

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2938 of 2013

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner is directed against the docket orders (intermediary orders) dated 28.03.2013 of the learned Special Officer under A.P (A.A) Tenancy Act-cum-Junior Civil Judge, Mummidavaram, East Godavari District passed in ATC 7 of 2008.

2. I have heard the submissions of the learned counsel for the revision petitioner ('the petitioner', for brevity) and the learned counsel for the respondents ('the respondents', for brevity). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The petitioner brought the tenancy case against the respondents for eviction and recovery of possession of the plaint schedule lands. The respondents are resisting the tenancy case. The petitioner intended to rely upon a lease letter dated 24.07.2007 for a period of three years executed by him in respect of the tenancy relating to the schedule lands. When the said document was tendered in evidence by PW1, the learned Special Officer held that the said document being a document of lease for a period of three years with annual rent is compulsorily registerable in view of the provision of Section 17(d) of the Indian Registration Act and that therefore, it is inadmissible in evidence and hence, it cannot be received in evidence in view of the proviso contained in Section 49 of the said Act. Accordingly, the learned Special Officer had upheld the objection of the respondents that the said document is inadmissible in evidence. Therefore, the aggrieved petitioner had filed this revision petition.

4. The only contention of the revision petitioner is that even though the

document is compulsorily registerable, it can be permitted to be exhibited as it can be received as evidence of any collateral transaction unaffected by registered document like proving the nature of possession.

5. The learned counsel for the respondents had mainly contended that the revision petition is not maintainable in view of Section 16(2) of the Act and that on that ground alone, the revision is liable to be dismissed. He would contend that against an order passed by the Special Officer under the provisions of the Special Enactment, an appeal shall lie to the District Judge having jurisdiction, within thirty days of passing of the order and that the decision of the District Judge in such appeal shall be final. He would, therefore, contend that when an efficacious remedy of appeal is provided under the Act, the revision petition is not maintainable. He would also contend in the alternative that 'collateral purpose' means a purpose other than the main purpose and that an unstamped and unregistered lease deed cannot be received in evidence for proving any transaction, which has to be affected by a registered document and that the document cannot be permitted to be relied upon for proving any of the terms of the alleged lease including tenancy between the parties as the said aspects are not collateral in nature. His further contention is that when the lease deed is inadmissible for sufficiency/deficiency of stamp duty and want of registration, it cannot be admitted even for collateral purpose unless the deficit or the required stamp duty along with penalty are paid as required under the law governing the transaction covered by the document.

6. Dealing first with the maintainability of the revision, it is necessary to first note that as per Section 16(2) of the Act, against any order under this special enactment, an appeal shall lie to the District Judge. Therefore, an efficacious remedy by way of an appeal is provided under the Act and hence, it appears that the present revision petition under Article 227 of the Constitution of India is not maintainable. However, the learned counsel for the petitioner had placed reliance on a decision in **Muramalla Ammanaraju v. Babba Seetaratnam**^[1], wherein it was held as follows:

“In view of our foregoing discussion, we hold that the District Munsifs or the District Judges discharging functions under the Andhra Pradesh (Andhra Area) Tenancy Act are not civil Courts but only tribunals, and as such, we hold that a revision does not lie to the High Court under Section 115 of the Code of Civil Procedure against the orders passed by such tribunals, as the tribunals are not subordinates to the High Court. We further hold that the remedy available to the litigant is only to file a revision petition under Article 227 of the Constitution or a writ petition under Article 226. Thus, the present revision is liable to be dismissed as not maintainable.”

The facts of the case disclose that revision in that case is directed against ATA 15 of 1992. In that case, the revision was filed after availing the statutory remedy of appeal unlike in the present case. Keeping in view that the present revision is filed under Article 227 of the Constitution of India whereunder this Court is having supervisory jurisdiction it is necessary to refer to the relevant precedential guidance in **Surya Dev Rai v/s. Ram**

Chander Rai and others^[2] which is as follows:

- (1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.
- (2).....
- (3) ...
- (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.
- (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
- (6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.
- (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions issought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High

Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

Be it noted for reference that the decision above is partly overruled in **Radhey Shyam and others v/s. Chhabi Nath and others**^[3]. In this decision, while answering the question – ‘whether the view taken in **Surya Dev Rai** that a writ lies Under Article 226 of the Constitution against the order of the civil court, which has been doubted in the reference order, is the correct view?, it is held as follows:

Accordingly, we answer the question referred as follows:

(i) Judicial orders of civil court are not amenable to writ jurisdiction Under Article 226 of the Constitution;

(ii) Jurisdiction Under Article 227 is distinct from jurisdiction from jurisdiction Under Article 226.

Contrary view in **Surya Dev Rai** (supra) is overruled.

Having regard to the facts peculiar to this case and in the light of the fact that an efficacious remedy of appeal provided under the special enactment is available to the revision petitioner herein, this Court holds that a revision petition under Article 227 of the Constitution of India is also not maintainable. Accordingly, this Court holds that the revision petition is liable to be dismissed as not maintainable.

7. Without disturbing the above finding and proceeding on the assumption that the revision is maintainable, it is to be examined as to whether the order impugned calls for any interference.

8. Admittedly, the lease letter dated 24.07.2007 is in respect of agricultural land for a period of three years and is engrossed on a stamp paper of the value of Rs.100/-. The lease deed in question is a compulsorily registerable document in view of the provision contained in Section 17 of the Indian Registration Act is not in dispute. Therefore, the document in question cannot be looked into for the main purpose. In the decision in **Avinash Kumar Chauhan v. Vijay Krishna Mishra**^[4], the Hon'ble Supreme Court having referred to the ratio in **T.Bhaskar Ravo v. T.Gabriel and another**^[5], had held as follows:

“It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act.”

Since unstamped or insufficiently or deficiently stamped document is inadmissible in evidence even for collateral purpose and the document in question remained insufficiently stamped, this Court finds that the order of the court below in refusing to admit the document tendered for admission in evidence is not illegal. Since the document is not duly stamped and the duty and penalty are not paid, it cannot be received in evidence even for collateral purpose. In view of the settled legal position, in the well-considered view of this Court, the revision petition is devoid of merit and is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed confirming the orders of the Court below. However, these orders shall not preclude the petitioner from offering to pay the Deficit stamp duty and penalty payable on the document and make a request to the Court below to admit the document under Section 49 of the Indian Registration Act, as such a document can be received as evidence of any collateral transaction not required to be affected by registered instrument. However, it is further made clear that the Court

below shall decide at the appropriate time as to what is the 'collateral transaction' for which the document may be received as evidence having regard to the facts and circumstances of the case.

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

M.SEETHARAMA MURTI, J

22nd April, 2016
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[\[1\]](#) ALT-1993-3-221

[\[2\]](#) AIR 2003 SC 3044

[\[3\]](#) AIR 2015 3269

[\[4\]](#) 2009 (1) LS 35 (SC)

[\[5\]](#) AIR 1981 AP 175