

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.5151 of 2016

ORDER:

This CRP is filed by the petitioners/defendants aggrieved by the order dated 20.09.2016 in O.S.No.32 of 2011 on the file of Junior Civil Judge, Sidhout whereunder the trial Court refused to mark the unregistered lease agreements dated 19.10.1985 and 17.02.1997 filed by the defendants.

2) The respondent/plaintiff filed the suit for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. Trial in the suit was commenced; PWs.1 to 8 were examined on behalf of plaintiff; evidence on plaintiff's side was closed on 02.11.2015 and on 14.03.2016 the 2nd defendant was examined as DW1 in Chief in part. At that time the defendants sought to mark the two unregistered lease agreements dated 19.10.1985 and 17.02.1997 stating that though they were unregistered documents, they can be admitted in evidence for collateral purpose. Plaintiff opposed the same. The trial Court enquired into the matter on admissibility of documents. On hearing both parties at length, the trial Court observed that the documents sought to be marked by the defendants were neither duly stamped nor registered and hence not admissible in evidence and accordingly rejected.

Hence the CRP.

3) Heard arguments of Sri Ch.Janardhan Reddy, learned counsel for petitioners and Sri L.J.Veeera Reddy, learned counsel for respondent.

4) As can be seen, the respondent/plaintiff's case is that originally the suit schedule property was a Government land and DKT Patta was granted in favour of his father—Venkataiah. After the death of his father the plaintiff was in possession and enjoyment of the same and when the defendants unlawfully tried to meddle with the property he filed the suit for perpetual injunction against the defendants. While so, the case of the defendants is that originally DKT Patta was granted in favour of plaintiff's father in respect of suit schedule land in 1978. Thereafter, he was unable to cultivate the land and fell in debts and failed to repay bank loans. Hence, Venkataiah, the father of the plaintiff took an amount of Rs.60,000/- from Ganguraju Srinivasa Babu of Mantapampalle village and executed an unregistered lease agreement dated 19.10.1985 for a period of 99 years and delivered possession of the suit land to him. The said Srinivasa Babu kept the land idle for paucity of water. Hence, he approached the 1st defendant and expressed his willingness to sell the land in his favour. However, since the land was a DKT Patta land which stood in the name of Venkataiah, it was not possible to execute a registered sale deed. In the meanwhile Venkataiah died. Thereafter, 1st defendant and

Srinivasa Babu consulted the plaintiff and the plaintiff told that his father already leased out the land in favour of Srinivasa Babu and he was not in a position to take back the land from Srinivasa Babu by clearing the debts and further, he had no money with him to celebrate the marriage of his sister. He thus informed the 1st defendant and Srinivasa Babu that he had no objection if the 1st defendant purchased the land from Srinivasa Babu by giving some amount to Srinivasa Babu and also to him. At that time, the plaintiff was working as Driver at Tirupati. Later, on 17.02.1997 the plaintiff came to the village and 1st defendant paid Rs.1 lakh to Srinivasa Babu and Rs.45,000/- to the plaintiff and accordingly plaintiff executed an unregistered lease agreement dated 17.02.1997 in favour of 1st defendant for a period of 99 years and delivered possession. Ever since the 1st defendant was in possession and enjoyment of the suit schedule land and he spent Rs.5 lakhs and reclaimed the suit land and dug bore wells and applied for electricity connection. He raised Neem plants and Banana plants in the suit land. Except himself none else has title and possession over the suit property. Recently the plaintiff and his wife came to the village and observed the developments in the suit land and out of jealousy he filed the present suit.

5) In the above back-ground, the 1st defendant wanted to mark the documents dated 19.10.1985 and 17.02.1997 on his behalf. The trial Court declined to mark those documents on the main observations that document dated 19.10.1985 which was said to be executed by father

of plaintiff in favour Ganguraju Srinivasa Babu, though styled as “Kararunama agreement”, but the contents of the same resemble a mortgage by conditional sale and the said document was neither a lease agreement nor agreement of sale and the said document was written on NJ stamps worth Rs.7/- and since it was not duly stamped and unregistered and further, the father of the plaintiff was only an assignee of the DKT Patta land and he had no right to alienate the land, the said document cannot be marked. In respect of document dated 17.02.1997, the trial Court observed that though the document was styled as “Lease agreement” but the contents of the document resemble the ingredients of sale and the document was neither registered nor duly stamped and it was written on NJ stamps worth Rs.50.25 ps. and father of the plaintiff being an assignee of DKT patta, had no right to lease out the same for 99 years or to sell the same. The trial Court declined to mark the said document on the aforesaid observations. The trial Court further observed that the defendants claimed title over the suit schedule property through those documents and their intention was to prove their title and thereby, *de jure* possession over the suit schedule property, and not for any collateral purpose and hence the documents cannot be marked.

6) Opposing the order, learned counsel for petitioners would argue that though the two documents were unregistered and not duly stamped, still they can be marked as exhibits on behalf of petitioners/defendants for the collateral purpose of proving their

possession over the suit schedule property and they are ready to pay stamp duty and penalty if necessary, and the trial Court without properly appreciating the nature of the documents and purpose for which the petitioners sought to mark them, committed a grave error declining to mark them as exhibits on behalf of petitioners/defendants. He thus prayed to allow the CRP and set aside the impugned order.

7) Per contra, while supporting the impugned order, learned counsel for respondent would argue that the averments in the written statement clearly manifest that the defendants claimed as if they purchased the suit property under the guise of lease agreement by paying some amount to defendants and G.Srinivasa Babu under the impugned documents and the defendants wanted to produce the documents not for collateral purpose of establishing mere possession but their title also and since the lands in question are DKT Patta lands, which are not amenable for alienation by the assignee, the trial Court rightly refused to accord permission to the petitioners/defendants to mark those documents and hence there is no merit in the revision and the same may be dismissed.

8) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the CRP to allow?”

9) **POINT**: This Court perused the two controversial documents dated 19.10.1985 and 17.02.1997 in the light of arguments advanced by both sides.

a) Document dated 19.10.1985 is styled as Kararunama agreement which was said to be executed by Venkataiah—father of the plaintiff in favour of Srinivasa Babu. It is mentioned that Venkataiah took Rs.60,000/- from Srinivasa Babu for his needs and in consideration thereof, he delivered possession of the plaint schedule land to him and agreed that the creditor could retain the said land for 99 years and enjoy the same and after passage of 99 years, the creditor should return the land to him. A condition was also mentioned in the agreement that in case the plaintiff or his legal heirs raise any dispute, they have to return Rs.60,000/- to the creditor. The document was written on NJ stamp worth Rs.7/- and it is an unregistered document. Though nomenclature was styled as “Kararunama”, the terms of the document, as opined by the trial Court, resemble a mortgage by conditional sale.

b) Then, the document dated 17.02.1997 was purported to be executed by plaintiff in favour of 1st defendant. It was mentioned that plaintiff received Rs.45,000/- from 1st defendant and delivered possession of suit schedule property with absolute rights for 99 years by paying taxes to the Government. It was also mentioned in the document that till 99 years the plaintiff has no right over the suit

schedule property. The document was styled as lease agreement. It was written on NJ stamps worth Rs.50.25 ps. and unregistered. There was no condition for redelivery of the land after 99 years. Though the document was styled as lease agreement, as rightly observed by the trial Court, it resembles a sale deed.

c) There is no demur both the above documents require proper stamp duty and penalty and they also require registration which was not done. The case of the learned counsel for petitioners/defendants is that they are proposing to mark those documents only for collateral purpose of showing their possession but not for claiming any title and they are ready to pay necessary stamp duty and penalty if the documents are impounded. Per contra, the contention of the respondent/plaintiff is that as per the averments in the written statement, the stand of the defendants is that they purchased the suit land under the guise of impugned documents and therefore, the purpose in adducing those documents is to claim title and not mere possession.

10) This Court finds force in the submission of respondent/plaintiff. The stand taken by the defendants in the written statement is to the effect that they wanted to purchase the suit land and when they contacted the plaintiff, he expressed his inability to pay the debt amount to G.Srinivasa Babu and informed that he had no objection if the defendants pay the debt amount to G.Srinivasa Babu and some

amount to him and accordingly the 1st defendant paid Rs.1 lakh to G.Srinivasa Babu and Rs.45,000/- to plaintiff and obtained the document dated 17.02.1997. It appears, since the parties knew that the subject land was a DKT patta land and no sale deed could be executed in respect of such land, they got styled the document dated 17.02.1997 as lease agreement with perpetual lease for 99 years that too without a condition of redelivery of the property. Even the previous document dated 19.10.1985 was also styled as Kararunama for 99 years since the parties knew that sale deed could not be executed in respect of DKT Patta land. So, as rightly observed by the trial Court, the intention of the defendants was to obtain title in respect of suit land through the impugned documents, though they styled the documents as *Kararunama* and *lease agreement*.

11) In that view of the matter, though the petitioners/defendants ostensibly claim that they want to mark the documents only for collateral purpose of showing their possession, their intention which is manifest in the written statement, would clearly show that they wanted to claim title in respect of suit property by virtue of the impugned documents. As such, the trial Court was right in rejecting their request. There was no jurisdictional error on the part of trial Court.

12) I find no merits in the CRP and the same is accordingly dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Dt.13.02.2017
Murthy

