THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3392 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the orders dated 23.07.2015 of the learned VII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar passed in IA.no.194 of 2015 in OS.no.231 of 2013 filed under Section 49(c) of the Indian Registration Act, 1908 read with Section 151 of the Code of Civil Procedure requesting to mark the memorandum of gift dated 24.11.1997 and consider the same for the collateral purpose of establishing/noting the possession of the vendor of the plaintiff to whom the defendant and his late brother gifted the suit schedule property by way of the said memorandum of gift.

2. I have heard the submissions of the learned counsel for the revision petitioner. Though the matter is posted for hearing the learned counsel for the respondent, there is no representation and none appears. I have perused the material record.

3. The facts, as borne out by the record and as per the submissions made at the hearing, in brief, are as follows:

The plaintiff brought the suit for perpetual injunction to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property. The plaintiff had also filed an interlocutory application for grant of temporary injunction pending disposal of the suit. The case of the plaintiff is that the defendant and his late brother gifted the property to the vendor of the plaintiff and that the said fact is evident from the memorandum of gift dated 24.11.1997. Therefore, while placing reliance on the said memorandum of gift, the plaintiff requested the court below to permit the plaintiff to exhibit the said document at the time of enquiry into the IA. However, an objection is raised by the defendant before the Court below stating that the memorandum of gift is not sufficiently stamped and that it is not registered as required under law. The Court below having upheld the objection declined to receive the said document on file and refused to grant permission for exhibiting the same. Therefore, the petitioner earlier filed a revision petition in CRP.no.3945 of 2014. This Court by an order dated 12.12.2014, having considered the submission of the learned counsel that even if the document is insufficiently stamped and unregistered the same can be relied upon for collateral purpose to prove possession, had noted that the said plea does not appear to have been raised before the Court below and had, hence, permitted the plaintiff to raise the same plea before the trial Court and directed the trial Court to consider the said plea and take an appropriate decision in the matter. Pursuant thereto, the revision petitioner filed the present application to permit him to exhibit the said document in the interlocutory enquiry in an interlocutory application field for temporary injunction and to consider the said document for collateral purpose. The said application was resisted by the defendant *inter alia* contending that the said document evidencing the transaction of gift which is contemporaneous is compulsorily registerable and that the said document is inadmissible in evidence for want of registration. However, the fact is that the plaintiff had paid the necessary stamp duty and penalty collectable on the said document. The plaintiff's only request is that the said document, though not registered, may be received in evidence for collateral purpose, as such a course is permissible under Section 49 of the Indian Registration Act. However, on merits, the trial Court, by the order impugned, did not consider the request of the plaintiff and had dismissed the petition. Therefore, the plaintiff is before this Court.

4. The learned counsel for the plaintiff having narrated the facts, which lead to the filing of this revision, which are already stated supra, in detail, had placed reliance on the decision of the Supreme Court in **Hafeeza Bibi and others v. Shaikh Farid (dead) by LRs and others [(2011) 5 SCC 654]**.

5. I have gone through the precedent cited. The Supreme Court in the cited case having referred to a passage in Mulla's 'Principles of Mahomedan law' had held that the distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to be in conformity with the rule of gifts in Mohammadan Law. Though the position was succinctly stated in the above mentioned lines, still it is advantageous to refer to the passage in the text of Mulla and the ratio in the cited decision, which are as follows:

> **Mulla, Principles of Mahomedan Law (19th Edition), Page 120, states the legal position in the following words :**
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> **"Under the Mahomedan law the three essential requisites to make a gift valid : (1) declaration of the gift by the donor: (2) acceptance of the gift by the donee expressly or impliedly and (3) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 Transfer of Property Act, excludes the rule of Mahomedan law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Mahomedan gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case."**
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> **29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.**

In view of the precedential guidance, the law is now well settled that a deed of gift executed by a Mohammeddan is not the instrument effecting, creating or making the gift deed but a mere piece of evidence and such writing is not a document of title but is a piece of evidence and that, therefore, the said document does not require registration and is not a compulsorily registerable document. In view of the settled legal position and aforementioned reasons, this Court finds that there is acceptable merit in the revision petition and that the order impugned warrants interference.

6. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.194 of 2015 in OS.no.231 of 2013 stands allowed. The trial court is directed to permit the plaintiff to exhibit the memorandum of gift dated 24.11.1997 without insisting upon the requirement of registration. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

16.03.2016
Vjl