THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.123 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order, dated 22-08-2016 passed in I.A.No.134 of 2016 in O.S.No.417 of 2008 by the Principal Junior Civil Judge at Medchal, Ranga Reddy District.

2. Petitioner is the plaintiff, whereas the respondent is the defendant in O.S.No.417 of 2008, which was filed for perpetual injunction.

3. Pending suit, petitioner (plaintiff) filed the above interlocutory application under Order XIII Rules 3 to 6 r/w Section 151 CPC to reject the unregistered sale deeds, dated 11-08-1969 and 25-12-1993, which are marked as Exs.B1 and B2. The said application was dismissed vide impugned order, holding that the documents are admissible for collateral purpose in a suit for injunction simplicitor to establish possession, but not for establishing the title to the property. Hence, this revision.

4. The petitioner (plaintiff) filed the application before the trial Court to reject the unregistered and unstamped sale deeds-Ex.B1 and B2 on two grounds. The first ground is that both the documents are unstamped and the second ground is that they are unregistered and hit by Section 17 (2) (b) of the Registration Act, 1908 and therefore, they are inadmissible in evidence.

5. The respondent (defendant) filed counter contending that once the documents are admitted, they cannot be rejected. In view of bar under Section 36 of the

Indian Stamp Act, 1899, a document can be received and admitted in evidence for collateral purpose as the suit was filed for injunction simplicitor and the respondent intends to establish his plea of collateral purpose under Section 49 of the Indian Registration Act.

6. The trial Court based on the principles laid down in the cases of **T.BASAVARAJU (DIED) PER L.RS V T.NAGARATNAM AND OTHERS**[1], **BOGGAVARAPU NARASIMHULU V SRIRAM RAMANAIAH AND OTHERS**[2] and **S. REDDY V JOHANPUTRA**[3] held that the documents can be received for collateral purpose and not for establishing the title and right in the immovable property covered by such unstamped and unregistered documents.

7. This revision is filed by the petitioner (plaintiff) on various grounds mostly reiterating the contentions raised before the trial Court.

8. During the course of hearing, learned counsel for the petitioner contended that the two documents, which are marked as Exs.B1 and B2 cannot be admitted in evidence and if the Court finds that they are inadmissible in evidence, the Court can reject the documents at any stage of the proceedings in view of power conferred upon the Court under Order XIII Rule 3 CPC. But, the trial Court did not exercise its powers conferred on it under Order XIII Rule 3 CPC and committed error in dismissing the application and failed to allow the application.

9. The objection raised by the learned counsel for the petitioner is two fold. The first objection is regarding the admissibility of the document on the ground that it is not a stamped document though it is a sale deed. Ex.B1 is styled

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[1] 2006 (1) ALT 135
[2] 2014 (2) ALD 426
[3] AIR 1972 AP 373

as sale deed for Rs.325/- and Ex.B2 is styled as sale deed for Rs.5,000/-, whereby the vendor created a right and interest in the immovable property and it is liable to be stamped under Article 47-A of Indian Stamp Act and the stamp duty is payable on such sale is specified and part thereof, but no stamp duty is paid on the document styled as sale deed and even the recitals in Exs.B1 and B2 go to establish that vendor created title and interest in the immovable property in favour of the purchaser. In such a case, unless such documents are impounded by exercising the power under Section 33 of the Indian Stamp Act and collect stamp duty and penalty in terms of Section 35 of the Indian Stamp Act, the documents cannot be admitted in evidence. But the trial Court based on judgments referred to above, admitted the documents in evidence.

10. At this stage, it is brought to the notice of this Court that the objection regarding the stamp duty payable, the documents were impounded and collected stamp duty and penalty payable on the documents, vide proceedings of the District Registrar, Ranga Reddy District in Lr.No.156/Court/2012, dated 22-01-2015. Therefore, right now the objection regarding the stamp duty payable on the documents is no more available. Hence, the first contention needs no further examination as Exs.B1 and B2 were already impounded by order of the District Registrar, dated 22-01-2015.

11. The next objection is with regard to admissibility of the documents. Since Exs.B1 and B2 are unregistered sale deeds, they create title and interest in the immovable property. According to Section 17 (1) (b) of the Registration Act, 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, is compulsorily registerable documents. But here, Exs.B1 and B2 are unregistered documents. The trial Court based on the proviso to Section 49 of the Registration Act, declined to reject the documents as they are admitted for collateral purpose to establish the possession of the defendant.

12. According to Section 49 of the Registration Act, no document required by Section 17 or by any provisions of the Tansfer of Property Act, 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

Clause (c) of Section 49 of the Registration Act is applicable to the present facts of the case in view of specific contention raised by the learned counsel for the petitioner. Taking advantage of Clause (c) of Section 49 of the Registration Act, he contended that the documents cannot be received and the same has to be rejected by exercising the power under Order XIII Rule 3 CPC. The proviso to Section 49 of the Registration Act permits receiving documents affecting immovable property and required by this Act, or the Transfer of Property Act, 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 or as evidence of any collateral transaction not required to be effected by registered instrument. Therefore, first limb of the proviso pertains to suit for specific performance. The second limb deals with collateral transaction.

13. The word ‘collateral transaction’ is not defined anywhere. In a decision reported in **RAMALAKSHMI V BANK OF BARODA** [4] it was held that the word ‘collateral purpose’ is difficult to define. However, the real purpose can only be gathered from the facts and circumstances of each case and may also vary from case to case. In the present case, the suit was filed for injunction simplicitor, where the Court is required to decide as to who is in lawful possession and has title and record its findings. Therefore, the basis for deciding the suit for injunction simplicitor is lawful possession. But here, the respondent (defendant) is claiming possession basing on unregistered sale deeds and such sale deeds are admissible only to the extent of establishing his possession as held by this Court in a decision reported in **K.RAMAMOORTHI V C.SURENDRANATHA REDDY** [5] and the trial Court also referred three judgments, which are in consonance with the law declared by this Court in **K.B.SHAH AND SONS (P) LTD V DEVELOPMENT CONSTRUCTION LTD.**, [6] wherein the Apex Court defined the ‘collateral purpose’ and ‘collateral transaction’. ‘Collateral purpose’ is the purpose which is independent of or devisable from, purpose for which document was executed and of which the law required registration. A ‘collateral transaction’ must be independent of, or divisible from, the transaction to which the law required registration. 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.

14. Therefore, in the present case, to prove possession based on unregistered sale deeds is only for

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[4] AIR 1957 Madras 472 (DB)
[5] 2012 (6) ALD 163
[6] AIR 2008 SC (Supp.) 850

collateral transaction or for collateral purpose since the main purpose is creating right or interest in the immovable property by executing registered sale deed. Therefore, in a suit for injunction simplicitor, unregistered sale deed, which is required to be registered under Section 17 (1) (b) of the Registration Act can be received for limited purpose of proving their possession only and the Court is not expected to record any finding as to the genuineness and validity of the transaction covered by Exs.B1 and B2. Therefore, at this stage, this cannot be a ground to reject the documents as inadmissible for want of registration by exercising the power conferred under Order XIII Rule 3 CPC. However, it is made clear that the trial Court shall not record any finding as to the title and such documents cannot be gone into except for a limited purpose of deciding the possession in a suit for injunction simplicitor since the law declared by this Court is that the Court cannot go into the title of the suit filed for bare injunction except for limited purpose of deciding possession. Hence, I find no grounds to interfere with the findings of the trial Court as to the admissibility of the documents for collateral purpose in a suit for bare injunction.

15. Accordingly, the Civil Revision Petition is dismissed confirming the order dated 22-08-2016 passed in I.A.No.134 of 2016 in O.S.No.417 of 2008 by the Principal Junior Civil Judge at Medchal, Ranga Reddy District. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 14-07-2017.
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