

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5862 of 2016

ORDER:

1) Assailing the docket order dated 20.10.2016 passed in O.S.No.160 of 2015 on the file of the Additional Senior Civil Judge, Tirupati, wherein and whereunder the trial Court rejected marking of the settlement deed dated 10.09.1978 on the ground that it requires registration, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) Respondent/ plaintiff herein filed O.S.No.160 of 2015 for partition and separate possession of the suit schedule property into two equal shares and to allot one such share to the plaintiff. It is the case of the plaintiff that out of his own savings he has purchased the property and constructed a house therein. It is also his case that the property was purchased in the name of the defendant, who is his son, part consideration of Rs.15,900/- was paid by him and got the document registered in his name. The property which is subject matter of dispute in the suit is RCC building with vacant site bearing Door No.5-21, Brahmana Street, Chandragiri Village and Mandal, Chittoor District.

3) Written statement came to be filed by the defendant denying the averments in the plaint. The defendant submits that the plaintiff retired long back and as the salary of the plaintiff was meager he could not have contributed any amount for purchase of the property. It is stated that "A" schedule property was acquired with the amounts provided by in-laws of the defendant and subsequently, the defendant constructed a house with his earnings. Plaint "B" schedule property was given to the daughter of the plaintiff. It is stated that the plaintiff is suffering with mental ill health as he is aged 90 years and the present suit is filed at the instance of other family members. It is stated that there is a prior partition between the plaintiff and defendants as such, the suit is not maintainable.

4) After completion of the evidence of the plaintiff, the defendant filed his chief affidavit as DW.1 along with list of documents. One of the documents which is sought to be marked is immovable property settlement deed dated 10.09.1978 which is listed as document No.5. The document in question being a settlement deed, which is not compulsorily registerable as defined in Section 17 of the Registration Act, registration of it may not be necessary.

5) In P.Veerraju and another v. Lakkaraju Indira Bai and others¹ a learned Single Judge of this Court held as under:

“The proviso to Section 49 of the Act carves out two exceptions for admissibility of the un-registered documents. Under the said proviso, an un-registered document, which is compulsorily registerable, is still admissible in evidence under two circumstances, viz (1) if such document is filed in a suit for specific performance; and (2) the same is sought to be filed as evidence of any collateral transaction not required to be effected by registered instrument.”

6) It is to be noted that the said document relates to an agriculture land situated in Nellore District. The property covered under the said document was said to have been given by in-laws of the defendant towards “Pasupu kumkuma” at the time of marriage, which took place about 30 years back. The said document also states that the parents of the wife of the defendant are willing to register the document in favour of their son-in-law and daughter. The said document has nothing to do with the property in dispute in the suit nor the plaintiff is claiming any share in the said property. It appears that the said document has been marked for proving the defence taken by the defendant in the written statement and to show the source of purchase of the suit schedule property. It is stated that funds were provided by his in-laws for

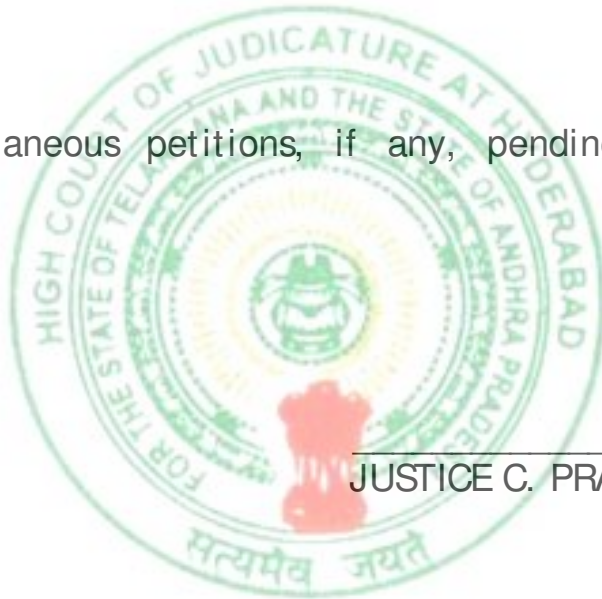
¹ (2015) 1 ALD 472

purchase of suit schedule property and that his in-laws have also given some other property referred to in the settlement deed dated 10.09.1978. It is urged that the property in the settlement deed is not subject matter of dispute in the suit and it is being used only for collateral purpose.

7) For the aforesaid reasons and in view of the judgment referred to above, the order under challenge is set aside and the Civil Revision Petition is allowed. There shall be no order as to costs.

8) Miscellaneous petitions, if any, pending shall stand closed.

17.02.2017
gkv



JUSTICE C. PRAVEEN KUMAR

