

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.4282 of 2016

Order:

Aggrieved by the action of the Principal Junior Civil Judge, Avanigadda in returning a plaint without numbering, on the ground that a valid mortgage deed did not accompany the plaint, the plaintiff in the suit has come up with the above revision under Article 227 of the Constitution of India.

2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner.

3. Since the plaint presented by the revision petitioner was returned by the Court below without even numbering the suit, the question of ordering notice to the respondent in this revision does not arise. Hence the revision is taken up for disposal.

4. The petitioner herein filed a suit in O.S.(GL).No.2650 on 15-6-2016 on the file of the Principal Junior Civil Judge, Avanigadda. The reliefs sought for in the suit are as follows:

(a) Pass a preliminary decree in favour of the plaintiff against the defendant for the amount of Rs.1,24,800/- with subsequent interest on the principal of Rs.1,00,000/- by fixing the redemption period in accordance with the procedure by creating charge over the plaint schedule property.

(b) Pass a personal decree against the defendant.

(c) Pass a final decree in pursuance of the preliminary decree for filing E.P. proceedings.

(d) If not satisfied the debt out of the schedule property/ies the plaintiff is permitted to proceed against the other properties of the defendants.

(e) Costs of the suit.

5. The plaint was first returned by the Court below on 21-7-2016 on the ground that particulars of the suit claim were not noted properly. The petitioner rectified the defects and represented the plaint. Then the plaint was returned on 05-8-2016 questioning as to how the suit was maintainable without filing the mortgage deed. The petitioner represented the plaint with an endorsement to the effect that the suit was based upon equitable mortgage created by a mere deposit of title deeds and that therefore the question of filing any registered mortgage deed did not apply.

6. However, the Court below again returned the plaint questioning as to how the suit was maintainable, in view of the law laid down in 2014 (1) ALT 441 SC (DNV) and State of Hyderabad v. Nair Singh 2013 (8) SCJ 957. Therefore the petitioner has come up with the above revision petition.

7. At the outset, it is to be pointed out that the petitioner had filed along with the plaint, four documents. Two of those documents were promissory notes and one was a registered partition deed between the defendant and his mother. The fourth was a letter of confirmation dated 15-5-2015.

8. The copy of the letter of confirmation dated 15-5-2015, shows that the said document records the handing over an original document dated 14-5-2015 as

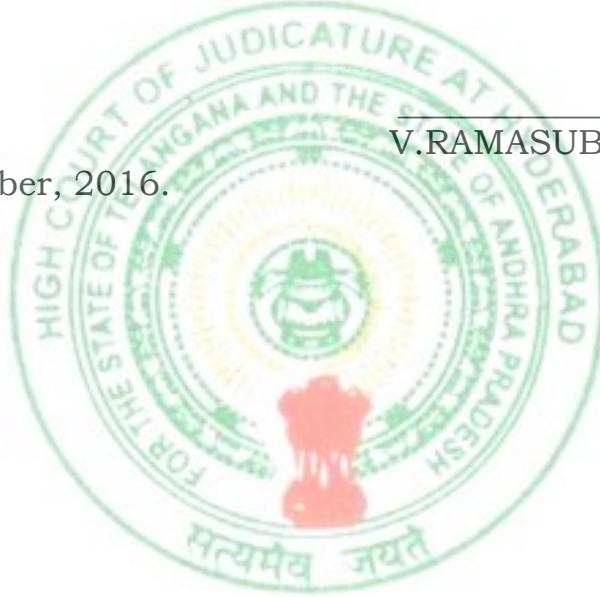
security for the loan taken on 09-5-2014. I do not wish to go into the question whether document No.4 dated 15-5-2015 filed by the petitioner was actually a simple deed of mortgage requiring payment of stamp duty and registration or whether it was only a memorandum recording the past events of deposit of title deeds. If I go into this question now, it will tantamount to deciding an important question that may become the subject matter of controversy during the course of trial.

9. But for the present, the duty of the Court is only to see with what case the plaintiff has approached the Court. The plaintiff has approached the Court below contending that document No.4 was only a memorandum of deposit of title deeds *post facto*. Once a person comes to Court with such a positive stand, it is not open to the Court below to return the plaint on the presumption that there was no valid mortgage deed. The validity of the mortgage deed is completely different from the admissibility of a deed of mortgage in evidence. The Court below appears to have mixed up both. If Avanigadda is an area notified in terms of Section 58(f) of the Transfer of Property Act, 1882 and if document No.4 filed along with the plaint falls within the parameters of a memorandum of deposit of title deeds, the Trial Court was obliged to number the suit. Without even examining the same the Trial Court has simply returned the plaint repeatedly. The same is not in accordance with law.

10. Therefore, the civil revision petition is allowed. The petitioner shall represent the plaint, along with the documents listed in the plaint. The Court below shall number the plaint subject to the question of jurisdiction and payment of Court fees, leaving the question relating to the letter dated 15-5-2015, by which the creation of the mortgage was said to have been recorded *post facto*, to be agitated by the defendant at the appropriate stage. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

14th September, 2016.
Ak/Js

V.RAMASUBRAMANIAN, J.



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14th September, 2016.
(Ak)