

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 577 of 2016

ORDER:

Assailing the order dated 08.12.2015 passed in I.A.No.586 of 2014 in O.S.No.50 of 2006 on the file of the Additional Senior Civil Judge, Madanapalli, the petitioners, who are the plaintiffs, filed the present Civil Revision Petition under Article 227 of the Constitution of India.

The petitioners herein preferred the above suit seeking permanent injunction restraining the defendants and their followers from interfering with the plaintiffs' possession and enjoyment of the suit property in any manner and to avoid technicalities alternatively for declaration and recovery of possession of the suit properties through Court, if necessary.

Pending the said suit, the defendants herein filed I.A.No.586 of 2014 under Order 13 Rule 3 and Section 151 of C.P.C. to reject the un-registered agreement-cum-memorandum of family arrangement as described in the evidence of PW.1. As per the affidavit filed in support of the said I.A., the second plaintiff, who was examined as PW.1 and the recitals of the said un-registered document show that the executants of the above documents were said to have relinquished their rights in the suit property in favour of M.K.Ramachandra Sharma and as the said document is hit by Section 17 of the Registration Act, the same is not admissible in evidence. It is their case that since the said document is not registered, mere payment of stamp duty and penalty does not cure the defect of non-registration.

A counter came to be filed opposing the same. As per the counter it is urged that the said document is only a memorandum of family arrangement which requires no registration. It was pleaded that the nomenclature of the document can be considered and decided after full fledged trial but not at the initial stage.

After considering the rival arguments advanced, the trial Court found that the relinquishment deed is not admissible even for collateral purpose for want of registration. It was further held that the document is inadmissible in evidence both in view of bar contained under Section 35 of Indian Stamp Act and also in view of Section 49 of the Registration Act and accordingly allowed the petition. Challenging the same, the plaintiffs preferred the present Civil Revision Petition.

Relying upon the judgments of this Court and the Judgment of the Apex Court, learned counsel for the petitioners would submit that this being a document executed by the parties relinquishing their rights the same need not be registered, using the same for collateral purpose, though it may require registration for making it admissible in evidence. The same is strongly disputed by the learned counsel for the respondents contending that since the document is not admissible in evidence for want of registration the same cannot also be used for collateral purpose.

In ***Vangala Laxmamma v. Pasham Narsi Reddy***^[1] this court while considering Section 17 and 49 of the Registration Act, observed as under:

“11. The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of

documents of transfer. This is achieved by providing for consequences of non-registration.

Section 17 of the Registration Act clearly provides that any document (other than testamentary documents) which purports or operates to create declare, assign, limit or extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of Rs.100/- and upwards to or in immovable property.

Section 49 of the said Act provides that no document required by Section 17 to be registered shall affect any immovable property comprised therein or be received as evidence of any transaction affecting such property, unless it has been registered. Registration of a document gives notice to the public that such a document has been executed.

12. It is provided under Section 49 of the Registration Act that no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall affect any immovable property comprised therein or be received as evidence of any transaction affecting such property unless it is registered. As per the provision made in the proviso to that Section such a document may be received as evidence of any collateral transaction not required to be effected by registered instrument. It has consistently been held by Courts of law that an unregistered document of transfer which is required to be registered and not registered is admissible in evidence to prove the date of entering into the fact of possession of the transferee and to show the character of his possession. Though an unregistered document required to be registered under law is not admissible in evidence to claim any right under it, it would be admissible in evidence for a collateral purpose i.e., for a purpose other than that for which the document was created.”

It is not in dispute that the document which is sought to be marked is an un-registered document but at the same time it is also not in dispute that the stamp duty and penalty was paid and

the said document was also impounded but not registered. A reading of the said document further makes it clear that it is a document where the parties by name M.K.Lakshmana Sharma and M.K.Kamakshamma relinquished their rights in respect of land called as Mulamadi land situated at P.T.M., Devappakota in favour of M.K.Ramachandra Sharma. The said document has not recorded only past transaction wherein the parties relinquished their rights under the document in question. The parties therein have relinquished their rights over the properties in favour of one M.K.Ramachandra Sharma.

That being the position two issues arise for consideration namely 1) as to whether the document can be admitted in evidence and (2) whether the said document can be used for collateral purpose.

As stated earlier, though stamp duty and penalty are paid and the document is impounded, the same is not registered. Section 17 of the Registration Act makes it clear that any document to be made admissible in evidence requires Registration. Therefore, the issue as to whether an un-registered relinquished deed is admissible in evidence is no more *res integra* in view of the judgment of this Court in ***Telugu Krishna Mohan v. Smt. Boggula Padmavathi***^[2].

Insofar as the second issue is concerned namely as to whether the said document can be used for collateral purpose, the Apex Court in ***Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others***^[3] while dealing with the effect of using an un-registered document for collateral purpose observed as under:

“18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy^[4] has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.”

In view of the judgment of the Apex Court referred to above and having regard to the fact that the stamp duty and penalty was paid and the document was also impounded which fact is reflected in the impugned order itself, the trial Court is directed to mark the same for collateral purpose subject to its proof and relevancy.

Accordingly, the Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

15.07.2016

gkv

[\[1\]](#) (2010) 3 ALT 165

[\[2\]](#) (2009) 5 ALT 132

[\[3\]](#) (2016) 1 ALD 40 (SC)

[\[4\]](#) AIR 1969 A.P. (242)