THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2847 OF 2014

ORDER:

This revision petition, under Article 227 of the Constitution of India, by the unsuccessful defendant Nos.2 to 5 is directed against the docket order, dated 14.07.2014, of the learned Principal Junior Civil Judge, Narsapur, passed in O.S.No.226 of 2009.

2. I have heard the submissions of Sri K. Ram Babu, learned counsel for the petitioners – defendant Nos.2 to 5 ('defendants', for brevity). I have perused the material record.

3. By the impugned order, the trial Court upheld the objection of respondent No.1 - plaintiff that the document, dated 28.01.1986, is a deed of relinquishment insofar as item No.1 of the property therein, which is also the subject matter of the suit and *inter alia* held that the said document is compulsorily registerable and that it is inadmissible in evidence as it is not registered as required under Section 17 of the Indian Registration Act. Aggrieved thereof, the defendants filed this revision petition.

4. Learned counsel for the petitioners, having read the contents of the document, submitted that a plain reading of the recitals in the document would show that no right in item No.1 of the property is relinquished under the document and that under the said document only a right, which was existing already in favour of the beneficiary of the document, was affirmed and that no right is created by way of relinquishment in favour of the party, in whose favour the document is executed. He, therefore, prayed that the order impugned be set aside and the trial Court may be directed to mark the document by treating the same as a record of the past transaction. He alternatively submitted that, in case, this Court comes to the conclusion that the document is a relinquishment deed insofar as item no.1 of the property therein, the defendants may be given opportunity to make a request to the trial Court to rely upon the same for collateral purpose, if necessary, after paying the deficit stamp duty and penalty, if any, payable on the said document.

5. I have bestowed my attention to the facts and submissions and I have carefully gone through the document in question.

6. The recitals in the document, insofar as the subject item, clearly show that the executant of the document asserted that on 02.11.1982 an extent of Ac.0-30 Cents was gifted to her and that she had absolute right over item No.2 of the property therein, but she does not have any right over item No.1 of the property and that she has voluntarily taken Rs.300/- and settled the same and that the person, in whose favour the document is executed i.e., Y. Rajagopalam, is having all rights, including the right of alienation, and that the property was not handed over to her (given possession to her) since 02.11.1982. The above recitals in the document, in the considered view of this Court and as also rightly observed by the trial Court, indicate that the executant of the document, who is having absolute right over the subject item, relinquished her right in the property in favour of Y. Rajagopalam, in whose favour the document was executed by receiving consideration of Rs.300/-.

Prior to this document under consideration, the executant has not executed any registered document in favour of the beneficiary transferring her rights in the subject property in favour of the beneficiary, i.e., Y.Rajagopalam. The subject document is the only document by which rights are created, for the first time, in favour of the said beneficiary, Y.Rajagopalam, and under the said instrument, the executant of the document conferred right, title and interest in favour of the said person by relinquishing her rights in her said immovable property. The recitals in the document also reflect that the said person and his legal heirs, therefore, are having rights, including right of alienation over the said item of property. Therefore, the transaction embodied in the document, in the considered view of this Court, is a transaction of relinquishment of right in immovable property.

7. At the hearing, it is not disputed that the value of the subject property is more than Rs.100/-. Under Section 17 of the Indian Registration Act, documents *inter vivos* transferring rights or relinquishing rights in immovable properties of the value of Rs.100/- or more are compulsorily registerable. In view of the facts and legal position, this Court finds that the trial Court is justified in passing the impugned order *inter alia* holding that the document under consideration is compulsorily registerable.

8. Dealing with the contention that the defendants may be permitted to make a request to the trial Court to rely upon the document for collateral purpose, it is no doubt true that an unregistered document affecting immovable property and required by the Indian Registration Act to be registered may be received as evidence of any collateral transaction not required to be affected by the registered document. However, if a document is to be received for collateral purpose, the requirement of Section 35 of the Indian Stamp Act has to be satisfied. Unless the document is sufficiently/duly stamped or the required stamp duty and penalty are collected, as envisaged under Section 35 of the Indian Stamp Act, the document cannot be received in evidence even for collateral purpose. Therefore, the alternative request of the defendants can be considered only on payment of deficit stamp duty and penalty, if any payable on the said document insofar as item No.1 of the property in question and covered by the said document. On the above analysis, this Court finds that the order impugned does not warrant interference.

10. In the result, the revision petition is dismissed, however, reserving liberty to the petitioners - defendants to make a request to the trial Court to permit them to rely upon the said document, insofar as item no.1 of the property therein is concerned, for collateral purpose, in the event they comply with the requirement of payment of deficit stamp duty and penalty as envisaged under Section 35 of the Indian Stamp Act by following the procedure established by law.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

October 23, 2017
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