THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No. 4558 of 2016

ORDER:

Vide the present petition, petitioner assails the legality of the order dated 28.07.2016 passed in I.A.No.262 of 2016 in O.S.No.610 of 2006 on the file of I Additional Senior Civil Judge, Guntur.

2. Learned counsel appearing on behalf of the petitioner submits the petitioner moved an application whereby sought impounding of un-registered Gift Deed dated 04.05.1982, however, the same was dismissed vide order dated 28.07.2016. He submits that the Court below ought to have allowed the application, however, failed to appreciate that under Section 33 of the Indian Stamp Act, the word "document" includes any document, and even a plain paper can be sent to the concerned authority for impounding. He submits that the Court below failed to appreciate that the whole defence of the defendant/petitioner herein is mainly based on the un-registered Gift Deed dated 04.05.1982; and that the registration is a one part performance, and non-registration of a document, by itself, cannot be a ground to refuse the document either to receive or to send the same for impounding. Learned counsel for the petitioner further submits that the Court below failed to appreciate that it is always open to the respondent/plaintiff to test the veracity of the document and recitals made therein at the time of marking the document.

3. To strengthen his arguments, learned counsel for the petitioner relied on the judgment passed in **M.A. Bhupathi v. M. Koteswara Mudali and Anr**[1], whereby this Court, while relying on the judgment of this Court in **B.V.R. Reddy v. A. Co-op. C. Stores**[2], held as under

> "*If the party filing the documents wants it to be admitted in evidence, then only the Court shall collect the duty and penalty and then admit it in evidence. But if the party instead of requiring the documents to be admitted in evidence merely wants the Court to send it to the Collector to be dealt with under Section 40, the Court has no option, but to send it to the Collector as provided under Section 38(2). The Court cannot compel the party to pay duty and penalty and have it admitted in evidence.*"

4. In view of the above noting, this Court made it clear that the Court has only directed to send the documents in question to the Collector for impounding, and there is no direction to validate or receive or admit the documents in question and mark the same in evidence; and therefore there is no basis for apprehension of the respondent/plaintiff that if this Court allows the present petition, the document in question would be admitted in evidence.

5. On the other hand, learned counsel appearing on behalf of the respondent/plaintiff has relied on the case in **K.B. Saha and Sons**

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[1] 1998 (2) ALT 21

[2] AIR 1975 AP 96

Private Limited v. Development Consultant Limited[3], wherein it was held as under:

"*From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*

1. *A document required to be registered, if unregistered is not admissible into evidence under Section 59 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.*"

6. Learned counsel for the respondent has also relied on the case in **Ranga Reddy v. Sadhu Padamma and others**[4], wherein this Court held as under:

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[3] (2008) 8 Supreme Court Cases 564

[4] 2002 (6) ALD 752

"Section 49 prohibits the Court to receive in evidence any document affecting immovable property which is not registered as required under Section 17 of the Act or any provisions of the Transfer of Property Act, 1882. The proviso to Section 49 contains three exceptions. They are –

(1) an unregistered document affecting immovable property required to be registered under law may be received as evidence of a contract in a suit for specific performance;

(2) an unregistered document affecting immovable property required to be registered under law may be received as evidence of part performance of a contract for the purpose of Section 53-A of the Transfer of Property Act; and

(3) *an unregistered document affecting immovable property required to be registered under law may be received as evidence under law may be received as evidence of any collateral transaction not required to be affected by registered instrument."*

7. I have heard the learned counsel for the parties.

8. In the case of **Yellapu Uma Maheswari & Anr. v. Buddha Jagadheeswararao & Ors**[5], the Hon'ble Supreme Court held as under:

> *"Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in **Chinnappa Reddy Gari Muthyala Reddy v. Chinnappa Reddy Gari Vankat***

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[5] Civil Appeal No.8441 of 2015 arising out of SLP (Civil) No.12788 of 2014

> ***Reddy***[6]*, metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B-22 for collateral purpose subject to proof and relevance."*

9. However, the learned trial Court opined that unless a Gift Deed is registered, it cannot be received in evidence and the evidence of plaintiffs was closed long back and the defendant is dodging the matter on one pretext or other by playing tricks to avoid cross examination in the open Court and now resorted to file this petition to further prolong the matter, and for impounding the document, it need not be sent to the registration authorities.

10. It is not in dispute that the petitioner filed the application to send the document i.e. unregistered Gift Deed dated 04.05.1982 for impounding by registration authorities under Section 33 of the Indian Stamp Act. However, the Court below opined that it is clear from the

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[6] AIR 1969 A.P. (242)

words used in Section 33 of the Indian Stamp Act that the instrument is produced before the Authority, where the instrument is insufficiently stamped, but not the instruments written on plain paper. Section 17 of the Registration Act deals with documents for which registration is compulsory. Section 17(a) deals with "Instruments of gift of immovable property", which is compulsorily registerable.

11. However, the fact remains that in the present case the petitioner/defendant, relying on an unregistered Gift Deed, moved an application for impounding the same.

12. As stated by the learned counsel for the petitioner, impounding of the document does not give any right to the petitioner and that will be subject to the objection or cross-examination of the respondent/plaintiff. In the case of **Yellapu Uma Maheswari (5 supra)**, it is made clear that an un-stamped instrument is not admissible in evidence even for collateral purpose until the same is impounded. If the petitioner wants to mark these documents for any purpose (even for collateral purpose), it is open to the petitioner to pay the Stamp Duty together with Penalty and get the document impounded. It was further made clear that the trial Court would be at liberty to mark the exhibits for collateral purpose subject to proof and relevance.

13. In view of the law settled, I hereby set aside the order dated 28.07.2016 passed in I.A.No.262 of 2016 in O.S.No.610 of 2006 on

the file of I Additional Senior Civil Judge, Guntur, and direct the trial Court to send the document for impounding. I also make it clear that the respondent/plaintiff is at liberty to raise any objection available to him under law before the trial Court.

14. Accordingly, the civil revision petition is disposed of. No costs. Miscellaneous petitions, if any, shall stand closed.

SURESH KUMAR KAIT, J

13th October, 2016

Note: Issue C.C. in a week.

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