

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.261 of 2012
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ORDER:

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This civil revision petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the orders dated 10.11.2011 of the learned Principal Junior Civil Judge, Kovvur wherein and whereby the learned Principal Junior Civil Judge refused to admit in evidence the document dated 15.05.1996 tendered in evidence during the further examination in chief of PW1 (the plaintiff) on the ground that the said document, which is unregistered, cannot be admitted in evidence for want of registration.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for short) and the learned counsel for the respondents/defendants ('the defendants', for short). I have perused the material record including the copy of the document in question.

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

The plaintiff brought the suit against the defendants for declaration of right in 'ABCDEF' schedule passage [also shown in the plaint plan] to reach his lands and for a consequential injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the right in regard to the said passage and not to cause any obstructions for ingress and egress and for carrying on agricultural produce through the passage to the Southern side Vadapalli to Chandravaram road (punta). The defendants are resisting the said suit. At trial, during the further examination in chief of PW1, the plaintiff tendered for marking the document dated 15.05.1996 in support of his claim in regard to the plaint schedule passage. However, the learned counsel for the defendants had raised an objection for marking the said document on the ground that the said document discloses an easement by way of passage and creates some interest in property, though no title and

ownership are given, and that the said document is inadmissible in evidence as it is unregistered. In support of the said objection raised, he had placed reliance on a decision in **Hamir Ram v. Varisng Raimal** [1999(1) ALT 18.4 (DN) (OHC)]. On the other hand, the learned counsel for the plaintiff had submitted that the transaction under the document is incapable of valuation and that the contents of the document can be taken into consideration though the document is unregistered. In support of his contentions, he had placed reliance on the decision in **Varghese Paul and others v. Narayanan Nair and others** [AIR 1999 Kerala 417]. Having heard the submissions of the learned counsel for both the sides and having referred to the provisions of Sections 2(6) and 17 of the Registration Act and following the ratio in the decision of Orissa High Court in **Hamir Ram's** case (supra), the trial Court had held that the document in question created some interest in the property, that is, in regard to the usage of passage and that, therefore, the document requires registration; and that the document is a compulsorily registerable document. The trial Court had accordingly upheld the objection raised on behalf of the defendants and had refused to admit the said document in evidence.

4. Feeling aggrieved, the plaintiff filed this revision petition. It is *inter alia* contended on behalf of the plaintiff as follows: “The trial Court had erroneously held that the document in question requires registration without properly considering the ratio in the decision in **Varghese Paul** cited on behalf of the plaintiff and by wrongly applying the ratio in the decision of the Orissa High Court in **Hamir Ram's** case, which is inapplicable. The document in question is not registerable much less compulsorily registerable under Section 17 of the Registration Act as under the said document only permission is given to the plaintiff to use the passage for tractors, bullock carts, cattle and for carrying on agricultural implements, but no right is created in the immovable property comprised in the passage. Therefore, the provisions of the Indian Registration Act, which require compulsory registration, are not applicable to the document in question. The trial Court did not properly appreciate the nature of the transaction encompassed in the

document and also the provisions of law and had arrived at an incorrect conclusion that the document requires registration and that it is a compulsorily registerable document.” The learned counsel for the plaintiff placed reliance on the decision in **Musunoori Satyanarayana Murti v. Chekka Lakshmayya and others**^[1].

5. On the other hand, the learned counsel for the defendants while supporting the findings of the trial Court had *inter alia* contended that the suit is filed for declaration in regard to the plaint schedule passage, which is shown in the plaint plan, and that in the suit for declaration, an easement in regard to a passage is claimed and that though under the document an easement in regard to way or passage is created some interest in the immovable property is also there and that though no title or ownership are given under the said document in regard to the said passage, the document, as rightly held by the Court below, is compulsorily registerable and that the court below has rightly applied the ratio in the decision of the Orissa High Court as an easement by way of passage creates some interest in the property but no title or ownership in the same. He had finally urged that the document requires registration and hence, the revision petition is liable to be dismissed.

6. In the decision in **Musunoori Satyanarayana Murti**, the issue is in regard to the plaintiff's right to let out drainage water through the drainage channel passing through the defendants' fields and such right is based upon an easementary right granted to the plaintiff under a document executed by the father of the defendant and it is a letter. The Madras High Court noted that under Section 6(c) of the TP Act an easement cannot be transferred apart from the dominant heritage and that Section 54 of the TP Act taken along with Section 6(c) would appear to contemplate the transfer of an existing easement as distinguished from the creation of the imposition of a new easement and that there is a clear distinction between the transfer of an existing easement and the creation or grant of a new easement and that the transfer of an existing easement is the act of the dominant owner and is

inseparable from the transfer of the dominant heritage, while the creation of a new easement is the act of an owner imposing a burden on his property. On the above reasoning the Madras High court held that the grant of an easement does not involve such a transfer of ownership in immovable properties as is contemplated by Section 54 of the TP Act and hence, the said document does not require registration. In the cited decision, the decision in **Bhagwan Sahai v. Narasingh Sahiah** [(1909) 31 ALL.612] was referred to, wherein it was held as follows:

It seems clear to me that the creation of a right of easement by grant is not such a transfer of ownership as is contemplated by S.54 of the Act. Where under that section an easement is transferred it must be so transferred along with the dominant heritage. There is no other way of transferring it and this arises by reason of the nature of the right. It exists only for the benefit of the heritage and to supply its wants. There is nothing in law which necessitates the creation of an easement being evidenced by writing.

7. I have given detailed and thoughtful consideration to the facts and the submissions. I have carefully gone through the contents of the document; as, not nomenclature but the content of the document determines the nature of the transaction.

8. The said document was executed on 15.05.1996 in favour of the plaintiff by Krishnarao @ Krishnamurthy, S/o Satyanarayanamurthy, who is said to be the father of the defendants 1 and 2. In this document, it is stated that the said Krishnarao, the executant of the document, had self acquired the properties in Rs.Nos.290/1, 276, 275/1 and 275/6 and that he had provided a way to the Northern portion of his lands from Vadapalli Chandravaram punta which is on the South and that the plaintiff Satyanarayana is provided way from the said passage to the land sold to him i.e., land in S.No.275/1 and 275/6 to go to his lands from Southern side Vadapalli to Chandravaram punta. It is further stated in this document that through the said passage tractors, carts, cattle and agricultural implements can be taken and for the same no objection would be raised and that the document is executed with consent. The document was signed by the said Krishnarao @ Krishnamurthy and was attested by two witnesses and also bears the signature of the

scribe. It was executed on non judicial stamp paper of the value of Rs.100/-. A plain reading of the document shows that already the executant of the document had provided a right of way from a punta to his lands and that he had permitted the said Satyanarayana to use the same passage to reach his land, which was sold to him i.e., the land in S.No.275/1 and 275/6. Therefore, under this document, in the well considered view of this Court, licence is granted to Satyanarayana, the plaintiff, to use the same passage which was already in existence and which was provided for the lands of the said Krishna Rao @ Krishnamurthy, the executant of the document. Admittedly, no title or ownership over the said passage is created under the document in favour of Satyanarayana, the plaintiff, who is the beneficiary under the document. He was only permitted to reach his lands through the said passage, which passage the executant of the document has already provided for his lands. Therefore, to my mind the document in question created no right in immovable property; and, only irrevocable permission was accorded under it to use the existing passage by granting licence so to say. Viewed thus, this court finds that the document in question does not require registration. Though one of the contentions of the defendants, who are objecting for marking of the document on the ground that it requires registration, is also that the said document is a forged document, that aspect need not be considered by this Court in this Revision petition as it is for the trial Court to go into the said aspect at the appropriate stage, in case the document is eventually admitted in evidence and necessary evidence is adduced by both the sides to prove and disprove the document.

9. Having regard to the facts and reasons, this Court holds that the order of the Court below is liable to be set aside. As a result, the trial Court is directed to admit the suit document in evidence provided the plaintiff pays the stamp duty and penalty, if any, payable on the said document as per the provisions applicable to the transaction of licence.

10. In the result, the Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

Date:17.02.2016
Vjl

[\[1\]](#) AIR 1929 Madras 79