

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

CIVIL REVISION PETITION No.4066 OF 2016

Between:

R.Suresh Babu

... Petitioner

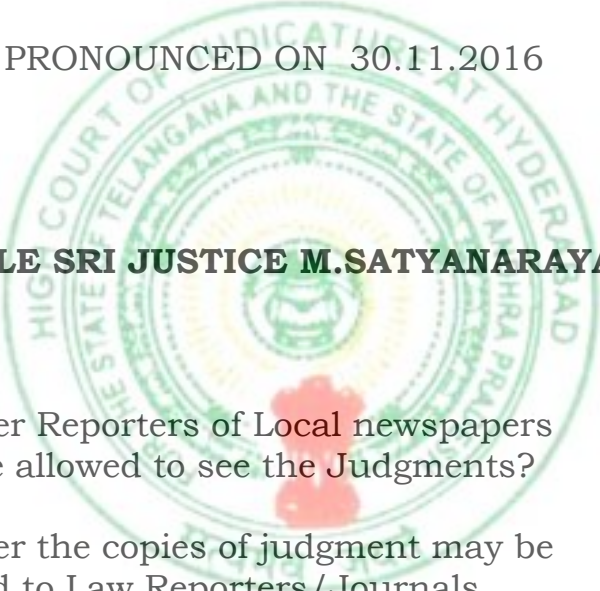
And

G.Rajalingam and 2 others

... Respondents.

JUDGMENT PRONOUNCED ON 30.11.2016

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- 
1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -No-
 2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes -
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes -

*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION No.4066 of 2016

% 30.11.2016

R.Suresh Babu

....Appellant

v.

\$ G.Rajalingam and 2 others

.... Respondents

! Counsel for the Petitioner : Sri J.V.Suryanarayana for
Sri M.Mohan Rao

Counsel for Respondents: Sri O.Manohar Reddy.

<Gist :

>Head Note:

? Cases referred:

1. AIR 2010 Supreme Court 1654
2. 2012 (3) RCR (Civil) 811
3. (2003) 1 SCC 557
4. (1998) 7 SCC 184
5. (2006) 3 SCC 100
6. (1977) 4 SCC 467
7. (1989) 2 SCC 163
8. (1994) 6 SCC 322
9. AIR 1955 AP 22
10. AIR 1967 AP 257
11. (2008) 8 SCC 564
12. 2012 (6) ALD 163
13. 2011 AIR SCW 4484
14. AIR 2003 SC 1905
15. AIR 1990 Cal 135
16. AIR 2004 All 335
17. (2010) 10 Supreme Court Cases 512
18. (1984) 1 Supreme Court Cases 369
19. 1957 AIR (Mad) 78
20. 1981 (83) BomLR 339
21. AIR 1960 AP 83
22. AIR 1924 PC 269
23. AIR 1995 SC 491

24. IA No.20617/2012 in CS (OS) 2661/2012 dated 01.10.2013
25. AIR 2009 Delhi 1
26. I.A.No.5540/2005 in CS (Os) No.1281/2004 dt 30.04.2007
27. AIR 1988 CALCUTTA 155
28. [1960] 3 SCR 820
29. (1998) 2 SCC 70
30. 2004(6) ALT 217
31. 2009 (2) ALT 143
32. 2001 (1) ALT 524
33. 2004 (4) ALT 614
34. 2003 (6) SCC 641



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4066 OF 2016

ORDER:

This revision under Article 227 of Constitution of India is filed to set aside the order dated 08.02.2016 passed in I.A.No.686 of 2014 in O.S.No.182 of 2005 by the XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, prayed to allow I.A.No.686 of 2014 rejecting the plaint in O.S.No.182 of 2005.

The petitioner/defendant in suit filed I.A.No.686 of 2014 under Order VII Rule 11 read with Section 151 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") to reject the plaint in O.S.No.182 of 2005 pending on the file of XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad on various grounds.

The main and very first requirement of law to file a suit for Specific Performance of an agreement of sale is that there should be a valid agreement of sale in view of A.P. State amendment by incorporating clause (g) to Section 17 (1) of the Registration Act, 1908, with effect from 01.04.1999. As per the said amendment all agreements of sale of immovable property worth more than Rs.100/- compulsorily be registered. As the immovable property involved in the agreement of sale dated 06.06.2003 is worth more than Rs.100/-, the said agreement of sale is invalid for want of registration. The said unregistered agreement of sale will not affect transfer of any immovable property and on that ground alone the plaint is liable to be rejected. When there is no chance of succeeding in the plaint and the same is without merits, the suit cannot be continued and the trial Court by exercising power under

Order VII Rule 11 of C.P.C. can reject the plaint and prayed for rejection of the plaint in O.S.No.182 of 2005.

The respondent – plaintiff filed counter raising several contentions. The respondent – plaintiff mainly contending that the agreement of sale is enforceable under law and the plaintiff is entitled to maintain the suit. Under law, there is no bar to file suit for Specific Performance of a contract based on unregistered document. Section 49 of the Registration Act, 1908 enables a party to use the unregistered agreement for the purpose of specific performance of the contract. Therefore, the suit is not barred by any law to invoke the jurisdiction under Order VII Rule 11 (d) of C.P.C. to reject the plaint and that the suit is maintainable, prayed for dismissal of the petition.

The trial Court upon hearing both the counsel, passed the order under challenge, dated 08.02.2016 in I.A.No.686 of 2014 in O.S.No.182 of 2005 rejecting the contention of the defendant on the ground that the agreement is admissible in law and the suit for specific performance is maintainable based on unregistered agreement of sale and thereby the plaint cannot be rejected by exercising the power under Order VII Rule 11 (a) or (d) of C.P.C.

Aggrieved by the order and decreetal order passed by the trial Court referred supra, the present revision is filed almost reiterating the grounds urged before the trial Court and pointed out that the trial Court did not exercise the jurisdiction under Order VII Rule 11 (a) or (d) of C.P.C. and when the agreement itself is invalid, which would not affect the immovable property in view of the bar under Section 17 (1) (g) of the Registration Act, as amended by Andhra Pradesh Act 4 of 1999 with effect from 01.04.1999. The

trial Court has not followed the proviso to Section 49 of the Registration Act, the law laid down by the Apex Court in “**S.Kaladevi v. V.R.Somasundaram and others**”¹ cannot be applied to the present facts of the case since it is based on the law prevailing in Tamilnadu State and the application of law laid down by Apex Court pertaining to Tamilnadu is an error apparent on the face of the record. The trial Court did not consider the amendment to Section 17 (1) (g) of the Registration Act by A.P. Act 4 of 1999 with effect from 01.04.1999 and prayed to set aside the impugned order passed by the trial Court.

During hearing Sri J.V.Suryanarayana, learned Senior Counsel appearing on behalf of Sri M.Mohan Rao, learned counsel for the revision petitioner – defendant No.1 mainly concentrated on validity and enforceability of unregistered agreement of sale executed within the State of Andhra Pradesh. Learned senior counsel further contended that in view of amendment to Section 17 (1) (g) of the Registration Act by A.P. Act 4 of 1999 with effect from 01.04.1999, the agreement itself is not enforceable for want of registration. When the agreement itself is not valid for want of registration, continuation of proceedings in the suit is nothing but abuse of process of law and when there is a direct bar for affecting transfer of immovable property, the suit cannot be decreed and thereby it would fall within the ambit of Order VII Rule 11 (d) of C.P.C., which permits that when the suit is barred by any other law, the plaint can be rejected by exercising jurisdiction under Order VII Rule 11 (d) of C.P.C. Similarly, the claim of the defendant would fall within the ambit of Order VII Rule 11 (a) or (d) of C.P.C.,

¹ AIR 2010 Supreme Court 1654

which deals with rejection of plaint, where the plaint does not disclose the cause of action and since the cause of action mentioned in the plaint is not valid in view of non registration of the agreement of sale dated 06.06.2003, which is the document sued upon, the plaint shall be rejected. It is further contended that the trial Court did not consider the law in proper perspective with reference to amendment to Section 17 (1) (g) of the Registration Act by A.P. Act 4 of 1999 with effect from 01.04.1999 and committed serious error, which calls for interference of this Court by exercising jurisdiction under Article 227 of Constitution of India and drawn the attention of this Court to several judgments of Apex Court and other Courts to substantiate his contention and prayed to allow the revision setting aside the order passed by the trial Court in I.A.No.686 of 2014 in O.S.No.182 of 2005 and allow the same and reject the plaint.

Though notice was ordered in the revision and served on the advocate appearing for the respondents before the trial Court, none put up appearance on behalf of the respondent – plaintiff.

Considering the order passed by the trial Court and the arguments advanced by the learned counsel for the revision petitioner, the nature of the suit document with reference to provisions of Indian Registration Act including amendment to Section 17 (1) (g) of the Registration Act by A.P. Act 4 of 1999 with effect from 01.04.1999, the point that arises for consideration is as follows:

“Whether the plaint in O.S.No.182 of 2005 is liable to be rejected on the ground that the document sued upon i.e. agreement of sale dated 06.06.2003 in a suit for specific performance

would not affect the immovable property in view of Section 17 (1) (g) of the Registration Act as amended by A.P. Act 4 of 1999, if so, the order passed by the trial Court be sustained?”

P O I N T:

The defendant in O.S.No.182 of 2005 filed a petition under Order VII Rule 11 (a) and (d) of C.P.C., which deals with the rejection of plaint when the plaint does not disclose cause of action and when the claim is barred by any other law.

The suit was filed for specific performance of agreement of sale under the provisions of Specific Relief Act to compel the petitioner/defendant No.1 to perform his obligation under unregistered agreement of sale. The main contention of the petitioner is that the unregistered agreement of sale is invalid document, which would not affect the immovable property and that apart as per A.P. amendment to Registration Act, the agreement is a compulsorily registerable document under Clause (g) of Section 17 (1) of Registration Act, which reads thus:

17. Documents of which registration is compulsory :-

(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 :--

(g) agreement of sale of immovable property of the value of one hundred rupees and upwards :]

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 rents reserved by which do not exceed fifty rupees.

In the absence of registration of agreement of sale, no decree can be passed for specific performance.

Learned Senior Counsel would contend that the proviso to Section 49 says that 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. Though it is in the nature of exception, but the language used in the proviso that ***“unregistered document affecting immovable property and required by this Act”*** indicates that when the suit is based on unregistered document affecting immovable property, which is compulsorily registerable document, the same can be received as evidence in a suit for specific performance. If proviso to Section 49 of Registration Act is read in conjunction with Section 17 (1) (g) of the Act, it is clear that unregistered agreement of sale of immovable property of value of Rs.100/- or more can be received as evidence of contract. But such document is invalid according to the contention of the learned counsel for the revision petitioner and thereby no decree can be passed.

In support of his contention he placed reliance on the law declared by the Apex Court, this Court and other High Courts in various judgments, which are 15 in number and the law declared therein will be discussed at appropriate place to avoid repetition.

The main endeavour of the learned counsel for the petitioner is that when the suit is filed based on compulsorily registerable document affecting immovable property but not registered, the suit cannot be decreed since the transaction itself is invalid, but the

trial Court did not consider this contention in proper perspective with reference to provisions of Indian Registration Act including amendment to Section 17 (1) (g) of the Registration Act by A.P. Act 4 of 1999 and committed an error, hence the plaint is liable to be rejected on this ground.

Order VII Rule 11 (a) of C.P.C. conferred power on the Court to reject the plaint when it does not disclose a cause of action.

It is settled proposition of law that the defence of the defendant cannot be looked into while considering an application under Order VII Rule 11 of C.P.C. and the Court has to consider the entire allegations made in the plaint and come to conclusion whether the plaint discloses any cause of action for the suit.

Learned Counsel for the revision petitioner with regard to cause of action, drawn the attention of this Court to a judgment of the Apex Court rendered in “***The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/ Managing Trustee***”²

The Apex Court in the above judgment elaborately dealt with the power of the Court to reject the plaint under Order VII Rules 11 and 14 of C.P.C. relying on several judgments of the Apex Court rendered in “***Saleem Bhai and Ors. v. State of Maharashtra and Ors.***”³, “***Raptakos Brett and Co.Ltd. v. Ganesh Property***”⁴, “***Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V.Fortune Express and Ors.***”⁵ and “***T.Arivandandam v.***

² 2012 (3) RCR (Civil) 811

³ (2003) 1 SCC 557

⁴ (1998) 7 SCC 184

⁵ (2006) 3 SCC 100

T.V.Satyapal and Anr.⁶” and on the strength of the above judgments, it is concluded that the Court has to take into consideration total allegations made in the plaint and decide whether the plaint discloses cause of action for filing the suit.

In the facts of the above judgment, in a suit for specific performance, the defendant filed application for rejection of plaint under Order VII Rule 11 of C.P.C. on the ground that the plaint does not disclose cause of action. The single Judge of the High Court rejected the plaint insofar as the 1st defendant is concerned and directed that the suit can be proceeded against the 2nd defendant, while rejecting the application for interim injunction and amendment of the plaint. Thereupon the order was challenged by the plaintiff before the Division Bench, on that the Division Bench by its order while dismissing the appeals against the order rejecting the applications for amendment and for interim injunction, allowed the appeal against the rejection of the plaint. Aggrieved by the same, the 1st defendant therein approached the Apex Court by filing appeal by way of Special Leave Petition, the Apex Court concluded that when the plaint does not disclose cause of action, the same shall be rejected.

The law declared by various High Courts is that Order VII Rule 11 of C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order VII Rule 11 of C.P.C. at any stage of the suit i.e. before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the

⁶ (1977) 4 SCC 467

purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII Code of Civil Procedure, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant to decide the application filed under Order VII Rule 11 of C.P.C. But curiously in “**T.Arivandandam v. T.V.Satyapal and Anr.**” (referred supra) the Apex Court has held as follows:

“5. ...The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. and if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, Code of Civil Procedure An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.”

To apply the principle laid down in “**T.Arivandandam v. T.V.Satyapal and Anr.**” (referred supra), the Court can reject the plaint only at the time of first hearing by examining the parties under Order X of C.P.C. but not based on application filed under Order VII Rule 11 of C.P.C. Therefore, it is obligatory on the part of the Court to find out whether the allegations made in the plaint would give raise to any cause of action or plaint discloses any cause of action for the suit.

What is cause of action, is again a question to be decided and in the same judgment the Apex Court relied on judgment rendered in “**A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P.**

Agencies, Salem⁷ wherein the word “cause of action” is defined as follows:

“Cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

In “**Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors.**”⁸ the word “cause of action” is defined as follows:

“Cause of action means every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court.”

Here, the plaint disclosed the acts done by the plaintiff/respondent No.1 and defendant/revision petitioner, which form the basis for filing the suit based on unregistered agreement of sale and refusal to execute registered the sale deed etc. would form the basis for claiming the relief in the suit. The plaint, which is filed along with the present revision discloses that on 06.06.2003 the plaintiff and defendant entered into agreement of sale to purchase the schedule property, thereafter on 04.06.2005 the plaintiff approached the defendant and requested to receive the balance sale consideration and to execute the registered sale deed in his favour, the defendant made false statement that he would execute the sale deed within a short time. Thereafter, the plaintiff came to know that the defendant started negotiating with the 3rd parties to sell the suit schedule property and refused to execute the registered sale deed in favour of the plaintiff by receiving balance sale consideration. So, the facts pleaded in the plaint

⁷ (1989) 2 SCC 163

⁸ (1994) 6 SCC 322

discloses the acts done by both the parties to the suit including refusal to execute the registered sale deed by receiving balance sale consideration in terms of unregistered agreement of sale that gave raise to cause of action i.e. right to relief in the plaint. Therefore, the plaint disclosed cause of action, but the contention of the revision petitioner is that the plaint shall be rejected since it does not disclose valid or true cause of action and such contention cannot be accepted as it is against the purport of the judgment of the Apex Court referred supra regarding the definition of cause of action and validity or genuineness of cause of action cannot be decided at the threshold while deciding a petition under Order VII Rule 11 (a) of C.P.C.

Learned counsel for the revision petitioner mainly contended that the unregistered agreement of sale would not affect the immovable property; thereby based on unregistered agreement of sale, suit for specific performance cannot be decreed since it is invalid and ineffective transaction and placed reliance on **“Kalathooru Raghavareddi v. Kalathooru Venkatareddi and Ors.”**⁹ and **“M.Venkataratnam and Anr. v. M.Chelamayya and Anr.”**¹⁰. In **“Kalathooru Raghavareddi v. Kalathooru Venkatareddi and Ors.”** (referred supra) a suit for declaration of title was filed based on unregistered document, whereas in **“M.Venkataratnam and Anr. v. M.Chelamayya and Anr.”** (referred supra) an arbitration award was sought to be executed to claim title over the property, but the Court declined to pass such decree since the transaction covered by unregistered agreement of sale is invalid and inoperative and that would not create any title/

⁹ AIR 1955 AP 22

¹⁰ AIR 1967 AP 257

conveying title from the vendor to the vendee. But the fact situation in the above said two judgments is different and has no application to the facts of the present case. However, in the said two judgments, this Court held as follows:

“A combined reading of S.17 and S.49, Registration Act clearly shown that an unregistered partition deed or an award cannot affect any immovable property comprised therein. It is not a question of admissibility of a document. The non-registration invalidates the transaction altogether. When an invalid document is specifically relied upon by the plaintiff and when it is found in favour of the defendants, the fact that the execution of the invalid document was admitted cannot, by any process of reasoning, validate the invalid document. The decisions relied upon by the learned counsel are beside the point.”

Learned counsel for the revision petitioner further drawn the attention of this Court to another judgment of Apex Court rendered in “**K.B.Saha and Sons Pvt. Ltd. v. Development Consultant Ltd.**”¹¹, wherein the Apex Court discussed about the effect of unregistered lease agreement in a suit filed for declaration of title and permanent injunction based on unregistered lease deed. The Apex Court held that the lease agreement, being an unregistered document, could not be used to establish that the suit premises was let out to the respondent only for the purpose of occupation of its employee Mr.Keshab Das and the members of his family for their residential purpose and for no other purpose.

Even from the principle laid down in the above judgment, it is clear that the unregistered lease deed, which is required to be registered can only be used for the purpose of proving occupation of employee and not for any other purpose since such agreement is admissible in evidence in view of proviso to Section 49 of

¹¹ (2008) 8 SCC 564

Registration Act for collateral purpose. But here the fact situation is totally different, but the principle laid down therein is only to the effect that unregistered document would not affect immovable property and cannot be used to claim title to the property. In **“K.B.Saha and Sons Pvt. Ltd. v. Development Consultant Ltd.”**

the Apex Court laid down the following principles:

“1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

Similarly in **“K.Ramamoorthi v. C.Surendranatha Reddy¹²”** this Court considered the admissibility of unregistered document and adverted to the pleas of the defendant in paragraph No.15 that unregistered draft lease agreement was inadmissible for want of registration under Section 49 of the Registration Act. In view of such plea this Court placed reliance on **“ M/s. Sms Tea Estates P. Ltd v M/s. Chandmari Tea Co.P.Ltd.¹³”**, wherein it is held as follows:

¹² 2012 (6) ALD 163

¹³ 2011 AIR SCW 4484

“Section 49 makes it clear that a document which is compulsorily registrable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily registrable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to section 49 of the Registration Act.”

This Court also adverted to another judgment of Apex Court rendered in “**Bondar Singh and others v. Nihal Singh and others**¹⁴”, wherein the Apex Court held that unregistered document though admitted into evidence would not affect the immovable property. The Court finally laid down the following guidelines:

“i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17 (b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.

ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.

iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a

¹⁴ AIR 2003 SC 1905

transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.

v) The phrase "collateral purpose" is with reference to the transaction and not to the relief claimed in the suit.

vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.

vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document. Having culled out the legal propositions, the discussion on this issue will be incomplete if a few illustrations as to what constitutes collateral transaction are not enumerated as given out in Radhomal Alumal v K.B. Allah Baksh Khan Haji Muhammad Umar and another AIR (29) 1942 Sind 27 and other Judgments. They are as under:

a) If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendant's possession.

b) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: Queen-Empress v Rama Tevan ('92) 15 Mad. 253, P.V. M.Kunhu Moidu v T. Madhava Menon ('09) 32 Mad. 410 and Vani v Bani ('96) 20 Bom. 553).

c) In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (Hanmantapparao v Ramabai Hanmant('19) 6 : AIR 1919 Bom. 38 : 21 Bom. L.R.716).

d) An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by virtue of deed of gift but by setting up the plea of adverse possession (Varada Pillai v Jeevaratnammal 43 Madras 244 (PC))

(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of

possession Radhomal Alupal v K.B. Allah Baksh Khan Haji Muhammad Umar and another AIR (29) 1942 Sind 27, Bondar Singh and others v Nihal Singh and others AIR 2003 SC 1905:(2003) 4 SCC 161, A. Kishore @ Kantha Rao v G.Srinivasulu : 2004 (3) ALD 817 (DB).”

(Emphasis is brought out)

Learned counsel for the revision petitioner further drawn the attention of this Court to a judgment of Calcutta High Court rendered in “**Pieco Electronics and Electricals Ltd. v. Smt.Tribeni Devi**¹⁵”, in which a suit is filed for ejectment based on unregistered sale deed and the Division Bench of Calcutta High Court held that the unregistered deed can at best be looked into for ascertaining the commencement of possession, rate of rent or similar other purposes which are collateral to the principal transaction. This should be the true import of the proviso to Section 49, Indian Registration Act, 1908. It could never have been the intention of the Legislature that under the first part of the section, Court should discard an unregistered document for want of registration and at the same time under the camouflage of the proviso, Court should be permitted to look into and rely upon all the terms of the inoperative document which do form the integral parts of the principal transaction.

The Allahabad High Court in “**Surendra Kumar v. Amarjeet Singh and Ors.**¹⁶” had an occasion to deal with similar question in a suit for specific performance based on unregistered document with reference to Section 17 (2) (v) and 49 (as amended in U.P. in 1976) of Registration Act and U.P. Amendment Act 57 of 1976 held as follows:

¹⁵ AIR 1990 Cal 135

¹⁶ AIR 2004 All 335

“ By the amendment Act 57 of 1976, as applicable in the State of U. P., in Clause (b) of Section 49, the words "confer any power to adopt or" has been substituted with the words "confer any power or create any right or relationship, or" and in the proviso, the words "as evidence of contract in a suit for specific performance under Chapter II of the Specific Relief Act 1877, or" has been omitted.

The result of this amendment is that, prior to 1.1.77, an unregistered document affecting immovable property could be enforced in a suit for specific performance of a contract, but after the amendment of Section 49 of the Registration Act w.e.f. 1.1.77, an unregistered document could not be enforced in a suit for specific performance of a contract.”

The facts of the above judgment are distinguishable from the facts of the present case. In the State of Andhra Pradesh Section 17 (1) (g) of Registration Act was added by A.P. Act 4 of 1999 making agreement of sale is compulsorily registerable document, but Section 49 of Registration Act was not appropriately amended like Uttar Pradesh State amendment referred supra, but in section 49 of the Registration Act, in the proviso, the words, figures and letter or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 (4 of 1882 .)," are omitted by the Registration and other Related Laws (Amendment) Act, 2001 Act No.48 OF 2001 [24th September, 2001]. Thus, the proviso permitting to receive unregistered agreement of sale as evidence of contract in a suit for specific performance under chapter II of Specific Relief Act remained intact in the State of Andhra Pradesh. If the similar amendment like Uttar Pradesh State amendment to Section 49 of Registration Act by way of State Amendment, unregistered agreement of sale cannot be taken as evidence of contract in a suit for specific performance the principle laid down by Allahabad High

Court can be applied. But obviously for different reasons, the proviso to Section 49 of Registration Act was not suitably amended even after amending the Section 17 by A.P. Act 4 of 1999. Consequently, the principle laid down in the above judgment of Allahabad High Court cannot be applied.

The Apex Court in “**Man Kaur (Dead) by L.Rs. v. Hartar Singh Sangha**¹⁷” while deciding appeal against the decree in a suit for specific performance laid down law as to when the relief of specific performance can be granted and discussed what are the requirements to grant decree of specific performance and held that plaintiff to seek specific performance of a contract of sale relating to immovable property, and for a court to grant such specific performance, it is not necessary that the contract should contain a specific provision that in the event of breach, the aggrieved party will be entitled to specific performance. The Act makes it clear that if the legal requirements for seeking specific enforcement of a contract are made out, specific performance could be enforced as provided in the Act even in the absence of a specific term for specific performance in the contract. It is evident from Section 23 of the Act that even where the agreement of sale contains only a provision for payment of damages or liquidated damages in case of breach and does not contain any provision for specific performance, the party in breach cannot contend that in view of specific provision for payment of damages, and in the absence of a provision for specific performance, the court cannot grant specific performance. But where the provision naming an amount to be paid in case of breach is intended to give to the party in default an

¹⁷ (2010) 10 Supreme Court Cases 512

option to pay money in lieu of specific performance, then specific performance may not be permissible.

In view of the principles laid down in the above judgment, to succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract.

Taking advantage of the first requirement referred above, learned counsel for the revision petitioner would contend that the basic requirement for grant of specific performance is that there shall be valid agreement of sale between the plaintiff and defendant.

Here, except non registration as required under Section 17 (1) (g) of Registration Act as amended by A.P. Act 4 of 1999 no other contention was raised regarding invalidity of the agreement.

By applying the principles laid down in the above judgment, the agreement of sale is not suffering from any defect except non-registration, prima -facie, but such document can be received as evidence of contract in a suit for specific performance in view of the proviso to Section 49 of Registration Act. Therefore, for limited purpose i.e. for filing the suit for specific performance the agreement of sale is valid in the absence of any legal infirmity in the agreement of sale. Consequently, the agreement as on today in a suit for specific performance can be received as evidence of contract.

Learned counsel for the revision petitioner further drawn the attention of this Court to a judgment of the Apex Court rendered in “**Satish Chand Makhan and others v. Govardhan Das Byas and others**¹⁸”, wherein it is held that the proviso to Section 49 was however not applicable in the present case inasmuch as the terms of a lease are not a "collateral purpose" within its meaning. It follows that the unregistered draft lease agreement Ex. B-2 was inadmissible in evidence to prove the transaction of lease. It was also ineffectual to create a valid lease for a renewed term of nine years for want of registration as required under Section 17 (1) (d) of the Registration Act.

Division Bench of High Court of Madras in “**Manicka Goundan v. Elumalai Goundan**¹⁹” held that a rule of evidence cannot certainly enlarge or alter substantive law. A rule of evidence cannot confer rights if there are none under the general law. The only thing which follows from the proviso is that if a suit for specific performance is maintainable, then in such a suit an unregistered document can be received in evidence. But whether a suit for specific performance would or would not lie in given circumstances must be decided on other considerations and on legal principles.

Bombay High Court in “**Association of Commerce House Block Owners Ltd. v. Vishandas Samaldas**²⁰” held that the Maharashtra Ownership Flats (Amendment) Act 1963 mandates registration of agreement and in view of Section 4 thereof registration of document is mandatory and the subject document

¹⁸ (1984) 1 Supreme Court Cases 369

¹⁹ 1957 AIR (Mad) 78

²⁰ 1981 (83) BomLR 339

is unregistered one, the plaintiff is not entitled for relief of specific performance. But the principle laid down in the above judgment cannot be applied to the present case for the simple reason that the suit filed before the trial court is not based on any state enactment, where document is compulsorily registerable except as required under Section 17 (1) (g) of the Registration Act as amended by A.P.Act 4 of 1999.

In “**Gadiraju Sanyasi Raju v. Kandula Kamappadu and Ors.**”²¹ the full bench of this Court had an occasion to deal with effect of non-registration of lease, which falls within the ambit of Section 17 (1) (d) of the Act and this Court opined as follows:

“The question however remains as to whether it is saved by the proviso to Sec. 49 of the Indian Registration Act which is in these terms;

"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 part performance of a contract for the purpose of Section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

This also Court also opined that Sections 12 and 27 (A) of Specific Relief Act, 1877 deals with enforcement of contract of lease of special character subject to certain specified limitations and when Section 27 (A) is exhaustive of all claims of specific performance based on written contracts, the suit for specific performance cannot be decreed for non-registration.

Thus, in all the judgments it is held that when the agreement is invalid or inoperative, the suit cannot be decreed.

²¹ AIR 1960 AP 83

Learned counsel for the revision petitioner drawn the attention of this Court to certain provisions of Specific Relief Act and Section 27 –A deals with Specific performance in case of part performance of contract of lease, but the present suit is governed by chapter 2 of Specific Relief Act, hence Section 27 (A) has no application to the present facts of the case since it relates to enforcement of agreement of lease.

Keeping in mind, the law declared by various Courts, based on state amendments to Registration Act. In view of the specific contention urged before this Court, it is necessary to advert to Sections 17 & 49 of A.P. Amendment Act and examine the issue.

Section 17 of A.P. State Amendment Act reads as follows:

“In section 17,--

(a) in sub-section (1),--

(i) for clause (d) the following shall be substituted, namely:--

"(d) leases of immovable property;"

(ii) after clause (e) but before the proviso, the following clauses shall be inserted, namely:--

"(f) any decree or order or award or a copy thereof passed by a civil court on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under section 35 of the Indian Stamp Act, 1899 (2 of 1899), such as registered title deed produced by the plaintiff where such decree or order or award purports or operate to create, declare, assign, limit, 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; and

(g) agreement of sale of immovable property of the value of one hundred rupee and upwards;"

(b) in sub-section (2),--

(i) in clause (v), for the words "any document not in itself creating", the words "any document except an agreement of sale as mentioned in clause (g) of sub-section (1) not in itself creating", shall be substituted,

(ii) in clause (vi), for the words "any decree or order of a court", the words "any decree or order of a court, not being a decree or order or award falling under clause (f) of sub-section (1)", shall be substituted,

(iii) the Explanation shall be omitted.

[vide Andhra Pradesh Act 4 of 1999 w.e.f. 1-4-1999}]”

Similarly, Section 49 of the Registration Act reads as under:

“Section 49 - Effect of non-registration of documents required to be registered

1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall--

1[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 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 (3 of 1877)^{2,3}[***] or as evidence of any collateral transaction not required to be effected by registered instrument.]”

Though, Section 17(1)(g) is added to A.P. Amendment Act 4 of 1999 with effect from 01.04.1999, subsection (2) clause (v) was not suitably amended. Clause (v) of subsection (2) of Section 17 spelt out that any document other than the documents specified in sub-section (1A) except a document in clause 1 (g) (A.P. Amendment) 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 is exempted from application of Section 17(1).

The language used in Clause (v) of Sub-Section 2 clearly indicates that if the agreement of sale in clause (g) of Section 17 (1) is not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest in the immovable property of value of more than one hundred rupees, is exempted from application of Section 17(1) of Registration Act.

Even after the Central Amendment to the Act, except clause (g), the entire section remains as it is. Therefore, the agreement of sale whereby the vendor agreed to execute another document to create, declare, assign, limit or extinguish any right in the immovable property. In such a case, Section 17(1)(g) has no application.

As per subsection (2) Clause (v) it is clear that agreement of sale which is not creating, declaring, assigning, limiting or extinguishing any right, title or interest in immovable property of the value of more than one hundred rupees, but agreed to create right by execution of regular registered document, is exempted from application of Section 17(1)(g). If, the agreement itself creates an interests in the immovable property, for instance, a general power of attorney-cum-agreement of sale which is covered by Section 202 of Indian Contract Act is compulsorily registerable document, since such agency is coupled with interest. But, agreement or contract of sale of immovable property would not create any interest or extinguish the right in immovable property, is not required to be compulsorily registerable.

Curiously, the State Amendment did not disturb Section 49 of the Registration Act by way of any amendment and it remained undisturbed even after amending Section 17(1)(g) and Section 17(2) clause (v). If the same is taken into consideration, the agreement of sale would fall within explanation 2 under the proviso i.e. transfer of unregistered document affecting immovable property and required by this Act or Transfer of Property Act to be registered, may be received as evidence of contract in a suit for specific performance under Chapter II of Specific Relief Act. The proviso to

Section 49 was amended by Central Act 48 of 2001 with effect from 24.09.2001 omitted the following words.

“As the evidence of part performance of contract for the purpose of Section 53-A of Transfer of Property Act, 1882”

This amendment did not change the position relating to unregistered agreement of sale which is required to be registered under Registration Act or Transfer of Property Act, as evidence of contract in a suit for specific performance under Chapter II of Specific Relief Act. A conjoint reading of Sections 17(1)(g), 17(2)(v), and Section 49 proviso, as amended by Central Act, it is clear that any document which is required to be registered under the Registration Act or Transfer of Property Act which is not registered can be received as evidence of contract in a suit filed for specific performance under Chapter II of Specific Relief Act.

The agreement for sale is only an agreement to execute a registered sale deed in future, subject to fulfilment of certain conditions and on execution of regular sale deed, the transfer is deemed to have effected.

The term ‘Sale’ is defined in Section 54 of Transfer of Property Act and it read as a transfer of ownership in exchange for price paid or promised or part-paid and part-promised. It also specified as to how sale is to be made and explained that such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible things, can be made only by a registered instrument.

Effect of ‘Contract for sale’ is also specified in the same section as a contract for the sale of immoveable property is a

contract that a sale of such property shall take place on terms settled between the parties and it does not, of itself, create any interest in or charge on such property.

Therefore, such contract may be either oral or in writing. If it is in writing and falls within Section 17(1)(g) creating any interest or extinguishing right in immovable property, it is required to be registered as per Section 17(1)(g) of the Act, but, Transfer of Property Act is silent about this.

In “**James R.R. Skinner v. Robert Hercules Skinner and Ors²²**”, the Privy Council held that an agreement for sale of immovable property under a transaction affecting the property within the meaning of Section 49 of Registration Act, unless, if carried out, it will bring about change of ownership should be received with caution. The Privy Council held that the document ought to be treated as being an agreement for sale rather than a sale deed and that, therefore, registration was not necessary. The Privy Council further held that the document was a sale deed and not an agreement mainly on the ground that the language employed is perhaps not that of a trained draftsman, but the document clearly purports to transfer the executant's interest in the immovable properties which he had inherited from his brother and the document in addition to creating an interest in immovable property provided as one of the terms and therefore, an integral part of the transfer that the vendor should, if the vendee so required, execute a registered sale deed.

²² AIR 1924 PC 269

But, in the same judgment, the Privy Council observed that the transfer of interest in the property is clearly effected as seen from the language i.e. Section 49 of Registration Act.

However, in paragraph 12 of the same judgment, the Privy Council held as follows:

“12. The Privy Council has held in effect that the mere offer to execute and register a sale deed at a later date does not take away the effect of a clear recital transferring the title and interest of the vendor to the vendee or change the character of a document from a sale to an agreement to sell. The mere use of the word 'agreement' is not conclusive as held by the learned Judge in Un-reported decision of this Court in C.R.P. 199 of 1959 dated 3-11-1959. It is the cumulative effect of all the recitals and the relevant facts which has to be taken into account to decide the question.

The provision for execution of sale deed and registration in both the documents and the provision for obtaining the permission of the District Collector under Section 47 of the Hyderabad Tenancy Act in one document show that contemplation of something being done in future by the vendor. The mere existence of such provision does not necessarily mean that either the document is not a sale or that the parties really intended to effect a real sale only by a document, duly stamped and registered. For the provision for registration in the document, concerned in the decision of the Privy Council has not rendered the document an agreement to sell.”

Even according to the judgment of the Privy Council, if the document is creating interest or extinguishing right in immovable property, then it is required to be registered. When the document created interest in immovable property or extinguishes right in immovable property, mere usage of the word 'agreement' or agreeing to execute a registered document in future in terms of the document would not alter the situation, for the reason that by executing the document, interests in immovable property was created.

The Apex Court in **Sardar Singh v. Smt. Krishna Devi and another**²³ had an occasion to deal with effect of non-registration of award to secure right of third party in the immovable property and it held as under:

“14. It is, thus, well settled law that the unregistered award per se is not inadmissible in evidence. It is a valid award and not a mere waste paper. It creates rights and obligations between the parties thereto and is conclusive between the parties. It can be set up as a defence as evidence of resolving the disputes and acceptance of it by the parties. If it is a foundation, creating right, title and interest in present or future or extinguishes the right, title or interest in immovable property of the value of Rs. 100 or above it is compulsorily registerable and non-registration render it inadmissible in evidence. If it contains a mere declaration of a pre-existing right, it is not creating a right, title and interest in present, in which even it is not a compulsorily registerable instrument. It can be looked into as evidence of the conduct of the parties of accepting the award, acting upon it that they have pre-existing right, title or interest in the immovable property.”

As per the principle when the document is not creating a right title or interest or extinguishing right in immovable property, but, it declared the pre-existing factum, it is not require to be registered.

Though it is a judgment relating to pre amendment of Registration Act, still there is no change in the position in view of Section 17(2)(v) read with Section 49 of the Registration Act.

Therefore, unregistered agreement of sale is invalid and ineffective to claim right or title in immovable property based on such agreement but the transfer of right or interest in the immovable property would take place only on execution of a regular registered sale deed and by mere agreement to sell immovable property by terms settled therein by itself would not create interest or extinguish right or title in the immovable property. Therefore, such document would fall within the proviso

²³ AIR 1995 SC 491

to Section 49 of Registration Act after the State Amendment to Section 17 and Central Amendment to Section 17 and 49 by A.P. Act 4/1999 and Central Act 48/2001.

Now, the question before this Court is that the suit shall not be continued as the ultimate result would be dismissal, since the transaction covered by the agreement is invalid and ineffective. But, in view of my perspective analysis of the amendments to Section 17 by A.P. Act and Central Act, it is clear that the agreement of sale in the present suit dated 06.06.2003. (A document sued upon would fall within exception under subsection (2) clause (v) and proviso to Section 49.

Learned senior counsel drawn the attention of this Court to several judgments of Apex Court, this Court and Allahabad High Court, in all the judgments, except the judgment of Allahabad High Court, the dispute was with regard to title. Since, the transaction covered by unregistered agreement of sale is invalid and ineffective, the Courts declined to consider the said document. In all the judgments, except in the judgment of the Allahabad High Court, the validity of an agreement of sale in a suit filed for specific performance with reference to various provisions to Registration Act and Transfer of Property Act was not considered.

But, in the judgment of Allahabad High Court, Allahabad High Court held that a suit for specific performance is not maintainable. The basis for coming to such conclusion is, the state amendment to Section 49 of Registration Act by U.P. Act 57 of 1976 with effect from 01.01.1977 and by this Act, the words “as evidence of contract in a suit for specific performance under Chapter II of Specific Relief Act, 1877” were omitted. But, the

Central Amendment Act 48/2001 w.e.f 24.09.2001 remained undisturbed, except deleting the words 'in a suit based on as part performance'.

Therefore, as per the proviso to Section 49 of Registration Act, such unregistered document can be received as evidence of contract, while concluding that the principle laid down by the Allahabad High Court cannot be applied to the present facts of the case, particularly in State of Andhra Pradesh.

The main endeavour of the learned counsel for the petitioner is that the Court can reject the plaint when the document and transaction covered by agreement of sale is ineffective and invalid. But, as discussed above, the agreement of sale is not invalid and ineffective for granting relief of specific performance under Chapter II of Specific Relief Act, 1887 and by exercising jurisdiction under Order VII Rule 11 CPC, the plaint in suit cannot be rejected.

An identical question came up for consideration before the Delhi High Court in **Vinod Kumar & anr. V. Ajit Singh**²⁴, and the Delhi High Court held as follows:

"6. On the other hand, response of the plaintiff is that for the purpose of Order VII Rule 11 CPC, it is only the plaint and the documents which are to be considered and not the defences. It is submitted that the agreement to sell was not compulsorily registrable under Section 17(1A) of the Registration Act, and thus, does not come within the mischief of proviso of Section 49 inasmuch as the provisions of Section 53A of the Transfer of Property Act were not attracted. It is the plaintiffs' submission that the agreement to sell itself does not create any right, title or interest in the immovable property, and was thus not compulsorily registrable as per Clause (v) of Section 17(2) of Registration Act. Based on this premise, it is the plaintiff's case that Article 23A of the Schedule 1A as well as Sections 33 and 35 ISTA were not applicable....."
(Emphasis is brought out)

In the written statement, the defendant raised all pleas including validity of transaction covered by the agreement of sale of

²⁴ IA No.20617/2012 in CS (OS) 2661/2012 dated 01.10.2013

immovable property of value of more than Rs.100/-. But the counsel for the plaintiffs contended that, in view of law declared in **Saleem Bhai's** case with reference to Order VII Rule 11 of the Code, the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint but not the defence.

In the facts of the above judgment, a suit was filed for specific performance based on an agreement of sale, which formed part of payment of major part of consideration, the complaint apparently sets out real cause of action against the defendants entitlement, the plaintiff to maintain the suit and by following the proposition of law in **Saleem Bhai's** case, at the stage of consideration of Order VII Rule 11 CPC, the validity or admissibility of the documents which are relied upon by the plaintiff cannot be considered, though the Court would be entitled to consider the same and ascertain if a cause of action was disclosed in a plaint. So far as the admissibility of the documents is concerned, the same would be considered at appropriate stage. The same principle is laid down in "**Hyundai Motor India Limited v. Opal Metal Engineering Pvt. Ltd**²⁵" and "**Shri Rakesh Chandok v. Smt Harbans Kaur**²⁶".

Persuaded by the law declared by the Delhi High Court, it is difficult to hold that the cause of action employed in the plaint is not genuine and the suit of the plaintiff is barred under any other law i.e. Registration Act.

Learned counsel for the petitioner while contending that the plaint can be rejected when the claim is barred by Registration Act

²⁵ AIR 2009 Delhi 1

²⁶ I.A.No.5540/2005 in CS (Os) No.1281/2004 dt 30.04.2007

and placed reliance on the judgment of Calcutta high Court in **National Insurance Company Ltd. V. M/s Navrom Constantza and others**²⁷ and it is appropriate to quote paragraph 14 of the said judgment as under:

“14. The Supreme Court considered the effect of the said Rule 6 of Article III in the case of East and West Steamship Co. v. S. K. Ramalingam²⁸. It is observed therein that the ordinary grammatical sense of discharge from liability does not con note free from remedy as regards liability but are more apt to mean a total extinction of the liability following upon an extinction of the right. It is further observed that once the liability is extinguished under this clause there is no scope of any acknowledgement of liability thereafter. It is provided clearly in the said Rule 6 of Article 111 that the carrier of the ship shall be discharged from all liability in respect of loss or damage unless the suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Therefore, in my view, the effect of this Rule is not that the remedies are barred but the effect of it is the total extinction of the right. In my view, if the right is extinguished then there is no cause of action of the plaintiff against the defendants Nos. 2 and 3. Since the right has been extinguished there is nothing to enforce in the suit. Therefore, in my view, the plaint does not disclose any cause of action. I am, further, of the view, that the suit as it appears from the statement contained in the plaint is barred by law within the meaning of Rule 11 (d) of Order 7 of the C.P.C.”

Similarly, in paragraphs 10 & 11 of the judgment in **Sopan Sukhdev's** case, the Apex Court discussed the scope of Order VII Rule 11 of the Code and placed reliance **I.T.C. Ltd v. Debts Recovery Appellate Tribunal**²⁹ wherein, it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

Even if the principles are applied to the present facts of the case, the cause of action mentioned in the plaint is not illusory and

²⁷ AIR 1988 CALCUTTA 155

²⁸ [1960] 3 SCR 820

²⁹ (1998) 2 SCC 70

there is no clause in the contract i.e. agreement of sale or contract to sell immovable property to extinguish the right to sue for specific performance under Chapter II of Specific Relief Act. In any view of the matter, on overall consideration of entire material, more particularly, the A.P. State Amendment and Central Amendment to Sections 17 & 49 of Registration Act, I am of the firm view that there is no reason to reject the plaint by exercising jurisdiction under Order VII Rule 11, since the plaint disclosed real cause of action against the plaintiff and the agreement of sale is valid and effective for the purpose of receiving as evidence of contract in a suit for specific performance under Chapter II of Specific Relief Act.

The contention of the revision petitioner can be accepted if the suit is filed for declaration or for any other reliefs based on title to claim right and title over the property, based on agreement of sale. But, in a suit for specific performance in view of Section 17 (1) (g) and 17(2)(v) and proviso to Section 49, as amended from time to time, and the law applicable to the State of Andhra Pradesh as on the date of execution of agreement of sale, the plaint cannot be rejected.

Rejection of plaint on the ground that the agreement of sale of immovable property of worth more than one hundred rupees which is specifically registrable in view of A.P. Amendment Act to Section 17(1)(g), if accepted, it would have devastating effect on the rights of various purchasers of immovable property under agreement of sale, since the judgment of this Court has got serious repercussions both on the pending litigation for specific performance of agreement of sale or contract of sale or the future litigation based on the agreement or contract of sale.

When similar question came up before this Court in “**Sardar Darshan Singh v. Sardar Ram Sing and another**³⁰”, this Court held as follows:

“7. A mere perusal of the said proviso shows that an exception is carved out from the rigor of Section [49](#) which ordains that the document which is required to be registered under Section [17](#) of the Registration Act shall not be received as evidence of any transaction affecting such property or conferring such power unless it has been registered. The exception applies to three categories, namely, (i) the document may be received as evidence of a contract in a suit for specific performance; (ii) as evidence of part performance of a contract for the purpose of Section [53-A](#) of the Transfer of Property Act, 1882; and (iii) as evidence of any collateral transaction not required to be effected by registered instrument. In respect of these three categories of transactions, notwithstanding the fact that the document which is required to be registered has not been registered and, therefore, shall not be received as evidence, can be received as evidence.”

Similarly this Court in “**Attirala Chinnamma and another v. Gummadi Ravindraiah**³¹” and “**Dadi Reddy Sivanarayana Reddy v. Kasi Reddy Chinnamma**³²” expressed the same view.

In “**Javvadi Koteswara Rao v. Sonti Sambasiva Rao**³³”, this Court held as follows:

“Section 17 is a general provision making the agreements of sales compulsorily registrable, but certain exceptions have been provided under the Act itself. Clause (2) of Section [17](#) indicated the nature of documents that are exempted from registration. Section [17\(2\)](#) makes the position clear that any document other than the documents specified in Sub-section 1A except an agreement of sale as mentioned in Clause (g) of Sub-section (1) not in itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of value of Rs. 100/- 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. The learned Counsel for the respondent submits that the document by itself did not create any right of title over the property covered by the agreement of sale, therefore, it comes under the exception provided under Sub-clause (v) and also under the proviso to Section [49](#) of the Act.”

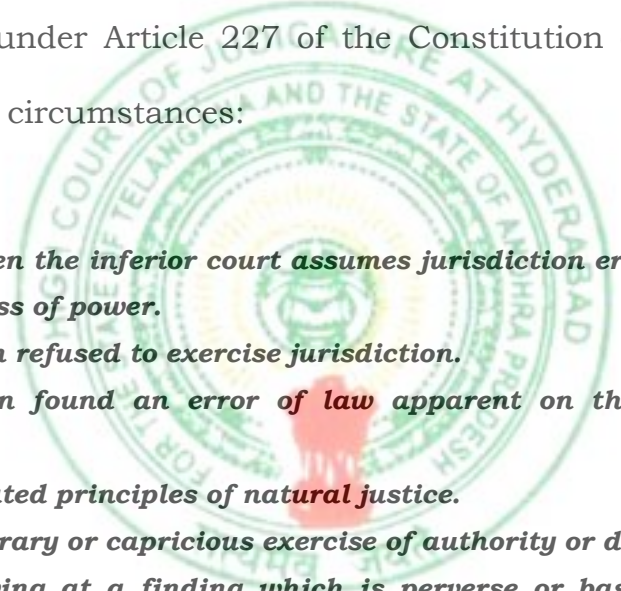
³⁰ 2004(6) ALT 217

³¹ 2009 (2) ALT 143

³² 2001 (1) ALT 524

³³ 2004 (4) ALT 614

Though this Court can exercise revisional jurisdiction under Article 227, questions regarding validity of the transactions cannot be decided, while exercising jurisdiction under Article 227, since the scope of revision under Article 227 is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdiction, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- 
- “a) When the inferior court assumes jurisdiction erroneously in excess of power.***
 - b) When refused to exercise jurisdiction.***
 - c) When found an error of law apparent on the face of record.***
 - d) Violated principles of natural justice.***
 - e) Arbitrary or capricious exercise of authority or discretion.***
 - f) Arriving at a finding which is perverse or based on no material.***
 - g) A patent or flagrant error in procedure.***
 - h) Order resulting in manifest injustice.***
 - i) Error both on facts and law or even otherwise.”***

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India:

- a) Where the only question involved is one of interpretation of deed;***
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;***
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;***

- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;*
- e) to correct an error of law, not being an error apparent on the face of the record;*
- f) to interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;*
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice.*

Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru**³⁴”, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227

³⁴ 2003 (6) SCC 641

of the Constitution of India to interfere with the findings recorded by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge.

In view of my foregoing discussion, I find no ground to exercise jurisdiction under Order VII Rule 11 to reject the plaint while exercising power of revision under Article 227 of Constitution of India. Consequently, the revision petition is liable to be dismissed.

In the result, the revision is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

Date:30.11.2016
Ksp/sp

Note:
Mark L.R. Copy
B/o
Ksp

JUSTICE M. SATYANARAYANA MURTHY

