

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Civil Revision Petition No. 1115 of 2017

Between

Moghal Sardar Hussain Baig

.... Petitioner

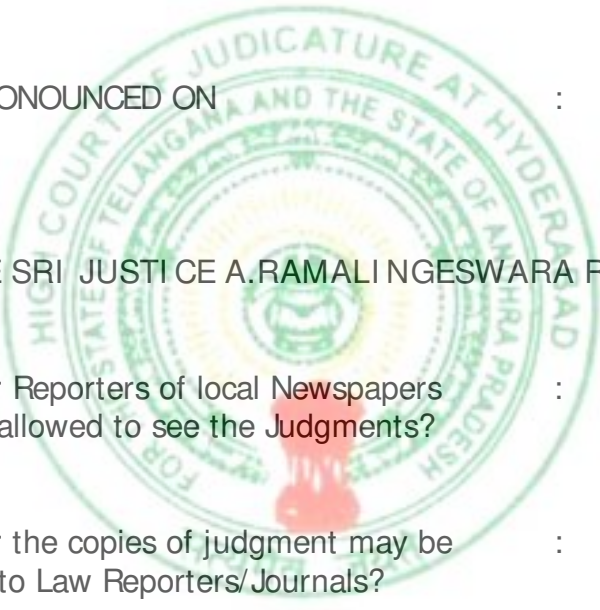
And

Syed Farveej Begum

... Respondent

JUDGMENT PRONOUNCED ON : 12.07.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : YES
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? : YES
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : YES

* THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

+ Civil Revision Petition No. 1115 of 2017

% 12.07.2017

Moghal Sardar Hussain Baig

...Petitioner

Vs.

\$ Syed Farveej Begum

... Respondent

!Counsel for the Petitioner : Sri Namavaraplu Chantibabu

^ Counsel for the Respondent : Sri Challa Siva Sankar

< Gist :

> Head Note :

? Cases referred:

1. 1969 Law Suit (SC) 581 = 1969 (1) UJ 86 = 1969(1) SCWR 341
2. (1984) 1 SCC 369 = AIR 1984 SC 143
3. 2004(3) ALD 817 (DB)
4. 2008(6) ALD 92 (SC)
5. 2012(6) ALD 163
6. (2015) 16 SCC 787
7. 2017 (1) ALT 299
8. 2017(1) LS (Hyd) 325
9. AIR 1969 AP 242
10. 2000(2) ALD 30 = 2000 (1) ALT 568
11. 2000(5) ALD 577 = 2000(5) ALT 561



HON'BLE SRI JUSTICE A. RAMALINGESWARA RAOCivil Revision Petition No.1115 of 2017Order:

Heard learned counsel for the petitioner and learned counsel for the respondent.

This Civil Revision Petition arises out of an order in I.A.No.1670 of 2016 in O.S.No.298 of 2016 dated 19.01.2017 passed by the learned Principal Junior Civil Judge, Markapur.

The petitioner is the plaintiff in the suit, whereas the respondent is the defendant. The suit was filed for permanent injunction restraining the respondent from ejecting the petitioner from the plaint schedule premises until the expiry of term of lease under an agreement dated 04.04.2016. When the petition for grant of temporary injunction was coming up for enquiry, the petitioner tried to mark the said agreement dated 04.04.2016 which was a lease agreement and the respondent objected to the same on the ground that the said lease agreement was inadmissible in evidence as it is an unregistered one. The petitioner stated that though it is an unregistered lease agreement, it can be looked into for collateral purpose for proving possession and nature of possession. But, the respondent objected on the ground that the unregistered lease agreement is inadmissible in evidence even for collateral purpose of proving possession as the factum of lease being the contentious issue. Hence the lease agreement cannot be marked and it cannot be looked into even for collateral purpose as the main suit itself is based on the terms of the lease. The trial Court upheld the objection on the ground that the lease

agreement was unregistered. Challenging the said order, the above CRP was filed.

Learned counsel for the petitioner by relying on the decisions reported in *Rana Vidya Bhushan Singh v. Ratiram*¹, *Satish Chand Makhan v. Govardhan Das Byas*² and *A. Kishore @ Kantha Rao v. G. Srinivasulu*³ contended that the lease deed is admissible in evidence for collateral purpose of proving possession and nature of possession, though not for proving the terms of the lease deed and hence the order passed by the trial Court is erroneous.

Learned counsel for the respondent submitted that the lease deed cannot be looked into even for collateral purpose and relied on the decisions reported in *Satish Chand Makhan v. Govardhan Das Byas* (supra), *K.B. Saha and Sons Pvt. Ltd., v. Development Consultant Limited*⁴, *K. Ramamoorthi v. C. Surendranatha Reddy*⁵, *Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao*⁶, *Vyasashramam, Amanduru village v. Chundur Bhooshana Kumari*⁷ and *Moduraboina Deepika v. Kuna Sujatha Devi*⁸.

Section 49 of the Registration Act, 1908, deals with the effect of unregistered documents which are required to be registered and the relevant provision reads as follows:

“49. Effect of non-registration of documents required to be registered:-

- (a)
- (b)

¹ 1969 Law Suit (SC) 581 = 1969 (1) UJ 86 = 1969(1) SCWR 341

² (1984) 1 SCC 369 = AIR 1984 SC 143

³ 2004(3) ALD 817 (DB)

⁴ 2008(6) ALD 92 (SC)

⁵ 2012(6) ALD 163

⁶ (2015) 16 SCC 787

⁷ 2017 (1) ALT 299

⁸ 2017(1) LS (Hyd) 325

- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document 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 part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction nor required to be effected by registered instrument.”

In Chinnappareddigari Pedda Muthyalareddy v. Chinnappareddigari Venkatareddy⁹, the Larger Bench of this Court examined the effect of unregistered partition deed and held that an unregistered partition deed is inadmissible in evidence and cannot be looked into for the terms of partition but can be looked into for the purpose of establishing a severance in status.

The Hon'ble Supreme Court in Rana Vidya Bhushan Singh's case (supra) had an occasion to consider an agreement which was unregistered and it was held that it would not create a right in favour of tenant for a period of fifteen years and it is inadmissible in evidence to support that claim. But in support of the plea that his possession was that of a tenant he was entitled to rely upon the recitals contained in that agreement of lease.

In Satish Chand Makhan's case (supra) the Hon'ble Supreme Court was examining the effect of unregistered draft lease agreement. It was held that though the unregistered draft lease agreement was ineffectual to create a valid lease for want of registration as required under Section 17(1)(d) of the Registration Act and was also inadmissible in evidence to prove the transaction of lease, but, it was admissible under

⁹ AIR 1969 AP 242

the proviso to Section 49 of the Registration Act only for a collateral purpose of showing the nature and character of possession of the defendants. But in the said case it was held that the proviso was inapplicable as the terms of a lease are not a “collateral purpose” within its meaning.

In A. Kishore @ Kantha Rao’s case (supra) a Division Bench of this Court considered the decision of the Hon’ble Supreme Court in Rana Vidya Bhushan Singh’s case and other decisions while answering a reference made by a learned single Judge on the following question:

“Whether the document in question is admissible in evidence, for collateral purpose in the facts and circumstances of the case?”

The facts in that case were also identical to the present case as it arose out of a suit for permanent injunction where a document, a deed of lease was pressed into service. An objection as to the registration was taken. A learned single Judge took note of the decisions in Hussain Begum v. Madu Ranga Rao¹⁰, Relangi Nageswara Rao v. Tatha Chiranjeeva Rao¹¹ and Satish Chand Makhan’s case (supra) and opined that since such questions were cropping up off and on, it is better to pronounce authoritatively by the Division Bench. The Division Bench, after considering the decisions on the point, held that there is no judgment from the Apex Court which lays down that an unregistered lease deed which is compulsorily registerable cannot be admitted in evidence even for the purpose of proving the nature of possession. It was further held that though such lease deed cannot be used for the purpose of proving the terms of such lease or the lease itself, it can certainly be used for the

¹⁰ 2000(2) ALD 30 = 2000 (1) ALT 568

¹¹ 2000(5) ALD 577 = 2000(5) ALT 561

purpose of proving the nature of possession and accordingly answered the reference.

Thus, the views expressed by the Hon'ble Supreme Court and the Division Bench of this Court are in favour of the petitioner herein.

The decisions relied on by the respondent do not lay down a different point of view as noticed by our Division Bench in A. Kishore @ Kantha Rao's case (supra). Satish Chand Makhan's case (supra) was considered by the Division Bench. In K.B. Saha and Sons Pvt. Ltd's case (supra) the Hon'ble Supreme Court had an occasion to consider the effect of an unregistered lease agreement between the landlord and company for residential use of premises. The violation of Clause 9 of the lease deed was in issue as it provides for use of suit premises only for named officer of the company and since the decision of the case rested on the interpretation and application of the said term it was held that the said important term forming part of lease agreement cannot be looked into even for collateral purpose. The Supreme Court on the facts of the case held as follows:

“21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. 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.

22. In our view, the particular clause in the lease agreement in question cannot be called a collateral purpose. As noted earlier, it is the case of the appellant that the suit premises was let out only for the particular named officer of the respondent and accordingly, after the same was vacated by the said officer, the respondent was not entitled to allot it to any other employee and was therefore, liable to be evicted which, in our view, was an important term forming part of the lease agreement. Therefore, such a Clause, namely, Clause 9 of the Lease Agreement in this case, cannot be looked into even for collateral purposes to come to a conclusion that the respondent was liable to be evicted because of violation of Clause 9 of the Lease Agreement. That being the position, we are unable to hold that Clause 9 of the Lease Agreement, which is admittedly unregistered, can be looked into for the purpose of evicting the respondent from the suit premises only because the respondent was not entitled to induct any other person other than the named officer in the same."

Since the interpretation of a particular Clause in the agreement of lease deed was involved, it was held that the said Clause cannot be looked into.

In K. Ramamoorthi's case (supra) a learned single Judge of this Court elaborately considered several decisions touching upon the subject of "collateral purpose" and the effect of the proviso to Section 49 of the Registration Act arising out of a suit for permanent injunction based on a registered gift settlement deed and another suit for declaration and permanent injunction arising out of an unregistered sale deed. This Court ultimately held as follows:

"24. On a compendious reference of the case law discussed above, the following conclusions emerge:

- (i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17(b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.
- (ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to

affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

- (iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.
- (iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.
- (v) The phrase "collateral purpose" is with reference to the transaction and not to the relief claimed in the suit.
- (vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.
- (vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document.

25. Having culled out the legal propositions, the discussion on this issue will be incomplete if a few illustrations as to what constitutes collateral transaction are not enumerated as given out in *Radhomal Alumal v. K.B. Allah Baksh Khan Jahi Muhammad Umar* (AIR (29) 1942 Sind 27) and other Judgments. They are as under:

- (a) If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendant's possession.
- (b) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: *Queen-Empress v Rama Tevan* ('92) 15 Mad. 253, *P.V.M. Kunhu Moidu v T. Madhava Menon* ('09) 32 Mad. 410 and *Vani v Bani* ('96) 20 Bom.553).
- (c) In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (*Hanmantapparao v Ramabai Hanmant*, ('19) 6 AIR 1919 Bom. 38 = 21 Bom. L.R 716).

- (d) An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by virtue of deed of gift but by setting up the plea of adverse possession (Varada Pillai v. Jeevaratnammal (43 Madras 244 (PC).
- (e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alumal's case (supra), Bondar Singh v. Nihal Singh (AIR 2003 SC 1905) and A. Kishore @ Kantha Rao v. G. Srinivasulu (2004(3) ALD 817 (DB).

The above instances are only illustrative and not exhaustive. There may be many more situations where a transaction can be collateral to the transaction which affects the immovable property. The Courts will have to carefully decide on a case to case basis in the light of the legal principles contained in the above discussed and various other judgments holding the field."

A perusal of the above decisions shows that they support the case of the petitioner herein. The decision in Yellapu Uma Maheswari's case (supra) is also a case arising out of suit for partition and the opinion of the Hon'ble Supreme Court is in tune with the opinion expressed by a Larger Bench of our High Court in Chinnappareddigari Pedda Muthyalareddy's case (supra).

In Vyasashramam's case (supra) the point did not arise and it is not relevant for the purpose of the present case. Moduraboina Deepika's case (supra) is a case arising out of declaration of title and delivery of possession. This Court considered the cases of Chinnappareddigari Pedda Muthyalareddy's case (supra) and Yellapu Uma Maheswari's case (supra) and in the facts of that case held that the deed of partition and the sale deed are not admissible in evidence and cannot be relied upon even for collateral purposes. Since it was a decision rendered on the facts of that case and in the absence of any contrary to the view taken on the point of law, the principle laid down in the decisions cited by the petitioner are holding the field and, in view of

the same, the document sought to be relied on by the petitioner can be looked into for collateral purpose.

Accordingly, the order of the lower Court in I.A.No.1670 of 2016 in O.S.No.298 of 2016 dated 19.01.2017 is set aside and the Civil Revision Petition is allowed for permitting the petitioner to produce the document for the purpose of collateral purpose. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 12th July 2017
Nsr

A. RAMALINGESWARA RAO, J



