

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.273 of 2011

ORDER :

This Civil Revision Petition is filed challenging the order dt.08.12.2010 in Objection Memo in O.S.No.221 of 2007 on the file of V Additional Senior Civil Judge (Fast Track Court), Visakhapatnam.

2. The petitioner herein is plaintiff in the above suit.
3. He filed the suit for declaration of his title to the plaint 'C' schedule property; and for a perpetual injunction restraining the respondents from interfering with his alleged peaceful possession and enjoyment of the said property.
4. Written statement was filed opposing the suit claim.
5. Issues were framed, and trial commenced.
6. During the course of evidence, the respondents/defendants filed a petition to summon certain documents from the Central Record Room of the Court, in particular, a document dt.01.06.1976 executed by father of petitioner in favour of father of 1st respondent, which had been filed as Exs.B.1 to B.4 in O.S.No.202 of 1992 on the file of Junior Civil Judge, Bheemunipatnam.

7. The said suit had been filed by petitioner herein for a bare injunction against respondents, and it was dismissed. The judgment in the said suit had been challenged in A.S.No.14 of 2001 by the IX Additional District Judge, Visakhapatnam and subsequently in S.A.No.105 of 2006 before this Court, both which were dismissed.

8. The petitioner filed a petition before the V Additional Senior Civil Judge (F.T.C.), Visakhapatnam objecting to the receipt of the said document, contending that the said document is in fact an outright sale deed which is compulsorily registerable, and it is also insufficiently stamped. Apart from this, he also raised a plea that the document in question is torn, mutilated and incomplete, and will not be of evidentiary value.

9. Reply was filed to the said objection memo by respondents pointing out that the present suit had been filed suppressing the fact of execution of the said document dt.01.06.1976 by father of petitioner in favour of father of 1st respondent after receiving full consideration of Rs.2,400/-, and also delivery of possession of the property along with the original sale deed relating to the land. The respondents pointed out that the document was marked in O.S.No.202 of 1992, and no objection to its marking was raised in the said suit by petitioner. They also contended that in the said suit, as well as in the appeals against the

judgment in the suit, a finding was given that the document in question was an unregistered sale deed, and it is not open to petitioner to resile from the same. It was contended that the plea that it is in a mutilated and torn condition cannot be taken into account since the contents of document were discussed in detail in O.S.No.202 of 1992 and the appeals against the judgment therein, and it is not open to petitioner to now object to marking of the said document. It was further contended that the document being an unregistered sale deed it can be received in evidence under Section 49 of the Registration Act, 1908 for collateral purpose.

10. By order dt.08.12.2010, the Court below rejected the Objection Memo filed by petitioner. It referred to the fact that the document in question had already been marked in O.S.No.202 of 1992 between the same parties and a finding was given in those proceedings that it was an unregistered sale deed. It was also noticed that stamp duty and penalty had already been collected on the document in O.S.No.202 of 1992 and once this was done, the objection as to insufficiency of stamp duty cannot be raised at this point of time. It further held that because the document had been determined to be an unregistered sale deed in O.S.No.202 of 1992, it can be received in evidence for collateral purpose under proviso to Section 49 of the Registration Act. It also rejected the objection as

to the condition of document being torn and mutilated and useless by observing that the contents of the document had already been discussed elaborately in O.S.No.202 of 1992 and A.S.No.14 of 2001.

11. Challenging the same, the present Revision is filed.

12. It is not in dispute that the document dt.01.06.1976 was declared to be unregistered sale deed in O.S.No.202 of 1992 filed by petitioner against respondents, and that stamp duty and penalty thereon had already been collected in the said suit on the said document. It is also not disputed that the contents of the said document have been discussed in detail in the judgments rendered in O.S.No.202 of 1992, A.S.No.14 of 2001 filed against it, and also in S.A.No.105 of 2006. Therefore, the fact that the document is in a torn and mutilated condition will not come to the aid of petitioner since the contents have already been referred to in the earlier round of litigation and the nature of document has also been determined therein. However, since it is an unregistered document, as per proviso to Section 49 of the Registration Act, 1908 it can only be used for collateral purpose.

13. In this view of the matter, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

14. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-02-2016

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