HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.935 of 2016

ORDER:

The revision petitioner is the defendant in O.S.No.558 of 2013 on the file of XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, filed by the plaintiff, who is the respondent herein. The suit was filed for declaration and recovery of possession. Pending suit, a docket order was passed on 05.01.2016 by the learned Judge that the memorandum of gift deed dated 13.04.1987 is not admissible in evidence and posted the matter to 18.01.2016 for marking of documents and cross examination of DW.1. Impugning the docket order dated 05.01.2016 the defendant filed the present revision.

2. It is the contention of the learned counsel for the revision petitioner that the lower Court failed to apply the correct legal position in respect of marking of the document i.e., memorandum of gift on the ground that it was an unregistered one. No doubt, the gift deed was an unregistered one and not duly stamped, but after filing of the said document along with other documents at the stage of the defendant's evidence, said gift deed it appears was duly impounded and proper stamp duty with penalty was collected from the petitioner. After paying stamp duty with penalty,

when the petitioner sought for marking the document, the lower Court did not allow for its marking on the ground that it was not duly registered under Section 17 of the Registration Act, though it is a compulsorily registerable document.

3. It is the submission of the learned counsel for the revision petitioner that when the proper stamp duty with penalty was collected under Section 34 of the Indian Stamp Act, said document could be marked even it is an unregistered one, atleast for collateral purpose. It is further contended that the lower Court failed to consider the case law submitted by the petitioner to consider said gift deed for marking and to admit in evidence. It is also submitted that as per the law laid down in the decisions relied upon, a document though unregistered, may be marked in evidence when proper stamp duty was paid in compliance with Section 34 of Indian Stamp Act, however the lower Court gravely erred in saying said gift deed could not be marked in evidence even for collateral purpose and thereby sought for allowing the revision.

4. Whereas it is the contention of the learned counsel for the respondent-plaintiff that the docket order of the lower Court holds good and for this Court while sitting in revision within limited scope there is nothing to interfere and hence to dismiss the revision.

5. Heard both sides and perused the material available on record.

6. Coming to the question of admissibility of the document, the law is fairly settled from the expression of the Apex Court in *Bipin Shanthilal Panchal V. State of Gujarat*[1] that but for stamp duty and registration to decide instantaneously, for all other objections including as to admissibility, relevancy and proof, the documents are to be marked subject to objections to decide such objections ultimately at the end of trial and not to adopt the archaic practice to decide all such objections even instantaneously, by giving life to the litigation by allowing the parties to stall the suit proceedings by filing revision or the like. The expression of the Apex Court in *Bondar Singh vs Nihal Singh*[2], holds that Section 17 of the Indian Registration Act deals with documents the registration of which is compulsory and Section 49 of the Act is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 of the Act or by any provisions of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power.

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[1] AIR 2001 SC 1158
[2] (2003) 4 SCC 161

But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter. The legal position is clear that the unregistered document, even though not admissible in evidence, can be looked into for collateral purpose of nature of possession of the plaintiffs over the suit land. In Rachakonda Rama Koteswara Rao and others vs. Manohar fuel centre, Neruducherla[3], it was held that whereas an unregistered document once duly stamped or stamp duty and penalty is paid, even though under section 17 of the Indian Registration Act, it is a compulsorily registerable one, for collateral purpose or such other purposes specified in Sections 49 r/w 17 of the Registration Act, it can be admitted and looked into.

7. This Court in the recent expression in CRP No.1850 of 2015, dated.23.08.2016, in Buddha Jagadeeswara Rao Vs. Sri Ravi Enterprises rep. by its Proprietor, held by scanning the law that collateral purpose to mean any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immoveable property. The proviso to Section-49 of the Registration Act, permits the use of an un-registered document even compulsorily be registered, as evidence of a collateral transaction. The expression "collateral transaction"

[3] 2003(2)-ALD-638=2002(2)AnWR-725

is not used in the sense of an ancillary transaction to a principal transaction or subsidiary transaction to a main transaction. But it would be possible to read in that transaction what may be called the purpose of the transaction and what may be called a collateral purpose. Thus, a collateral purpose is a purpose which must be unrelated to the terms and conditions of the main purpose of the transaction covered by the document. It must be independent of, or divisible from the transaction which requires registration, and it must be a transaction not by itself required to be effected by a registered document. Evidence as to character of possession is being considered as collateral purpose. *The test would be whether the party relying on the registered document seeks to rely on its terms for "affecting such property or conferring such power"*. If the genuineness of a document is questioned, the execution of the document itself will have to be proved and that cannot be a collateral purpose. In other words, what is prohibited is the attempt to enforce the terms of the unregistered document, but not to establish nature of possession which is a collateral purpose. The same is also reiterated by this court in CRP 158/2016 dated 09.08.2016 holding that character of possession from the transaction of sale or gift or lease or the like though cannot be let in from contents of document as if a collateral purpose, it can be used even the document is unregistered, for the collateral purpose to show only possession without going in to the contents of the document as to character of transaction. The Apex Court in Bondar Singh supra also held as referred supra of any conveyance must be by a deed duly stamped and registered and otherwise, even duly impounded not admissible in evidence for want of registration, but it can be considered as to nature of possession for said collateral purpose. The character of transaction from contents of the document in question thereby cannot be considered for same is not a collateral purpose and it is laid down by the Apex Court in K.B. Saha and sons (P) Limited Vs. Development Consultant Limited[4] that is reiterated in S.*Kalavathi V. V.R.Somasundaram*[5] that:

1. *A document required to be registered, if unregistered is not admissible into evidence under Section 17 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*

[4] (2008) 8 SCC 564
[5] (2010)5 SCC 401

> *evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.*"

8. This Court specifically in relation to even unregistered Gift/settlement deed held at para 4(a) in G.Narayana Reddy Vs. P.Narayan Reddy[6] relying upon the expressions of the Patna High Court in *Sm.Kheni Mahatani Vs. Charan Napit*[7] referring also to several earlier expressions of the High Courts of Calcutta and Allahabad holding an unregistered deed which is inadmissible in proving title, nevertheless it could be referred to as explaining the nature and character of the possession thereof held by the party as also held by the Privy Council in Ram Rattan Vs. Parma Nand[8] that unregistered documents are admissible to show nature of possession as a collateral purpose and the privy Council for that conclusion mainly placed reliance on the earlier expression in *N.Varada Pillai Vs. Jeevarathnammal*[9] wherein it was held that *gift though invalid as not being made by a registered document could be looked into as explaining the nature of possession thenceforth*.

9. Having regard to the above, the law is fairly settled that an unregistered document even liable for stamp duty, duly impounded on the original document (instrument) on same was

[6] 2016(3) ALT 12
[7] AIR 1953 Patna 365
[8] AIR 1946 PC 51
[9] AIR 1919 Privy Council 44

paid to say which is duly stamped, then it is admissible to show nature of possession only as a collateral purpose as per Sections 49 r/w 17 of the Registration Act.

10. Accordingly and in the result, the revision petition is allowed with a direction to the lower Court to admit the memorandum of original gift deed into evidence if duly stamped, only to show nature of possession as a collateral purpose as per Sections 49 r/w 17 of the Registration Act and proceed further in accordance with law to dispose of suit as expeditiously as possible.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

17.10.2016
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