

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.4081 OF 2017

ORDER

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

This Civil Revision Petition is directed against the order dated 5.7.2017 in I.A.No.935 of 2016 in O.S.No.781 of 2009 passed by the Principal Junior Civil Judge, Ongole.

The revision petitioner is the plaintiff and respondents are the defendants.

O.S.No.781 of 2009 was filed by the petitioner-plaintiff seeking partition and separate possession of the suit schedule property. In the said suit, the 5th respondent herein, who is a third party to the proceedings, filed an agreement of sale dated 19.4.2001 during the course of evidence. The said document, admittedly, is an un-registered document. But it was impounded and proper stamp duty was paid. When the said document was sought to be received as evidence, the present application was filed by the petitioner-plaintiff to declare the agreement of sale dated 19.4.2001 in favour of the

5th respondent as inadmissible in evidence. The trial Court *vide* its order dated 5.7.2017 dismissed the said application with the following observations:

“The 5th respondent is 3rd party and he added as 5th defendant in the suit as he is claiming plaint schedule mentioned property. The 5th respondent/D5 stated that he purchased the plaint schedule mentioned property under agreement of sale dt. 19.4.2001 and he was also paid stamp duty and penalty according to procedure, before concerned Register office. Therefore, the document can be admissible in evidence. Further whether the plea taken by the 5th respondent/defendant is true and considered or not and whether the agreement of sale is binding on the petitioner and other defendants are not to be decided after full fledged trial and at the time of judgment. Further the document i.e., agreement of sale dt. 19.4.2001 is not filed by the respondent/defendant for collateral purpose because the 5th respondent is claiming right in the plaint schedule mentioned property based on agreement of sale. Therefore, the document can be received as evidence on behalf of the 5th respondent/defendant. Further, whether the petitioner is joint family member or not; whether she is entitled for share as prayed for or not; whether the 5th respondent is absolute owner of the plaint schedule mentioned property based on agreement of sale dt. 19.4.2001 or not is to be decided at the time of judgment.

Further the 5th respondent/defendant relying on agreement of sale to prove his contention therefore he same is not irrelevant document. Further, 5th respondent/defendant paid stamp duty and penalty therefore it can be said that the same is admissible.

Therefore, the ingredients laid down under Order 13 Rule 3 CPC is not applicable to the present case facts.”

Learned counsel appearing for the petitioner submits that an un-registered document cannot be admitted in evidence.

Learned counsel appearing for the 5th respondent does not dispute the said proposition.

If the 5th respondent wants to rely on the said document, he can rely on the same only for collateral purpose.

In view of the same, the impugned order is modified to the extent of receiving the said document in evidence only for collateral purpose.

Accordingly, the Civil Revision Petition is disposed of.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

1st September, 2017
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