

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2884 OF 2013

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 19.06.2013 in O.S.No.112 of 2008 on the file of the Court of the Senior Civil Judge, Mangalagiri.

2. The contention of the learned counsel for the petitioners is two fold: (1) the finding of the trial Court that exchange deed can be received for collateral purpose is not sustainable either on facts or in law; and (2) the trial Court has not given a specific finding that the exchange deed will be considered for collateral purpose only i.e., nature of possession.

3. *Per contra*, Sri G.Pedda Babu, the learned counsel for respondent Nos.1 and 2, submitted that the trial Court rightly considered various aspects and allowed the petition. He further submitted that this Court while allowing C.R.P.No.1856 of 2010 made an observation that the document in question can be received for collateral purpose. He also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. A perusal of the record reveals that respondent Nos.1 and 2 herein have filed O.S.No.112 of 2008 on the file of the Court of the Senior Civil Judge, Mangalagiri, against the petitioners and third respondent herein for declaration and consequential perpetual injunction.

5. It is the case of respondent Nos.1 and 2 that the second respondent got the property under the exchange deed. It is the further case of respondent Nos.1 and 2 that the second respondent executed a gift deed in favour of the first respondent on 12.06.2002.

6. It is a settled principle of law that in a suit for declaration, the plaintiffs may succeed or fail basing on the strength and weaknesses of their case. It is needless to say the Court cannot grant relief of declaration in favour of the plaintiffs basing on the latches or lacunas on the part of the defendants. In the instant case, the first respondent claiming her title basing on the gift deed dated 12.06.2002 (Ex.A.1).

7. The predominant contention of the learned counsel for the petitioners is that respondent Nos.1 and 2 are intending to press into service the exchange deed in order to establish their title over the suit schedule property. Respondent Nos.1 and 2 filed C.R.P.No.1856 of 2010 challenging the order dated 18.03.2010 in O.S.No.112 of 2008 on the file of the Court of the Senior Civil Judge, Mangalagiri for not marking of the unregistered exchange deed. This Court while allowing the C.R.P. made the following observation in paragraph No.6:

“Prima facie, the collateral purpose, as sought to be contended by the learned counsel for the petitioners, appears sustainable, as the decision of the Supreme Court in **K.B.SAHA AND SONS (P) LTD** (1 supra) related to permissibility of reading a clause in the unregistered lease deed for the purpose of finding out as to who is the lessee. Such contingency and such purpose was, therefore, held not a collateral one. Whereas in the present case, the aspect as to

possession has to be considered collateral to the main purpose of the document, which is deed of exchange. However, the order impugned does not show the said contention having been either advanced or considered by the Court below. The Court below, therefore, has not examined in the matter as to whether the said document, in question, though unregistered, can be looked into for the collateral purpose of the plaintiffs showing possession.”

8. A perusal of the same clearly reveals that this Court *prima facie* gave a finding that the document was received for collateral purpose and remanded the matter to the trial Court to decide whether the document in question i.e., Ex.A.1 can be used for collateral purpose or not. The trial Court, after considering the case law, made the following observation in paragraph No.20:

“On considering the respective pleadings of both the parties and after advertg to the objections raised by defendants in receiving the document in question in evidence, an inescapable conclusion can be arrived at that the document in question can be received in evidence for the collateral purpose despite the fact that it is an unregistered exchange deed.”

9. A perusal of the same clearly reveals that the trial Court marked the document – Ex.A.1 for collateral purpose.

10. As rightly pointed out by the learned counsel for the petitioners, the trial Court has not given a specific finding that the exchange deed will be considered for collateral purpose.

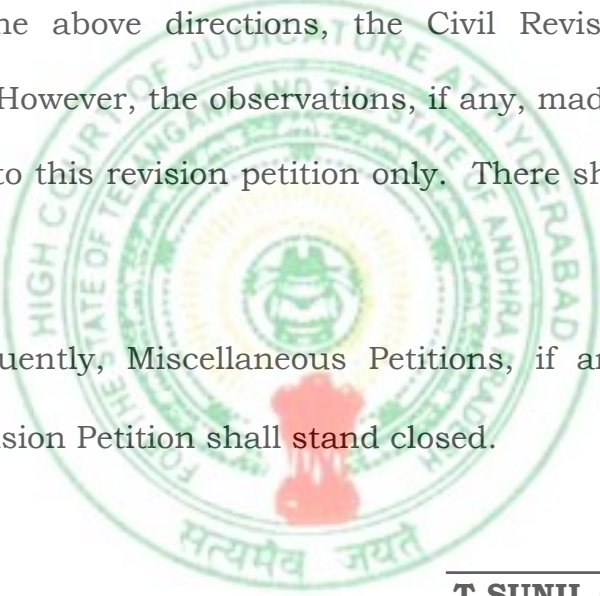
11. At the time of arguments, learned counsel for respondent Nos.1 and 2 submitted that respondent Nos.1 and 2 are intending to place reliance on the document in question for the purpose of proving their possession only and not to establish their title over the suit schedule property. If the document in question is received

only for collateral purpose, it may not cause any prejudice to the petitioners.

12. Having regard to the facts and circumstances of the case, the learned Senior Civil Judge, Mangalagiri, is hereby directed to consider Ex.A.1 for limited purpose to prove who was in possession of the suit schedule property as on the date of filing of the suit and the learned Judge is further directed not to consider Ex.A.1 to decide the title of the plaintiffs and dispose of O.S.No.112 of 2008 as expeditiously as possible.

13. With the above directions, the Civil Revision Petition is disposed of. However, the observations, if any, made by this Court are confined to this revision petition only. There shall be no order as to costs.

14. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.



T.SUNIL CHOWDARY, J

Date: 07.04.2017
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