THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 4898 OF 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging order dated 19-08-2016 in O.S.No. 52 of 2008 on the file of the Court of Additional Senior Civil Judge, Kurnool (for short, 'the Court below'), whereby the Court below declined to mark sale agreement dated 08-04-1972 on the ground that it is unstamped and unregistered and thereby it is inadmissible in evidence since it is a document evidencing delivery of possession.

The petitioners-plaintiffs filed O.S.No. 52 of 2008 on the file of the Court below for declaration of title and for consequential permanent injunction restraining the respondents-defendants from interfering with the possession and enjoyment of schedule property and for cancellation of patta as it is void *etc.*,. The basis for their claim is agreement of sale.

As seen from the document, it is unregistered sale deed creating right and interest in immovable property of value more than Rs.100/-. It is an undisputed fact that the document dated 08-04-1972 is unregistered and unstamped conveying immovable property in favour of Ashanna, father-in-law of plaintiff No. 1 and paternal grandfather of plaintiff Nos. 2 to 7, who was a tenant of the property and later purchased the same from Abdullah Khan in the year 1972. The respondents are adjacent owners who obtained patta in their favour from Government for the land. The plaintiffs, instead of filing suit for specific performance against the vendor of Ashanna, filed suit for declaration of title and other consequential reliefs referred *supra* asserting that after death of Ashanna, his son Venkata Swamy was in possession of the land till his death on 26-07-2005. After his death, the plaintiffs took possession of the land and in continuous and uninterrupted possession and enjoyment of the property.

Thereby, the plaintiffs perfected their title by adverse possession over schedule property. The Mandal Revenue Officer, Kallur, without observing legal procedure cancelled the patta in respect of schedule property and issued fresh patta in favour of the defendants. Thus, the plaintiffs perfected their title by adverse possession over schedule property.

The question is whether such unregistered and unstamped sale deed/agreement of sale dated 08-04-1972 is admissible in evidence? In view of the undisputed facts, the Court below declined to admit the document in evidence by judicial determination.

Now, the order is assailed on the ground that the plaintiffs perfected their title by adverse possession and unregistered sale deed or agreement of sale can be admitted but the Court below did not consider the law in proper perspective and committed an illegality in rejecting the admission of sale deed/agreement of sale dated 08-04-1972.

During hearing, Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioners, placed reliance on several judgments of the Apex Court and this Court in support of his contention and the same will be referred to at appropriate stage.

Whereas learned counsel for the respondents would contend that the document is inadmissible in evidence since it is unregistered and unstamped and placed reliance on ***Golla Dharmanna Vs. Sakari Poshetty and others***[1]; and ***Dangu @ Kadamenda Yellaiah (Died) per L.Rs. and others Vs. Ch.Sridhar Reddy and another***[2] in support of his contention.

The document sought to be admitted in evidence is out and out sale deed conveying schedule property and in the entire body of document, the vendor did

[1] 2013 (6) ALT 205
[2] 2013 (1) ALT 461

not agree to execute a regular registered sale deed on a specified event or at any later date but agreed to sell the property, received advance of Rs.800/- earlier and Rs.2,000/- on the date of execution of the document. Thus, he received Rs.2,800/- in total and thereby conveyed the property permitting the purchaser Ashanna to enjoy the property with absolute rights while incorporating usual term of indemnity. The document is styled as agreement of sale but the recitals would clearly establish that it is out and out sale deed conveying immovable property creating interest therein. It is required to be registered under Section 17 of Registration Act, 1908 (for short, '1908 Act'). Apart from that, it is written on a stamp paper worth of Rs.5/-. When the document is sale deed, stamp duty payable on the document is as per Article 47-A of Schedule I-A of Indian Stamp Act, 1899 (for short, 'the Act of 1899'). Therefore, the document is insufficiently stamped.

The Act of 1899 is a fiscal enactment and therefore the provisions of the Act have to be construed strictly to protect revenue to Government. In such case, when the document is produced before any public officer authorized to receive the same in evidence, the officer is bound to impound the document by exercising power under Section 33 of the Act of 1899 and collect stamp duty and penalty in accordance with Section 35 of the Act of 1899. Therefore, for non-payment of stamp duty and penalty, admission of a document cannot be refused and Court is bound to collect stamp duty and penalty in terms of Section 35 of the Act of 1899 being a public officer though no petition is filed under Order XIII Rule 8 of the Code of Civil Procedure (for short, 'C.P.C.').

During hearing, learned counsel for the petitioners fairly agreed to pay stamp duty and penalty on the document payable as per the provisions of the Act of 1899. Moreover, learned counsel for the respondents would contend that when no such relief is claimed before the Court below, this Court cannot permit the petitioners to pay stamp duty and penalty but this contention holds no substance in view of the statutory obligation attached to the public officer under Section 33 of the Act of 1899. Collection of stamp duty and penalty is a statutory duty of a public officer who is competent and authorized to receive document in evidence. Therefore, merely because there was no request before the Court below, the Court cannot collect stamp duty and penalty is without any substance and such statutory duty is conferred on the officer only to protect revenue to Government strictly adhering to the provisions of the Act of 1899. Therefore, even in the absence of any request before the Court below, the Court is bound to impound the document by exercising power under Section 33 of the Act of 1899 and collect stamp duty and penalty in terms of Section 35 thereunder. Hence, on this ground, the request made by learned counsel for the petitioners cannot be turned down. Therefore, in view of the request made by leaned counsel for the petitioners and in view of statutory duty, the Court below is directed to impound the document and collect deficit stamp duty and penalty payable on the document *i.e.* agreement of sale/sale deed dated 08-04-1972.

The other ground on which admission of document is denied is non-registration. According to Section 17 of 1908 Act, the document is compulsorily registerable document. The petitioners did not file the suit to enforce the terms of the document but claiming possession based on the document and set up an adverse title against the respondents while contending that they are in continuous and uninterrupted possession and enjoyment of schedule property from the date of purchase by Ashanna and thereafter, his son and after his death, the petitioners herein and filed the suit for declaration and other consequential reliefs referred *supra*. Therefore, the claim of the petitioners is based on continuous, hostile and litigious possession and enjoyment of the property over a statutory period. In such case, the document can be admitted in view of the law declared by the Apex Court in ***Bondar Singh and others Vs. Nihal Singh and others***[3]. In the facts of the above judgment, an unregistered sale deed was obtained which is required to be stamped properly. The sale deed though is not admissible in evidence can be looked into for collateral purpose. The collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized. Thus, from the principle laid down in the above judgment, an unregistered sale deed can be admitted for the purpose of proving nature of possession, as Ashanna, the purchaser under the document took possession and continued in possession and enjoyment of the property during his lifetime and later, his son and after his death, the petitioners herein but not claiming any adverse possession against the vendor of Ashanna *i.e.* Abdullah Khan.

A Division Bench of this Court in ***A.Kishore @ Kantha Rao Vs. G.Srinivasulu***[4] held that

> *"In a suit for permanent injunction, a document was pressed into service by the defendant, which was a Deed of Lease. An objection was taken to its admissibility on the ground that it was not registered. The contention was that in terms of Section 49 (c) of the Registration Act, 1908, the document though unregistered, could be used for collateral purpose. Since one of the parties had denied the jural relationship of landlord and tenant, the other party had justified his possession on the ground that he was a tenant and as such was in possession. Therefore the Court had to decide whether such a document could be taken into consideration for the purpose of establishing the possession."*

Based on the principle laid down in ***Bondar Singh*** (3rd *supra*), this Court is of the considered view that there is no judgment as such from the Apex Court

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[3] AIR 2003 SC 1905 (1)
[4] 2004 (3) ALD 817 (DB)

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.

Curiously, in another judgment in ***K.B.Saha and Sons Private Limited Vs. Development Consultant Limited***[5], the Apex Court, relying on ***Rana Vidya Bhushan Singh Vs. Ratiram***[6], held that

> *"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property."*

It was therefore finally held that a collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration and 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 immovable property of the value of one hundred rupees and upwards.

A similar view was expressed by this Court in ***K.Ramamoorthi Vs. C.Surendranatha Reddy***[7] while holding that a sale deed of immovable property requiring registration but not registered can be used to show nature of possession relying on ***Bondar Singh*** (3rd *supra*).

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[5] (2008) 8 SCC 564
[6] (1969) 1 UJ 86 (SC)
[7] 2012 (6) ALT 786

In ***Doma Govinda Raju Vs. Vanimisetti Papa Rao***[8], this Court held that unregistered sale deed conveying immovable property is admissible in evidence for proving nature of possession *i.e.* collateral purpose.

Learned counsel for the respondents and the Court below relied on ***Golla Dharmanna*** (1st *supra*), wherein this Court took a view contrary to the view of the Apex Court that an unregistered sale deed, which is compulsorily registerable, is not admissible even if requisite penalty and stamp duty is paid as per the provisions of the Act of 1899 and the decision as to admissibility of such document in evidence could not be postponed to the final state of delivery of judgment.

A similar view was expressed by this Court in ***Dangu @ Kadamenda Yellaiah*** (2nd *supra*) but the same judge in ***Rayadurgam Pedda Reddeppa (died) and others Vs. Rayadurgam Narasimha Reddy (died) and others***[9] took a different view and held that in a suit for declaration of title and for recovery of possession of suit property, the document is admissible in evidence and can be used for collateral purpose. Similarly, this Court in ***Golla Dharmanna*** (1st *supra*) did not take note of the principle laid down in ***Bondar Singh*** (3rd *supra*). Therefore, in view of the law declared by the Apex Court in ***Bondar Singh*** (3rd *supra*) and a Division Bench of this Court in ***A.Kishore @ Kantha Rao*** (4th *supra*), the document is admissible for proving nature of possession.

What is collateral transaction or collateral purpose is not defined in 1908 Act. The Apex Court in ***K.B.Saha and Sons Private Limited*** (5th *supra*) on reviewing entire law under 1908 Act about admissibility of document in evidence which is compulsorily registerable laid down the following principles:

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[8] 2012 (5) ALD 257
[9] 2006 (6) ALT 292

"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 immovable 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."

A similar view was expressed by the Apex Court in ***SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited***[10], wherein it was held that

"When a contract contains an arbitration agreement, it is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract. It is as if two contracts – one in regard to the substantive terms of the main contract and the other relating to resolution of disputes – had been rolled into one, for purposes of convenience. An arbitration clause is therefore an agreement independent of the other terms of the contract or the instrument. Resultantly, even if the contract or its performance is terminated or comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under

[10] (2011) 14 SCC 66

or in connection with the contract. Similarly, when an instrument or deed of transfer (or a document affecting immovable property) contains an arbitration agreement, it is a collateral term relating to resolution of disputes, unrelated to the transfer or transaction affecting the immovable property. It is as if two document – one affecting the immovable property requiring registration and the other relating to resolution of disputes which is not compulsorily registerable – are rolled into a single instrument. Therefore, even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer."

In the case on hand, the suit is filed for various reliefs stated above claiming adverse possession over the property against the respondents and not against the vendor of Ashanna or his legal-heirs. In such case, possession is a collateral term to the main contract or transaction since the document is unregistered conveying interest in immovable property which is compulsorily registerable. Whether the petitioners are entitled to claim such relief in the present suit is a different question to be examined at the end of trial and at this stage, this Court need not examine the entitlement of the petitioners to claim such relief. Therefore, the document is admissible only for limited purpose of proving nature of possession and not for enforcing the terms of the document. The Court below did not consider various judgments of the Apex Court and this Court referred *supra* and committed an error in refusing to admit the document for collateral purpose. However, since the document is insufficiently stamped, in view of the request made by learned counsel for the petitioners, the document is to be impounded by exercising power under Section 33 of the Act of 1899 to protect revenue of the State and the same principle is laid down in ***Chilakuri***

Gangulappa Vs. Revenue Divisional Officer, Madanapalle and another[11]. In view of the law declared by the Apex Court, refusing to admit the document in evidence on the ground of insufficiently stamped is an error and consequently the finding of the Court below is liable to be set aside and is accordingly set aside. The Court below is directed to admit agreement of sale dated 08-04-1972 after collecting stamp duty and penalty by exercising power under Section 33 of the Act of 1899 for limited purpose of proving nature of possession in the instant suit.

The civil revision petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 26-07-2017.
JSK

[11] (2001) 4 SCC 197