

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.5311 of 2017

ORDER:-

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent/plaintiff, assailing the order, dated 21.07.2017, of the learned Senior Civil Judge, Suryapet, passed in I.A.No.413 of 2014 in O.S.No.80 of 2009 filed by the 1st defendant, under Section 151 of the Code of Civil Procedure Code, 1908, requesting to give a finding on the unregistered document, dated 31.08.1977, with regard to its admissibility.

2. I have heard the submissions of *Sri Ajay Kumar Nerella*, learned counsel for the petitioner/plaintiff, ('plaintiff', for brevity), and of *Sri J. Ashvini Kumar*, learned counsel for the respondent/defendant ('defendant', for brevity). I have perused the material record.

3. The facts of the case, which are to be stated as a preface to this order, in brief, are as follows:-

The plaintiff filed the suit against the defendants for declaration that the registered sale deed No.449/ 1981, rectification deed No.1835/ 1985 and registered sale deed No.1839/ 1985 as null and void and not binding on him and for consequential injunction in respect of plaint 'A' & 'B' schedule properties claiming title over the said properties on the basis of unregistered document, dated 31.08.1977. The defendants, including the 1st defendant, are resisting the suit. While so, during the course of trial, the plaintiff tendered for being marked, the above said document, viz., unregistered sale deed, dated 31.08.1977 (hereinafter also referred to as 'subject document', for brevity). At that time, the 1st defendant filed the afore-stated interlocutory application seeking the above said relief. The plaintiff did not choose to file any counter.

On merits and by the orders impugned in this Revision, the trial Court while disposing of the afore-stated Interlocutory Application gave a finding that the subject document, dated 31.08.1977, cannot be received in evidence for want of registration. Aggrieved thereof, the plaintiff filed this Civil Revision Petition.

4. At the hearing, the learned counsel for the plaintiff would submit as follows:

“The order impugned is contrary to law and against probabilities of the case. The trial Court erred in holding that the document filed by the plaintiff is inadmissible in evidence for want of registration. The trial Court ought to have seen that the subject document has already been impounded, on 03.09.2012; and proper stamp duty/ penalty were paid as per the provisions of the Indian Stamp Act. The subject petition is filed by the 1st defendant at the stage of marking of documents by PW1 only to drag on the matter. The trial Court ought to have seen that when the document is impounded and stamp duty and penalty are paid and collected, it can be marked and the contents therein can be looked into, if not for the main purpose, at least for limited purpose, that is, collateral purpose.’

In support of his contentions, learned counsel for the plaintiff placed reliance on a decision of this Court in K. Ramamoorthi v. C. Surendranatha Reddy¹.

5. Per contra, the learned counsel for the 1st defendant, while supporting the orders of the Court below, forcefully contended that in a suit for declaration to declare certain documents as null and void a consequential relief of injunction was sought in respect of the plaint schedule immovable properties

¹ 2012 (6) ALD 163

claiming title over the same based on an unregistered sale deed and, hence, the subject document cannot be admitted for any purpose.

In support of his contentions, learned counsel for the 1st defendant relied upon the following decisions:

1. Yashchandra (D) by LRs v. State of Madhya Pradesh and others²
2. Buddha Jagadeeswara Rao Vs. Sri Ravi Enterprises³

6. Admittedly, the plaintiff while seeking a declaration that certain registered documents are null and void is seeking a further relief of consequential injunction in respect of plaint schedule immovable properties and the said claim is based on a plea of title to the said properties. In order to establish the case of the plaintiff, which is pleaded in the plaint, the plaintiff intends to rely upon the subject unregistered sale deed and therefore, tendered the same in his evidence as PW1 for being marked. The 1st defendant by filing the subject petition requested the Court to decide the admissibility of such unregistered sale deed, which is being sought to be marked in support of claim of title of the plaintiff in respect of plaint schedule immovable properties. The trial Court, after hearing both sides, held that such unregistered sale deed cannot be admitted in evidence in a suit of the present nature. Learned counsel for the plaintiff contends that stamp duty and penalty are already paid and collected and that though the said document cannot be marked and looked into for the main purpose, it can be marked and looked into for collateral purpose, that is, other than the main purpose. The 1st defendant contends that that unregistered sale deed (subject document) cannot be permitted to be marked for any purpose.

² AIR 2017 SC 4572

³ 2016 SCC Online Hyd 340

7. Now it is also profitable to refer to Sections 17 and 49 of the Registration Act.

Section 17 of the Registration Act reads as follows:-

Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate 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 one hundred rupees and upwards, to or in immovable property;
- (c)
- (d)
- (e)
- (f)
- (g)

Section 49 of the Registration Act reads as follows:-

49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: ⁵⁴ [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) ⁵⁵, ⁵⁶ [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]

Thus, Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating or taking away the rights in respect of an immovable property must be registered and Section 49 of the Registration Act imposes a bar on the admissibility of the unregistered documents that are required to be registered under Section 17 of the Registration Act.

8. Reverting to the facts of the case, it is to be first noted that the subject document is a unregistered sale deed in respect of an immovable property of the value of more than Rs. 100/- is admitted. It is being stated that the subject

document has already been impounded, on 03.09.2012, and that proper stamp duty/penalty are already paid as per the Indian Stamp Act. Though it is impounded, it is an unregistered sale deed. The unregistered sale deed/ subject document is being sought to be relied upon by the plaintiff for collateral purpose as it cannot be relied upon for the main purpose of proving title to the property comprised therein. It is undisputed that no document which is required by law to be registered shall affect any immovable property comprised therein. Therefore, under an unregistered sale deed, no valid title passes to the vendee in respect of the immovable property comprised therein. No such document required to be registered shall be received as evidence of any transaction affecting such property. Now, the question that remains to be considered is as to whether the subject document, which is an unregistered sale deed, can be permitted to be marked for collateral purpose in a suit of the present nature.

9. Buddha Jagadeeswara Rao's case (3 supra) is relied upon in support of the contention that a collateral transaction must be a transaction not itself required to be affected by a registered document, that is, a transaction creating any right, title or interest in immovable property of the value of one hundred rupees and upwards and that if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it for a collateral purpose.

10. In the decision in K. Ramamoorthi v. C. Surendranatha Reddy (1 supra) relied upon by the learned counsel for the plaintiff, this Court held that an unregistered sale deed is admissible in evidence for collateral purpose, that is, for the limited purpose of showing the possession of the plaintiff and that in a document of sale, possession is treated as collateral to main transaction

affecting immovable property. In this decision, after considering a compendium of decisions, this Court has stated its conclusions. The relevant observations in the said decision are as under:

- i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17(b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.
- ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.
- iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.
- iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.
- v) The phrase "collateral purpose" is with reference to the transaction and not to the relief claimed in the suit.
- vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.
- vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document. Having culled out the legal propositions, the discussion on this issue will be

incomplete if a few illustrations as to what constitutes collateral transaction are not enumerated as given out in Radhomal Alumal (2 supra) and other Judgments. They are as under:

This Court having culled out the above propositions, referred to a few illustrations of collateral transactions which are given in Radhomal Alumal v. K.B.Allah Baksh Khan Haji Muhammad Umath and Another (AIR (29) 1942 Sindh 27). The said illustrations are as follows:

- a) If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendant's possession.
- b) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: Queen-Empress v Rama Tevan('92) 15 Mad. 253, P.V. M.Kunhu Moidu v T. Madhava Menon('09) 32 Mad. 410 and Vani v Bani ('96) 20 Bom. 553).
- c) In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (Hanmantapparao v Ramabai Hanmant('19) 6 MANU/ MH/ 0030/ 1919 : AIR 1919 Bom. 38 : 21 Bom. L.R.716).
- d) An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by virtue of deed of gift but by setting up the plea of adverse possession (Varada Pillai (4 supra)).
- (e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal

Alumal (2-supra), Bondar Singh (15-supra) and A. Kishore (16-supra).

In the said decision, it is laid down that a document, which is compulsorily registerable but not registered and which creates, declares, assigns, limits, or extinguishes a right to immovable property and or affects the immovable property, such unregistered document cannot be received as evidence of any transaction affecting such property or conferring such power.

11. In the decision in *Yashchandra (D) by LRs v. State of Madhya Pradesh and others*⁴, the facts and the findings of the Supreme Court are as under: ‘Yashchandra in his suit for declaration of his occupancy rights in the suit land claimed that Phoolchand transferred 24 acres of land to him in 1968. The State, however, took a plea that the alleged transaction of lease is a sham transaction intended to defeat certain provisions of Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act (12 of 1974). The trial Court dismissed the suit. The Court of first appeal allowed the appeal. The High Court came to the conclusion that the alleged deed was a sham transaction. In the Civil Appeal, the Supreme Court noted that the lease document transfers an interest in immovable property of more than Rs.100/- and that though a oral lease is permitted by the statute, but, once the lease is created by a document, then, the same has to be registered under the Registration Act and that since the lease document is not registered, it cannot be looked into for deciding whether the document creates any right, title or interest in the appellants. Further, the Supreme Court also did not countenance the contention of the learned counsel for the appellants that the aforesaid document can be looked into for collateral purpose for deciding the possession of the plaintiffs.’

⁴ AIR 2017 SUPREME COURT 4572

In the decision in *Lakshminarayan and others*⁵, the Supreme Court held as follows:-

“It would be trite to say that if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we don't think that the Court would be entitled to admit the document because simply the parties say so.”

In *Sneh Gupta v. Devi Sarup*⁶ the Supreme Court held as under:

32. Title to a property must be determined in terms of the statutory provision. If by reason of the provisions of the Hindu Succession Act, 1956 the appellant herein had derived title to the property along with her brothers and sisters, she cannot be deprived thereof by reason of an agreement entered into by and between the original plaintiff and the contesting defendants. If a party furthermore relinquishes his or her right in a property, the same must be done by a registered instrument in terms of the provisions of the Registration Act.

Thus, title to a property, be it based on a relinquishment deed or a sale deed, shall be determined in terms of the statutory provision. If the relinquishment deed or sale deed for that matter is unregistered, though required by the statute to be registered, on the basis of such unregistered relinquishment deed or sale deed, title to the property cannot be determined. In the instant suit, the plaintiff intends to rely upon the unregistered sale deed for the purpose of proving his title over the plaint schedule properties to succeed in the suit filed for declaration of certain documents as null and void and for consequential injunction based on title in respect of the said immovable properties. Further, in the instant suit, even with regard to the relief of consequential injunction, any reliance on the unregistered sale deed cannot be permitted as using the

⁵ (2014) 1 SCC 618

⁶ (2009) 6 SCC 194

said document for the said purpose of consequential injunction would amount to using it for the main purpose and not collateral purpose. It is to be noted that the grant or otherwise of the relief of consequential injunction depends upon the plaintiff's success on the main relief. Be it noted that the suit is not filed for bare perpetual injunction; but, is filed for declaration that certain registered documents as null and void and for consequential injunction based on title. Therefore, as the plaintiff wants to rely upon the aforesaid document for the main purpose and not collateral purpose, the unregistered sale deed cannot be looked into in a suit of the present nature for deciding whether it creates any right, title or interest in the immovable property comprised in the said document and for proving possession of the plaintiff over the said property.

12. On the above analysis, this Court finds that the trial Court is justified in giving finding that the subject document, viz., unregistered sale dated 31.08.1977, cannot be received in evidence for want of registration.

13. In the result, the Civil Revision Petition is dismissed.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed. There shall be no order as to costs.

11.12.2017
Vjl

M. SEETHARAMA MURTI, J