

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.626 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/plaintiff, is directed against the intermediary order dated 31.12.2014 of the learned Junior Civil Judge, Koilakuntla, Kurnool District passed in O.S.No.110 of 2011.

2. I have heard the submissions of Sri M.Ram Mohan, the learned counsel for the petitioner/plaintiff. The respondents 1 and 2 are stated to be not necessary parties and the respondents 3 and 4, though served with notices, did not enter appearance and remained *ex parte*. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit for declaration of title over the plaint schedule lands, recovery of possession of the same and other reliefs, besides cancellation of registered sale deed dated 20.09.1978 *inter alia* contending that it is a fictitious sale deed. The defendants 1 and 2 remained *ex parte*. The other defendants, i.e., defendants 3 and 4 are contesting the suit. At trial, during the course of evidence of PW1, the plaintiff tendered through the said witness, two unregistered lease deeds dated 01.08.1990 and 17.07.1996 for being marked as exhibits to substantiate his case. An objection was raised on behalf of the contesting defendants that the said lease deeds, which are

unregistered and which are unstamped are inadmissible in evidence. The trial Court, by the orders impugned in this revision, upheld the said objection raised on behalf of the said defendants and directed that the said two lease deeds shall not be marked as exhibits. Aggrieved thereof, the plaintiff preferred this revision.

4. The learned counsel for the petitioner/plaintiff fairly concedes that the lease deed dated 01.08.1990 is for the period from 01.08.1992 to 31.07.1996 and that the other lease deed dated 31.07.1996 is for the period from 01.08.1996 to 31.07.2002 and that the said lease deeds are required to be stamped and are also required to be registered. However, he submits that the petitioner/plaintiff is prepared to pay the requisite stamp duty and penalty, if any, payable on the said documents and therefore, the petitioner/plaintiff may be permitted to pay the stamp duty and penalty, if any, payable on the said documents and exhibit the documents before the trial Court for collateral purpose in view of the proviso to Section 49 of the Indian Registration Act, 1908.

5. I have bestowed my attention to the facts and submissions. Under relevant sub article of Article 31 of the Indian Stamp Act, 1899, the subject lease deeds are to be stamped is not in dispute. Since the learned counsel for the petitioner/plaintiff now concedes the factual aspects and submits that the petitioner/plaintiff is prepared to pay the stamp duty and penalty, if any, payable on the said lease deeds, the short question now is as to whether the petitioner/plaintiff can be permitted to mark the said documents for collateral purpose, however,

after complying with the legal requirements in regard to sufficiency/deficiency of stamp duty.

6. Section 17 of the Indian Registration Act, 1908, lays down that a lease deed of an immovable property is a compulsorily registerable document. However, Section 49 of the said Act deals with the effect of the non-registration of the documents required to be registered. The proviso appended to Section 49 of the said Act reads as under:-

“Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

A plain reading of the above proviso shows that an unregistered document affecting immovable property and required by the Act to be registered may be received as evidence of any collateral transaction not required to be effected by a registered instrument. In view of the clear legal position enshrined in the provision of law, this Court is of the considered view that the request now made before this Court by the learned counsel for the petitioner/plaintiff deserves consideration.

7. On the above analysis, this Civil Revision Petition is allowed and the order impugned in the revision is set aside. The petitioner/plaintiff is given liberty to pay required stamp duty and penalty, if any, payable on the two lease deeds dated 01.08.1990 and 17.07.1996 and then make a request to the trial Court for permission to exhibit them for

collateral purpose, i.e., for consideration as evidence of any collateral transaction not required to be affected by registered instrument, i.e., for the purpose other than the main purpose as contemplated under law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

21st December, 2016
Bvv

M. Seetharama Murthi, J

