

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4579 of 2016

ORDER:

1) Assailing the order dated 01.07.2016 passed in I.A.No.60 of 2015 in O.S.No.49 of 2010 on the file of the VII Additional District Judge, Madanapalle, wherein and whereunder an application filed under Order 13 Rule 3 read with Section 151 C.P.C. to reject Ex.A2-award dated 15.11.2002 was dismissed, the present Civil Revision Petition is filed under Article 227 of the constitution of India.

2) For the sake of convenience the parties hereinafter referred to as arrayed in I.A.No.60 of 2015.

3) The 1st respondent herein filed O.S.No.49 of 2010 directing the defendant to divide the plaint schedule property into two equal shares by metes and bounds taking good and bad into consideration and to allot one such share to the petitioner within the time specified by the Court, failing which the same to be done through the process of law. The plaintiff got himself examined as PW1 and the award dated 15.11.2002 came to be marked as Ex.A2. Pending the suit, the petitioner filed I.A.No.60 of 2015 to reject or eschew Ex.A2, from consideration. The plaintiff filed counter contending that Ex.A2 is perfect and valid document which can be enforced. It is also said that the petitioner has been filing frivolous applications one after another only to drag on the proceedings and to cause inconvenience to the plaintiff.

4) After considering the rival submissions made, the trial Court dismissed the petition with costs. Challenging the same, the present revision is filed.

5) Learned counsel for the petitioner would submit that the trial Court failed to observe that the disputed document-Ex.A2 is an award passed in the Lok Adalat which is creating rights, title and interest and as such the same requires registration under Registration Act. He further submits that the finding of the trial Court that the plea of eschewing of the document at an earlier point of time cannot be considered on the ground that the document was already marked and that no objection was raised at the time of marking as exhibit is incorrect and invalid. The finding of the trial Court that the relevancy and admissibility of document will be looked into at the time of pronouncing the judgment is un-tenable and un-sustainable.

6) Learned counsel for the respondent/plaintiff opposed the application contending that after marking the document the question of eschewing the document would not arise. Hence submits that the finding of the trial Court warrants no interference.

7) It is to be noted that Ex.A2, which is now subject matter of dispute, is a Lok Adalath decree passed in O.S.No.158 of 1992. The validity or otherwise of the said award was not challenged for a period of eight years. Now an objection is raised with regard to marking of the decree on the ground that the said decree is

creating rights over the property and it requires registration. One fact which is to be noted that the property which is subject matter of dispute in the suit and the property in the decree are one and the same ie. House bearing Door No.V-161 and V-162 situated at Apparao Street, Madanapalle Town, Chittoor District. That being the position, the question of eschewing the said award and also getting the said document registered would not arise. It is also to be noted that no objection was raised at the time of marking of the document in the suit.

8) The issue identical to the case on hand came up for consideration before the Apex Court in *Som Dev v. Rati Ram*¹, wherein the Apex Court held as under:

7. On a plain reading of [Section 17](#) of the Registration Act, with particular reference to clause (vi) of sub-section (2) it is clear that a decree or order of a court and a compromise decree that relates only to the subject matter of the suit need not be registered on the ground that it is a non-testamentary instrument which purports to or operates to create, declare, assign, limit or extinguish any right to or in immovable property or which acknowledges receipt or payment of any consideration on account of a transaction which brings about the above results. But if a suit is decreed on the basis of a compromise and that compromise takes in property that is not the subject matter of the suit, such a compromise decree would require registration. Of course, we are not unmindful of the line of authorities that say that even

¹ Laws (SC) 2006 (8) 123

if there is inclusion of property that is not the subject matter of the suit, if it constitutes the consideration for the compromise, such a compromise decree would be considered to be a compromise relating to the subject matter of the suit and such a decree would also not require registration in view of clause (vi) of [Section 17\(2\)](#) of the Registration Act. Since we are not concerned with that aspect here, it is not necessary to further deal with that question. Suffice it to say that on a plain reading of clause (vi) of [Section 17\(2\)](#) all decrees and orders of Court including a compromise decree subject to the exception as regards properties that are outside the subject matter of the suit, do not require registration on the ground that they are hit by [Section 17\(1\)\(b\)](#) and (c) of the Act.”

9) Having regard to the judgment of the Supreme Court referred to above and since the property involved in the suit and the decree are one and the same, this Court is of the view that there are no merits in the revision and the same is liable to be dismissed.

10) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

11) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.12.2016
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