

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.3123 OF 2016

ORDER:

This Civil Revision Petition, filed under Article 227 of the Constitution of India, arose out of the order dated 06.05.2016, passed in I.A. No.69 of 2016 in Original Suit No.197 of 2013 by the Junior Civil Judge, Srungavarapukota, Vizianagaram, (for short, 'the trial Court'); wherein the trial Court dismissed the petition, filed, under Order VII Rule 1 of C.P.C., for receiving the unregistered sale deed dated 13.05.1977, on the ground that it was filed at the stage of defence evidence.

The revision petitioners are the defendants and the respondent herein is the plaintiff in O.S. No.197 of 2013.

On perusal of the document filed by the defendants, it is revealed that the petition schedule property is in the name of plaintiff and it is ancestral property. It was further observed therein that the defendants failed to explain how the un-registered sale deed is connected with the plaint schedule property and, mainly, on this ground the trial Court seems to have dismissed the petition. Notices sent to the address of the respondent-plaintiff have been duly served and, in support of the same, Sri S. Subramanyam, learned counsel for the petitioners-defendants, filed acknowledgment before this Court. In spite of the same, neither respondent-plaintiff is present nor there is any representation on his behalf.

The grounds urged in the Revision Petition are that the trial Court has not considered the plea taken by the petitioner-2nd defendant in his written statement that his father was a *bona-fide* purchaser, from his vendor, and that he has been in peaceful possession and enjoyment of the plaint schedule property and in proof of his possession, he wanted to file an un-registered sale deed for collateral purpose in O.S. No.197 of 2013.

Learned counsel for the petitioners-defendants submits that the suit is filed for permanent injunction by the respondent-plaintiff and to prove his possession over the suit schedule property, he should be permitted to rely upon the un-registered sale deed dated 13.05.1977 and the grounds on which the trial Court refused to receive the document are not sustainable and prayed to allow this Revision Petition.

The respondent-plaintiff has taken a plea in his written statement in I.A. No.69 of 2016 that the alleged document of unregistered sale deed is filed with a *mala-fide* intention and it is not legible, cannot be read and, therefore, sought for a direction to direct the petitioners-defendants to file a copy of typed document.

Perusing the material available on record, and the argument of learned counsel for the petitioners-defendants, the point that arises for consideration in this Revision Petition is:

Whether an un-registered sale deed can be received, by the trial Court, in the evidence of the petitioners-defendants?

POINT: Admittedly, the respondent-plaintiff has filed a suit for permanent injunction before the trial Court; the trial has already been commenced and the evidence on behalf of the respondent-plaintiff was over and when the case was coming up for the defendants' evidence, the defendants want to mark this document on their behalf. The grounds on which receiving of the alleged document was rejected by the trial Court were that the petitioners-defendants failed to explain the relevancy of the document. As far as the relevancy of the document is concerned, it is the pleaded case of the petitioner-2nd defendant that his father purchased the suit schedule property under a registered sale deed and, therefore, it is a material document to prove his possession over the schedule property. In this regard, the trial Court ought to have given an opportunity to the petitioners-defendants to mark that document, provided it is admissible in evidence. As far as the relevancy of the document is concerned, the petitioner-2nd defendant had already taken a plea in his written statement in O.S. No.197 of 2013 about the existence of the document though he had not stated that it was an un-registered sale deed. Therefore, there is no reason for the trial Court to reject to receive the alleged document of un-registered sale deed in the evidence of petitioners-defendants. I do not see any valid grounds for rejection of the alleged document by the trial Court.

The other ground, on which the trial Court rejected to receive the alleged document, is that it was filed at a belated stage *i.e.*, at the stage of evidence of the petitioners-defendants. Hence, it is appropriate for the petitioners-defendants to adduce the evidence, by filing the relevant document at the stage of their evidence, no prejudice would be caused to the respondent-plaintiff, if the document is received at that stage.

The respondent-plaintiff has not raised any objection in his counter except the fact that he is unable to read the copy of un-registered sale deed, as it was not legible.

Having regard to the facts and circumstances of this case, I am of the considered view that the impugned order passed by the trial Court is not in accordance with law and liable to be set-aside and is, accordingly, set-aside directing

the trial Court to receive the alleged document of unregistered sale deed dated 13.05.1977, if it is admissible in evidence, on condition that the petitioners-defendants shall submit a copy of the alleged document, on getting it typed in legible form, in the event of receiving the document by the trial Court.

The Civil Revision Petition is, accordingly, allowed. No order as to costs.

In consequence, miscellaneous petitions, if any, pending in this Revision shall stand closed as infructuous.

G. SHYAM PRASAD, J

Date: 15-07-2016.
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