HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.5067 of 2016

ORDER:

This Civil Revision Petition which is filed by the plaintiff aggrieved by the order dated 24.08.2016 in I.A.No.333 of 2016 in O.S.No.36 of 2011 on the file of Junior Civil Judge, Jammalamadugu, being bereft of any merits and law is liable to be dismissed for the following reasons.

2) The petitioner filed the suit for declaration of right and title over the suit schedule property and also for declaration that the sale deed dated 19.02.2010 executed by her father in favour of respondent No.1 was null and void. While so, the petitioner filed I.A.No.333 of 2016 requesting the trial Court to receive an unregistered document dated 12.08.2004 and mark it as exhibit on her behalf. The said document was a gift deed said to be executed by her father in her favour in respect of suit schedule property. She claimed that by virtue of said gift deed she became absolute owner and thereby her father had no right to sell the said property to 1st respondent. It was further averred that the unregistered gift deed dated 12.08.2004 was sent to District Registrar, Proddatur for impounding and collection of the stamp duty and the petitioner paid the stamp duty and penalty as fixed by the District Registrar, Proddatur and hence the said document can be admitted in evidence. The 1st respondent opposed the said petition on the ground that the unregistered gift deed dated 12.08.2004 though impounded was

not registered and the same cannot be permitted to be marked as exhibit.

3) The impugned order shows the trial Court having agreed with the 1st respondent dismissed the petition holding that the document in question was an out and out gift deed which is compulsorily registerable document by virtue of Section 17 of Registration Act, 1908. The trial Court observed that mere payment of stamp duty and penalty will not validate the document as it was an unregistered one.

Hence the revision.

4) The main plank of argument of learned counsel for revision petitioner Mr. M.N.Narasimha Reddy is that since the petitioner paid stamp duty and penalty before the District Registrar, Proddatur the document can be admitted in evidence for collateral purpose of showing the possession of the petitioner despite the document was an unregistered one in view of Section 49 of Registration Act, 1908. To buttress his argument he relied upon the following judgments.

1. ***Yellapu Uma Maheswari vs. Buddha Jagadheeswara Rao***[1]

2. ***Bondar Singh vs. Nihal Singh***[2]

5a) In oppugnation, learned counsel for 1st respondent, Mr. Venkat Reddy Kodumury would submit that the said document is an out and out gift deed which requires to fulfil the provisions under the Indian Stamp Act, 1899 and Registration Act, 1908. Though the petitioner met the requirement under Stamp Act by paying stamp duty and penalty,

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1 2015 Law Suit (SC) 998

2 (2003) 4 SCC 161

still the document cannot be admitted in evidence for the reason that it is an unregistered document. The gift deed is a compulsorily registerable document and such requirement is admittedly not met with in the instant case. So at the first instance, the document is not admissible in evidence.

b) He would further submit that the document is not admissible even for collateral purpose of showing possession because the suit is one for declaration of plaintiff's title over the suit schedule property wherein the plaintiff/revision petitioner seeks to establish her title through the unregistered gift deed. Therefore, the question of marking the document for collateral purpose of mere showing the possession of the petitioner will not advance her cause. In this regard, he relied upon the judgment of this Court in ***Shaik Kadaru Masthan vs. Sayyed Fathimun Bee***[3]. He thus prayed to dismiss the revision petition.

6) This Court finds considerable force in the argument of learned counsel for 1st respondent. The revision petitioner filed the suit for declaration of her title over the suit schedule property by virtue of an unregistered gift deed dated 12.08.2004 said to be executed in her favour by her father and also for declaration that sale deed dated 19.02.2010 executed by her father in favour of respondent No.1 was null and void. Now, in the said suit, the petitioner seeks to introduce the unregistered gift deed dated 12.08.2004, obviously to establish her title in respect of suit schedule property.

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[3] 2007 (6) ALD 482

7a) A perusal of copy of the gift deed dated 12.08.2004 filed by the petitioner would show that it has all the trapping of a gift deed. Therefore, the said document is eligible for payment of stamp duty and registration. Petitioner claims to have paid stamp duty and penalty before the District Registrar, Proddatur. Even then, the said document is not admissible in evidence for the alleged purpose of showing possession of the petitioner. As rightly contended by the 1st respondent, the suit filed before the trial Court is one for declaration of title of the petitioner over the plaint schedule property by virtue of an unregistered gift deed. As such, the petitioner cannot seek for admission of impugned document in evidence for the alleged collateral purpose of showing possession. Since the suit is one for declaration of title of the petitioner and petitioner being the plaintiff, the burden is on her to establish her title. In that view, permitting her to mark the unregistered document for collateral purpose of showing possession does not arise as mere establishing the possession of the petitioner will not amount to establishing her title which is required in the present suit. The decision cited by the petitioner will not help her.

b) In ***Yellapu Uma Maheswari*'s** case (1 supra) the Apex Court considering that Exs.B1 and B2 were relinquishment deeds in respect of immovable properties which were compulsorily registerable documents but not registered held that if the appellants/defendants wanted to mark those documents for collateral purpose, it is open for them to pay the stamp duty and penalty and get the documents impounded and then get them marked as exhibits for collateral purpose of showing possession.

c) In ***Bondar Singh***'s case (2 supra) also the Apex Court having noticed that the subject document i.e. sale deed was required to be properly stamped and registered but did not meet with such requirement held that the same can be admitted in evidence for collateral purpose.

d) As already stated supra, in the instant case since the petitioner wants to introduce the unregistered gift deed for establishing the title to claim the declaratory reliefs, the question of permitting her to get the document marked for collateral purpose of showing possession does not arise as it will not advance her cause in the suit.

8) This Court finds no perversity in the order impugned. Accordingly, this Civil Revision Petition is dismissed. However, there shall be no order as to costs.

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

U. DURGA PRASAD RAO, J

Date:02.06.2017
Murthy