

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION No.2327 of 2017

ORDER:

This Civil Revision Petition is arising out of the order dated 17.01.2017 passed in Original Suit No.291 of 2009 by the Junior Civil Judge, Bobbili.

2. The brief facts of the case are that the respondent herein is the plaintiff in Original Suit No.291 of 2009, which was filed for specific performance of agreement of sale against the petitioners herein/defendants. The petitioners have filed Original Suit No.302 of 2006 against the respondent herein and another for declaration of title and recovery of possession. Both the suits were clubbed together and are being tried by the trial Court. The trial Court has commenced trial in Original Suit No.302 of 2006.

3. Learned counsel for the respondent submits that the trial was commenced in Original Suit No.302 of 2006 and Exs.A.1 to A.13 were marked. During the trial, the dispute arose with regard to marking of alleged document i.e., agreement of sale dated 12.02.1988. The trial Court on consideration of arguments of both the parties has passed orders in O.S.No.291 of 2009 holding that even though the said document is shown as agreement of sale, the recitals of the document would show that it is a sale deed. It is further observed that however as the suit is filed for specific performance of agreement of sale and as in the decision reported in

S.Kaladevi v. V.R. Somasundaram¹, it was held that even an unregistered sale deed is admissible in evidence, the document was admissible in evidence. It is further observed that the disputed document was the suit document, which was impounded and the stamp duty and penalty was already collected and accordingly, the suit document was admitted in the evidence.

4. Heard the learned counsel for the revision petitioners and the respondent.

5. Learned counsel for the revision petitioners submits that the trial Court has clearly observed in its order that the suit document is a sale deed and marked the same as exhibit by overruling the objection raised by the petitioners herein. It is further contended that when the trial Court has observed that it is a sale deed, it could not have marked the said document by overruling the objection. Learned counsel placed reliance on the decision reported in Banguru Ramathulasamma v. Yedem Masthan Reddy and others².

6. Learned counsel for the respondent submits that the respondent/plaintiff has filed the suit for specific performance of agreement of sale and the sale consideration was paid; the agreement of sale was executed with a clause that whenever the plaintiff demanded, the respondents have to execute the registered

¹ 2010(4) ALT 58 SC

² 1998 (4) ALT 796

sale deed. In view of that clause in the suit document, there is still something to be performed to complete the sale and therefore, sought for considering the document as agreement of sale.

7. On consideration of the arguments advanced by both the counsel, it is obvious that both the suits viz., O.S.Nos. 291 of 2009 and 302 of 2006 are clubbed together and the evidence let-in in O.S.No.302 of 2006. At the time of marking of suit document, an objection was raised by the defendants in O.S.No.291 of 2009, but however, their objection was overruled and the suit document was marked.

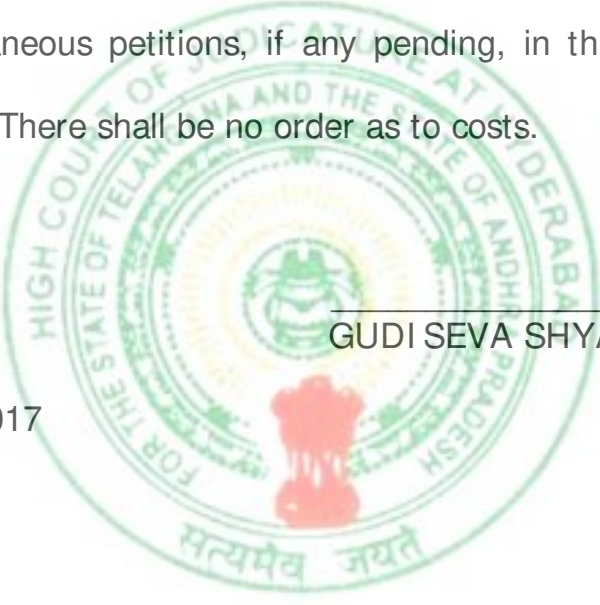
8. It is pertinent to note that the petitioners and the respondent have filed two suits against each other, one for declaration of title and possession and the other for specific performance of agreement of sale. The trial has been commenced. At the stage of marking of documents, marking of suit document in O.S.No.291 of 2009 was objected by the other side that it was a sale deed and not an agreement of sale. However, the trial Court has passed an order placing reliance on the decision reported in S.Kaladevi (1 supra) and marked the document in the evidence.

9. However, in the light of the arguments advanced by both the counsel since the question of fact has to be decided by the trial Court with regard to the nature of the document, in the light of the contentions raised by both the parties and the evidence let in by

them, it is left open to both the parties to agitate their grievance before the trial Court during the trial. Since the document is already marked by the trial Court, I do not see any valid ground to interfere with the orders passed by the trial Court in marking the document.

10. Accordingly, the Civil Revision Petition is disposed of and both the parties are given liberty to raise their contentions before the trial Court and the trial Court without getting influenced by any of the findings made in this order, may proceed to dispose of the suit.

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



GUDI SEVA SHYAM PRASAD, J

Date:21.07.2017
INL