

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.3583 of 2017

ORDER:-

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/plaintiffs, assailing the intermediary order, dated 21.06.2017, of the learned Senior Civil Judge, Shadnagar, Mahabubnagar District, passed in O.S.No.21 of 2014 (Old O.S.No.209 of 2008).

2. I have heard the submissions of *Sri V.V.Narasimha Rao*, learned counsel for the petitioners/plaintiffs, ('plaintiffs', for brevity), and of *Sri K.Ramachandra*, learned counsel for the 2nd respondent/ 2nd defendant ('2nd defendant', for brevity). I have perused the material record.

3. By the orders impugned in this Revision, the trial Court while upholding the objection raised by the learned counsel for the 2nd defendant held that the certified copy of an unregistered/ private sale deed, dated 12.11.1974, cannot be permitted to be exhibited and accordingly refused to permit the plaintiffs to mark the above said document. Aggrieved thereof, the plaintiffs filed this Civil Revision Petition.

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

The plaintiffs filed the suit against the defendants for declaration that the plaintiffs are the absolute owners of the land in an extent of Acs.5.11 guntas in survey number 159, which is contiguous to their other land in survey number 175 on the North, and for recovery of possession of the same and for ratification of the entries in the ROR of the year 1989-90 and for recording the names of the plaintiffs as owners in the records in respect of the said land, which is more fully described in the schedule

annexed to the plaint, and for other reliefs. The defendants, including the 2nd defendant, are resisting the suit. While so, the plaintiffs, during the evidence of the 4th plaintiff/ PW1, while marking their documents through the said witness, tendered for being marked, the above said document, viz., the certified copy of the private sale deed, dated 12.11.1974 (hereinafter also referred to as 'subject document', for brevity). The learned counsel for the 2nd defendant raised an objection for marking the same on the ground that it is certified copy of an unregistered/ private sale deed and hence, it is inadmissible in evidence. In reply, the learned counsel for the plaintiffs submitted before the trial Court that it is a certified copy of the private sale deed and that it is a material document necessary for consideration in the suit filed for declaration of title and recovery of possession and hence, it can be marked. In the further submissions, the learned counsel for the 2nd defendant submitted before the trial Court as follows: 'It is an unregistered/ private sale deed. Under the said sale deed, possession was also delivered to the vendees by the vendor. There is also a recital that the entire sale consideration was paid. But the said document is unregistered. The transaction between the vendor and vendees under the said document is an out and out sale. Hence, the said document is compulsorily registerable in view of the provision of Section 17 of the Indian Registration Act. Hence, it cannot be admitted in evidence either for the main purpose or for any collateral purpose, since the suit is filed for declaration of title and recovery of possession.' One of the contentions of the plaintiffs is that in an earlier suit filed for perpetual injunction, the said document was marked and from that suit, the certified copy of the said private sale deed was obtained and that on the private sale deed, stamp duty and penalty were collected by the RDO and, therefore, it is a valid document and hence, it can be marked and looked into, if not for the main purpose, for collateral purpose. As

noted already, the Court below upheld the objection of the learned counsel for the 2nd defendant and refused to admit the said document in evidence.

5. At the hearing, the learned counsel for the plaintiffs would submit as follows:

“Earlier, a suit in O.S.No.107 of 1989 was filed for perpetual injunction. During the trial of the said suit, the 2nd defendant came into possession of the lands by virtue of the injunction order granted in I.A.No.216 of 1989 in the said suit. Afterwards, the said suit was dismissed, on 21.01.1997, by a decree and judgment passed by the learned District Munsif, Shadnagar. The First Appeal in A.S.No.13 of 1997 on the file of the IV Additional District Judge (Judge, Fast Track Court), Mahabubnagar, was allowed, on 31.05.2004. This Court while dismissing the second appeal in S.A.No.1139 of 2004, held as follows: “In view of the above discussion, the second appeal is dismissed. However, it is left open to the parties to work out their remedies by way of appointment of a surveyor for the purpose of fixing boundaries etcetera. There shall be no order as to costs.” Basing on the said observation in the second appeal, a notice was got issued to the defendants for conducting survey, as the plaintiffs father purchased the said land from the 1st defendant under a private sale deed, dated 12.11.1974, and came into possession of the suit schedule lands. Hence, in the present suit, the present document viz., the certified copy of the private sale deed, dated 12.11.1974, was tendered in evidence for being marked on the side of the plaintiffs. The plaintiffs got surveyed the land through a Mandal Surveyor in view of the observations of this Court in the afore-stated second appeal. The agricultural lands can be purchased without the documents of sale being registered, as per the provisions of the ROR Act. Hence, in view of the provisions of the ROR Act,

Section 17 of the Registration Act has no application to the agricultural lands. The decisions relied upon by the trial Court in the order impugned have no application to the facts of the present case. The Court below refused to mark the document on improper appreciation of facts and on applying the legal position, which is inapplicable. The plaintiffs have also filed other documents other than the unregistered sale deed. Any unregistered document can be looked into for collateral purpose and to see the nature of possession. The decision of the trial Court refusing to admit the document in evidence on the side of the plaintiffs is illegal and unsustainable.”

5.1 In support of his contentions, the learned counsel for the plaintiffs relied upon the following decisions:

1. Bondar Singh and others Vs. Nihal Singh and others¹
2. Doma Govinda Raju and another Vs. Vanimisetti Papa Rao and others²

5.2 In Bondar Singh and others (1st supra), the plaintiffs claimed title over the suit lands by adverse possession *inter alia* stating that they were in possession of the suit lands by virtue of an unregistered and unstamped sale deed executed by their predecessor in interest. The defendants alleged that the plaintiffs were trespassers. However, the defendants admitted the possession of the plaintiffs since a long time and their vendors. The order of the revenue authorities also established the possession of the plaintiffs for the last 26 to 27 years. On facts, the Courts found that the claim of the defendants regarding taking over the possession from the plaintiff was found to be false and that the plaintiff's possession was hostile, continuous and adverse. In the cited decision it was held that

¹ AIR 2003 Supreme Court 1905 (1)

² 2012 (5) ALD 257

an unregistered sale deed is admissible for collateral purpose and that it can be looked into for collateral purpose, that is, to see the nature of possession of a party over the suit property.

5.3 In *Doma Govinda Raju and another* (2nd supra), this Court, following the decision of the Supreme Court referred to supra, held that an unregistered sale deed is admissible for the purpose of establishing possession of the ancestor and that claim of possession based on unregistered sale deed cannot be said to be the main purpose that is directly relatable to the main relief claimed by the plaintiffs and that, therefore, there is no error in the order of the trial Court in admitting the unregistered sale deed in evidence. The facts of the cited case show that, that suit is also filed for declaration of title and recovery of possession. In the cited case, the plaintiffs have claimed two main reliefs in the suit, namely, declaration of title through adverse possession; and, recovery of possession; and sought to rely upon an unregistered sale deed for the purpose of establishing their possession eventually to get their title declared through adverse possession.

6. Per contra, the learned counsel for the 2nd defendant, while supporting the orders of the Court below, forcefully contended that in a suit for declaration of title and recovery of possession, an unregistered sale deed cannot be admitted for any purpose. In support of his contentions, learned counsel relied upon the following decisions:

1. *Dangu @Kadamenda Yellah (died) by LRs and Ors. Vs. Ch.Sridhar Reddy and Anr.*³
2. *Buddha Jagadeeswara Rao Vs. Sri Ravi Enterprises*⁴

³ (2012) 6 ALD 747

⁴ 2016 SCC Online Hyd 340

6.1 In *Dangu @ Kadamenda Yellah* (3rd supra), the facts of the case show that the petitioners filed the suit against the respondents for the relief of declaration of title and perpetual injunction in respect of the suit schedule property and placed reliance on an unregistered sale deed, dated 08.06.1959, said to have been executed by one Gulam Rasool. The petitioners intended to file a Photostat copy of the said unregistered deed by *inter alia* contending that the original was presented for impounding and that after the document was impounded, it was lost in the year 2000 and that the RDO kept a Photostat copy of the original and that on an application filed by them, he had issued a certified copy of the document that is available with him. The said document was sought to be filed as secondary evidence. The counsel for the petitioners therein contended that the certified copy of the unregistered document fits into the definition of 'secondary evidence' and since the original was lost, the certified copy furnished by the RDO is admissible in evidence and that the view taken by the trial Court that even the original of the unregistered document cannot be received, cannot be countenanced, since even the unregistered document can be taken on record for collateral purpose. This Court noted that the suit is filed for the relief of declaration of title and perpetual injunction and that the document sought to be filed is an unregistered sale deed and that it is undisputed that a sale deed in respect of immovable property is required to be registered under the Transfer of Property Act and that Section 49 of the Registration Act deals with the affect of non registration of documents, which are required to be registered, and that it mandates that such unregistered document cannot be received in evidence and that its proviso carved out an exception to the effect that such documents can be received in evidence, for collateral purpose. Having so noted, this Court held as follows: 'The purpose can be said to be collateral, when it is other than the one, which the document purports

to deal with. If the document is an unregistered sale deed, any purpose other than the one which relates to establishment of title to the property can be treated as collateral. In a suit for declaration of title, to an item of immovable property, an unregistered sale deed, in relation thereto, cannot be received in evidence, even for collateral purposes. The party, who intends to rely upon it, cannot plead that he would use it only for other purposes.’

6.2 Buddha Jagadeeswara Rao’s case (4 supra) is relied upon in support of the contention that a collateral transaction must be a transaction not itself required to be effected 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 as a collateral purpose.

7. In Omprakash Vs. Lakshminarayan and others⁵, 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.”

8. 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

⁵ (2014) 1 SCC 618

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 and deals with the documents that are required to be registered under Section 17 of the Registration Act.

9. Reverting to the facts of the case, it is to be first noted that the original document is a private/unregistered sale deed in respect of an immovable property of the value of more than Rs.100/- is admitted. Such private unregistered sale deed was said to have been marked in an earlier suit for perpetual injunction. It is being stated that the necessary stamp duty and penalty were collected by the authority concerned. Now, from the previous suit record, the certified copy of the said private unregistered sale deed is obtained by the plaintiffs and it is being sought to be marked in the present suit filed for declaration of title, recovery of possession and other reliefs. Though it is a certified copy, it is a copy of a private/unregistered sale deed. The suit is filed for declaration of title and recovery of possession. 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. In *Sheh Gupta v. Devi Sarup*⁶ the apex 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

⁶ (2009) 6 SCC 194

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. The instant suit is one for declaration of title and recovery of possession. Therefore, the plaintiffs are not in possession of the suit schedule property is undisputed. However, the plaintiffs intend to rely upon the unregistered private sale deed for the purpose of proving possession prior to the plaintiffs losing possession over the property. The suit is not a suit filed under Section 6 of the Specific Relief Act. The plaintiffs have not taken any steps to send for the document, viz., the original private sale deed said to have been filed in the former suit. The plaintiffs simply obtained a certified copy of the unregistered private sale deed said to have been filed in the former suit and is intending to rely upon it for a collateral purpose. No explanation is forthcoming for not taking steps to send for the original private unregistered sale deed said to have been filed in the former suit. Thus, no foundation is also laid for receiving the certified copy of the private unregistered sale deed in question.

10. On the above analysis, this Court finds that the trial Court is justified in refusing to accord permission for marking the certified copy of the unregistered private sale deed, dated 12.11.1974.

11. 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.

M. SEETHARAMA MURTI, J

27.11.2017
BVV