The Hon'ble Sri Justice V.Ramasubramanian

Civil Revision Petition No.5117 of 2016

Date: 09.12.2016

Order:

This Civil Revision Petition arises out of Order passed by the trial Court, holding a particular document sought to be marked by the first defendant in evidence.

Heard Mr.G.Ramesh Babu, learned Counsel for the petitioner, Mr.Ambati Sudhakara Rao, learned Counsel appearing for respondent No.1/plaintiff, Mrs.S.V.Indira, learned Counsel appearing for respondent No.2, who was the first defendant in the suit, and Mr.Avinash Desai, learned Counsel for respondent No.6, who was the fifth defendant in the suit.

Though respondent Nos.2, 4 and 5 have been served and respondent Nos.4 and 7 have not been served, they are unnecessary parties to this Civil Revision Petition, as the fight is only between the petitioner, who was the seventh defendant in the suit, and respondent No.2, who was the first defendant in the suit.

For convenience, the parties shall be hereinafter referred to as they are arrayed in the Civil Revision Petition.

The suit filed by the first respondent was for a declaration that she is the absolute owner of the property in question. In the course of trial, she sought to mark a document, dated 06-12-1997. The same was objected to by the petitioner on the ground that it was insufficiently stamped and unregistered and hence, it was not admissible in evidence. The trial Court overruled the objections forcing the petitioner to come up with the present Civil Revision Petition.

The document in question is written in Telugu language. Admittedly, the title given to the document in the vernacular language is 'Angeekarapatram'. The words 'Angeekarapatram' would literally mean 'an Instrument of Acknowledgment'. Though Mrs.S.V.Indira, learned Counsel appearing for the second respondent contended that 'Angeekarapatram' would mean a letter of consent, I do not think that the same is correct. The word 'Angeekarapatram' has got roots in Sanskrit. It means 'Acknowledgment'. An acknowledgment may also tantamount to consent at times. But, every consent need not be an acknowledgment.

Having resolved the dispute with regard to the title to the document rather than the title to the property, let us now examine the contents of the document. An English translation of the document is provided by the revision petitioner in the material papers. In view of the dispute raised by the learned Counsel for the second respondent, I permitted the latter to file an independent English translation of the document. Let me go only by the translation provided by the learned Counsel for the second respondent and examine whether the document creates any right, title or interest in the first respondent. The document in entirety could be extracted for the purpose of convenience as follows:

> "You have rendered service to the first pontiff of Sri Vyasasramam, Pujyasri Sree Vimalananda Giri Swamy as his disciple. Later on, you proceeded to Varanasi and graduated in Vedantacharya M.A. and have been looking after all the properties and development of Sri Paramatmananda Ashramam for the past 5 years and have been developing the devotees in relation to religious mysticism. Earlier Sri Kilaru Appaiah, son of Kilaru Krishnaiah, had on 3.6.1943 executed a deed of gift and registered the same as Doc.No.862/43, Book-I, Volume-159 at pages 471-473 in the office the Sub-Registrar, Kankipadu, Krishna District relating to Sri Vyasasramam and located on the western side of Sri

Paramatmananda Ashramam. Said schedule property in an extent of Ac.0.90 cents (ninety cents) of dry land belonged to our Ashramam with absolute rights and earlier Bhavineni Rama Kotaiah, resident of Penamaluru village, had settled an extent of Ac.0.04 cents of dry land bearing R.S.No.462/2 in favour of our Ashramam by a deed of gift. As the extent of Ac.0.94 cents of dry land is located far away in another village and as we have no opportunity of developing the said land in relation to any spiritual matters and as you have been doing spiritual services to the Ashramam by residing there and as you had served for some time Pujyasri Vimalananda Giri Swamy being his disciple and as we have felt that it would be beneficial to give the same for utilization of Sri Paramatmananda Ashramam, I have earlier delivered possession of the schedule property to you earlier without any consideration. Henceforth, you shall pay cist etc., to the schedule land and shall utilize the same for spiritual purposes and for the tutelage of residents of the Ashramam practitioners of Brahma knowledge. The schedule property can be utilized in such a manner either by you or by disciples appointed by you. If the property is utilized in such a manner, either myself or my successors or any other person relating to me shall not raise any dispute. If any of your disciple or their disciples causes any damage or adopt a different tradition other than the Advaita tradition of Sri Adi Sankaracharya, the entire property of Sri Paramatmananda Ashramam and the present property given to you shall belong to Sri Vyasasramam. Assuring you that this property is not alienated in any manner on behalf of the Ashramam,

this agreement is executed. This property is not an assigned land under Act No.9/77."

A careful look at the above document would show that the property in question, as claimed under the document, would belong absolutely to the second respondent and that they handed over possession of the property, without any consideration, to one Vidyanandagiri Swamy. Though the document states that there was no monetary consideration, it nevertheless states that it was in consideration of the devoted services rendered by the person to whom it was conveyed in the past. The document proceeds to state that the suit schedule property should be used for spiritual purposes and for the tutelage of the residents and that if the property was so utilized, the person handing over the property would not raise any dispute. The document further states that if the person to whom it was handed over or any of his followers adopted a different tradition other than the Advaita tradition, the property would be taken back by the second respondent.

Though the document has been very carefully worded, what was actually done thereunder was to hand over possession of the property to a person with certain restrictions both with regard to its enjoyment and with regard to the

contingency as to what would happen if those conditions are not fulfilled. In other words, the document in effect creates a right of enjoyment in favour of the person to whom it is handed over, so long as he complied with those conditions and till such time, the second respondent agreed not to raise any dispute at all. In other words, a right of enjoyment is created under the document in question. Therefore, the document certainly requires to be stamped adequately.

If you consider the document as an agreement handing over possession creating certain right, the same would fall under the category of 'Conveyance' under Item No.23 or 23A of Schedule I to the Indian Stamp Act, 1899 (for short 'the Act'). Alternatively, if it is construed as a conditional gift, it may fall under the category of 'Gift' under Item No.33 of Schedule I to the Act. Therefore, the view taken by the trial Court that there was no transfer of any interest or right in the immovable property under the document is contrary to law.

As a matter of fact, the expression "Transfer" is defined under Section 5 of the Transfer of Property Act, 1882, as follows:

"Transfer of Property defined

> In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.
>
> In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

The expression 'Conveyance' is defined under Section 2 (10) of the Act as follows:

> "Conveyance includes a conveyance on sale, every instrument and every decree or final order of any Civil Court,{every order made by the High Court under Section 394 of the Companies Act, 1956 in respect of amalgamation or merger of Companies} by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, intervivos, and which is not otherwise specifically provided for by Schedule-I or Schedule- I-A, as the case may be."

The creation of an interest in immovable property, upon condition that the transferor would not seek to take back the property, so long as the conditions are fulfilled, would

certainly fall under any one of the above. Therefore, the order of the trial Court is contrary to law.

A document, which is not sufficiently stamped and which is not duly registered, cannot be admitted in evidence for any purpose. The document in question suffers from both vices. Therefore, the Civil Revision Petition is allowed and the order of the trial Court is set aside. Since the suit is of the year 2007, the trial Court shall endeavour to dispose of the same within a period of two months.

As a sequel, interim order, dated 21-10-2016, as extended by further orders, is vacated and Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(V.Ramasubramanian, J)

Dt: 9th December, 2016

Note:
Furnish CC by 14-12-2016
(B/o)
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