

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.30426 of 2016

Date:09.9.2016

Between:

Sirimalla Rajitha,
W/o P.Surender

..... **Petitioner**

And:

Union of India, New Delhi,
reptd by Secretary to Ministry of
Finance Department of Economic
Affairs (Banking Division) and two others.

....**Respondents**

Counsel for the petitioner: Mr. Bandi Vara Prasada Rao

Counsel for respondent No.1: Mr. B.Narayana Reddy
Assistant Solicitor General

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The petitioner, who claims to be a lessee under a purported unregistered lease deed, filed this Writ Petition to prevent respondent No.2—a security holder from enforcing its security interests against respondent No.3. In support of her plea that she is a tenant, the petitioner relied upon the purported lease agreement, dated 11.11.2012.

We are afraid, we cannot look into an unregistered lease deed in view of the specific bar under Section-17 read with Section-49 of the Registration Act, 1908 (for short 'the Act'), under which, the lease deed which is not a registered one, cannot be admitted in evidence except under the circumstances envisaged by the proviso to Section-49 of the Act.

Mr. Bandi Vara Prasada Rao, learned counsel for the petitioner, has not disputed the fact that the two circumstances envisaged under the said proviso, viz., an unregistered sale deed could be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument, do not exist in the present case. He has however placed reliance on the

judgment of the Supreme Court in *Vishal N.Kalsaria Vs. Bank of India & Ors*¹.

On going through the said judgment, we are of the opinion that the same is of no help to the petitioner as, the Supreme Court held therein that *de hors* an unregistered sale deed, a lessee could still prove before the Court based on any other material evidence that a valid lease is subsisting. Except the purported unregistered lease deed, no other material is placed by the petitioner before this Court in support of her plea that there is a valid subsisting lease in her favour.

At any rate, this being a disputed question of fact, could be adjudicated only by the forum exercising its original jurisdiction and therefore, in exercise of our jurisdiction under Article-226 of the Constitution of India, such a disputed issue cannot be decided.

In the light of the above, we do not find any merit in the Writ Petition and the same is, accordingly, dismissed.

¹ 2016(10 Civil Court Cases 696

As a sequel to dismissal of the Writ Petition,
WPMP.No.37652 of 2016 filed by the petitioner for interim
relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

09th September 2016

DR

