

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4765 of 2016

ORDER:

1) Assailing the order dated 01.04.2016 passed in I.A.No.73 of 2016 in O.S.No.126 of 2012 on the file of the Principal Junior Civil Judge, Puttur, wherein and whereunder an application filed under Section 151 of C.P.C. to mark the document dated 10.05.1989 was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) Respondent No.1 herein filed O.S.No.126 of 2012 seeking permanent injunction restraining the defendants, their men, agents, servants, friends, nominees and relatives etc. from in any way interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property admeasuring Ac.1.32 cents in Sy.No.163/ 10 (New Sy.No.163/ 10D) situated at R.R.Puram Village accounts, S.R.Puram Mandal, Karvetinagaram sub-district, Chittoor District. The averments in the I.A. would show that on 01.07.1983, P.Chengaiyah executed an agreement of sale in favour of the husband of the petitioner. Chengaiyah died in the year 1988 and the husband of the petitioner also died in the year 1986. Later on, the wife and son of Chengaiyah namely P.Alivelamma and Sheshadri executed Vikraya Kararunama in favour of the petitioner. In view of the above, the petitioner seeks marking of the said document.

3) A counter came to be filed by the plaintiff contending that when the document dated 01.07.1983 has not seen the light of day, the question of marking the Vikraya Kararunama dated 10.05.1989 would not arise. It is stated that the said document is not an agreement of sale, as the same speaks of transfer of possession, which requires registration under Section 17 (1) (b) and 49 of the Registration Act.

4) After considering the rival submissions made, the trial Court rejected the request made by the petitioner. Challenging the same, the present revision came to be filed.

5) Relying upon the contents of the document and also the judgment of this Court in *Meda Anjamma and another v. Vikram China Veeraiah and others*¹ learned counsel for the petitioner would submit that since the contents of the document does not anywhere refer to transfer of rights of the property; as the said document only speaks about an arrangement arrived at between the parties and as the said document is sought to be used only for collateral purpose, it does not require any registration.

6) On the other hand, learned counsel for the respondents would submit that the contents of the document refer to transfer of rights as such the said document requires registration. He further submits that since the basis of execution of the document dated 10.05.1989, is an earlier document dated 01.07.1983, and as the same is not placed on record, the document dated

¹ (2006) 2 ALD 710

10.05.1989 cannot be marked in evidence and even if it is marked it cannot be looked into, to adjudicate the dispute.

7) In *P.Veerraju and another v. Lakkaraju Indira Bai and others*² a learned Single Judge of this Court held as under:

“The proviso to Section 49 of the Act carves out two exceptions for admissibility of the un-registered documents. Under the said proviso, an un-registered document, which is compulsory registerable, is still admissible in evidence under two circumstances, viz.(1) if such document is filed in a suit for specific performance; and (2) the same is sought to be filed as evidence of any collateral transaction not required to be effected by registered instrument.”

8) In *Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others*³ the Apex Court while dealing with the effect of using an un-registered document for collateral purpose observed as under:

“18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy⁴ has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division

² (2015) 1 ALD 472

³ (2016) 1 ALD 40 (SC)

⁴ AIR 1969 A.P. (242)

of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/ defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.”

9) In the instant case, the contents of Vikraya Kararunama would show that one Chengaiah received Rs.4,000/- on 01.07.1983 from Kampalle Jayarama Naidu, who is the husband of the plaintiff, and executed an agreement of sale. On the same day possession of the schedule property was delivered to Kampalle Jayarama Naidu. The same was not registered due to death of Chengaiah and Kampalle Jayarama Naidu. On the advice of the Panchayat elders P.Aivelamma and her son Seshadri executed the present kararunama stating that they have no right over the said property. It may be true that earlier document dated 01.07.1983 is not filed in the Court but a reading of the Kararunama refers only to earlier delivery of possession of property by Chengaiah to Jayarama Naidu but in view of their death, the sale deed could not be executed. Therefore, a plain reading of the said document does not anywhere *prima facie* indicates transfer of any rights to any of the parties and on the other hand it only speaks about the rights which are already conferred on the parties.

10) For the aforesaid reasons and in view of the judgments referred to above, the order under challenge is set aside and

accordingly the Civil Revision Petition is allowed. The trial Court is directed to mark the same for collateral purpose subject to its proof and relevancy.

11) There shall be no order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.01.2017
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