit of title deeds, way back, the Madras High Court in **Muthiah Chetty v. Kodandarama Swami Naidu (31 MLJ 347)** held that if the document contains a clause that the lender may sell the property in default of payment on the agreed date, the power of sale creates an interest not only in the property but also in the title deeds and the said transaction of the document is chargeable as a regular mortgage deed. The law on this aspect was summarized by the Supreme Court in **United Bank of India Ltd., v. M/s. Lekharam Sonaram and Co. and others** as follows:

“.....A mortgage by deposit of title deeds is a form of mortgage recognised by [Section 58\(f\)](#) of the Transfer of Property Act which provides that it may be effected in certain towns (including Calcutta) where a person " delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon." In other words, when the debtor deposits with the creditor title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required under [Section 59](#) as in other classes of mortgage. It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under Section 17 of the Indian Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. If a document of this character is not registered it cannot be used in the evidence at all and the transaction itself cannot be proved by oral evidence either. In the case of *Kedarnath Dutt v. Shamloll Khettry*, 11 Ben. L.R. (O.C.J.) 405 Couch C.J. stated as follows :

" The rule with regard to writings is that oral proof cannot be substituted for the written evidence of any contract which the parties have put into writing. And the reason is that the writing is tacitly considered by the parties themselves as the only repository and the appropriate evidence of their

agreement. If this memorandum was of such a nature that it could be treated as the contract for the mortgage and what the parties considered to be the only repository and appropriate evidence of their agreement, it would be the instrument by which the equitable mortgage was created, and would come within [Section 17](#) of the Registration Act....”

A learned single Judge of this Court in **Thota Venkata Narasamma v. S.V.M. Srinivasan** considered the case of execution of promissory note on 30-05-1983 followed by execution of Memorandum of Title deeds on 02-06-1983. When a suit was filed on the basis of equitable mortgage by deposit of title deeds to realize the pronote amount and the objection of the defendant was overruled by the trial Court, this Court, considering the recitals of the agreement held that it was a compulsorily registerable document under Section 17 of the Registration Act.

The Supreme Court in **State of Haryana and others v. Navir Singh and another** examined the case of the mortgage by deposit of title deeds and held as follows:

“.....Mortgage inter alia means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. [Section 17\(1\)\(c\)](#) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. Mortgage by deposit of title-deeds in terms of [Section 58\(f\)](#) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, [Section 59](#) of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title-deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor deposits with the creditor title-deeds of the property for the purpose of security, it becomes mortgage in terms of [Section 58\(f\)](#) of the Transfer of Property Act and no registered instrument is required under [Section 59](#) thereof as in other classes of mortgage. The essence of mortgage by deposit of title-deeds is handing over by a borrower to the creditor title-deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent. After the deposit of the title-deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. **A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under [Section 17\(1\)c](#) of the [Registration Act](#), but in a case in which**

such a document does not incorporate any term and condition, it is merely evidential and does not require registration.

This Court had the occasion to consider this question in the case of [Rachpal v. Bhagwandas](#), AIR 37 1950 SC 272, and the statement of law made therein supports the view we have taken, which would be evident from the following passage of the judgment:

“4. A mortgage by deposit of title-deeds is a form of mortgage recognized by [S. 58\(f\)](#), [T.P. Act](#), which provides that it may be effected in certain towns (including Calcutta) by a person “delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon.” That is to say, when the debtor deposits with the creditor the title-deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under S.59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under S.17, [Registration Act](#), 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive.

The document may be handed over to the creditor along with the title-deeds and yet may not be registerable.....” This Court while relying on the aforesaid judgment in the case of [United Bank of India v. M/s. Lekharam Sonaram & Co.](#), AIR 1965 SC 1591 reiterated as follows:

“7.It is essential to bear in mind that the essence of a mortgage by deposit of title-deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under Section 17 of the Indian Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one

hundred rupees and upwards. If a document of this character is not registered it cannot be used in the evidence at all and the transaction itself cannot be proved by oral evidence either.....” Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case. It is relevant here to state that letter dated 29th March, 2007 of the Finance Commissioner inter alia makes “instrument of deposit of title-deeds compulsorily registerable under [Section 17\(1\)\(c\)](#) of the Registration Act.” In such contingency, registration fee and stamp duty would be leviable. But the question is whether mortgage by deposit of title-deeds is required to be done by an instrument at all. In our opinion, it may be effected in specified town by the debtor delivering to his creditor documents of title to immoveable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only showing deposit of the title-deeds. In such a case also registration is not required. But in a case in which the memorandum recorded in writing creates right, liability or extinguishes those, same requires registration. In our opinion, the letter of the Finance Commissioner would apply in cases where the instrument of deposit of title-deeds incorporates terms and conditions in addition to what flow from the mortgage by deposit of title-deeds. But in that case there has to be an instrument which is an integral part of the transaction regarding the mortgage by deposit of title-deeds. A document merely recording a transaction which is already concluded and which does not create any rights and liabilities does not require registration.

Nothing has been brought on record to show existence of any instrument which has created or extinguished any right or liability. In the case in hand, the original deeds have just been deposited with the bank. In the face of it, we are of opinion that the charge of mortgage can be entered into revenue record in respect of mortgage by deposit of title-deeds and for that, instrument of mortgage is not necessary. Mortgage by deposit of title-deeds further does not require registration. Hence, the question of payment of registration fee and stamp duty does not arise. By way of abundant caution and at the cost of repetition we may, however, observe that when the borrower and the creditor choose to reduce the contract in writing and if such a document is the sole evidence of terms between them, the document shall form integral part of the transaction and same shall require registration under [Section 17](#) of the Registration Act. From conspectus of what we have observed above, we do not find any error in the judgment of the High Court.

(emphasis supplied)

In the instant case, the document in question contains two statements viz., 1) the document relating to the land, which was registered as document No.433 of 2003 was handed over as security for the loan amount; 2) in case of failure to repay the amount, the lender was given full rights to recover the amount

against the property secured. If it is a simple document depositing title deed as a security, it would not have required registration, but when authorised the lender to take action for recovery of money on the basis of such deposit of title deed coupled with Memorandum, it requires registration. This distinction was not maintained by the trial Court.

The document was executed on a white paper. Article 7 of Schedule 1-A of the Indian Stamp Act, 1899 was amended by substituting the said Article under the Act 19 of 2005 w.e.f. 01-08-2005 requiring proper stamp duty. Article 35 of Schedule 1-A of the Act deals with Mortgage deed. In either of the cases, it requires stamp duty and if it is a mortgage deed, it further requires registration though it is styled as "Memorandum of Deposit of Title deeds".

Accordingly, the order dated 27-01-2015 in O.S.No.109 of 2010 passed by the IV Additional District Judge, Tanuku is set aside and the objection raised by the defendant is upheld. The Civil Revision Petition is accordingly allowed. No costs.

A.

RAMALINGESWARA RAO, J

Date: 23-11-2015

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