

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2243 OF 2016

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 14.03.2016 passed in O.S.No.22 of 2012 on the file of the Court of the VI Additional District Court, Godavarikhani, whereby the Court below sustained the objection raised by the plaintiff for marking of an unregistered sale deed dated 10.09.1969 through D.W.1.

2 The learned counsel for the petitioner assailed the impugned order on the following grounds: 1) The Court below has misconstrued the scope of Section 17 and proviso to Section 49 of the Indian Registration Act, 2) the trial Court failed to consider that an unregistered sale deed can be received in evidence for collateral purpose, and 3) the impugned order is not sustainable either on facts or in law.

3 *Per contra*, the learned counsel for the first respondent submitted that an unregistered sale deed is not admissible in evidence for any purpose much less collateral purpose. He further submitted that the petitioner is intending to place reliance on the unregistered sale deed dated 10.09.1969 to establish his title under the guise of proving his possession over the suit schedule property. He further submitted that there is no illegality in the impugned order, therefore, this Civil Revision Petition is liable to be dismissed.

4 The facts which are relevant for disposal of the present Civil Revision Petition are as follows:

5 First respondent filed O.S.No.22 of 2012 on the file of the Court of the VI Additional District Court, Godavarikhani against the petitioners herein for declaration that the first respondent is owner and possessor of the suit schedule property to an extent of Ac.2-27 guntas situated in Sy.No.667 of Janagam revenue village, within the municipal limits of Ramagundam Town and Mandal, Karimnagar District and consequential perpetual injunction restraining the petitioners herein from interfering with the suit schedule property. The petitioners herein have filed written statement opposing the claim of the first respondent inter alia contending that they have been in possession and enjoyment of the suit schedule property.

6 As can be seen from the pleadings of both parties, one Tajuddin owned an extent of Ac.15-35 guntas in Sy.No.667 of Janagam revenue village, within the municipal limits of Ramagundam Town and Mandal of Karimnagar District. One Neelam Boddiah was in possession and enjoyment of an extent of Ac.12.00 in sy.No.667 as tenant of Tajuddin. After following the due procedure, tenancy certificate was issued in favour of Neelam Boddiah to an extent of Ac.12-00. It is the case of the first respondent that Neelam Boddiah sold Ac.2.00 of land to Komirineni Mallayya who is her father-in-law. The husband of the first respondent sold land to different persons. The stand of the first petitioner is that his father purchased an extent of Ac.1-39 guntas from Tajuddin under a simple sale deed dated 10.09.1969. It is the case of the first petitioner that the father-in-law of the first respondent purchased an extent of Ac.12.00, but possession was delivered to him only to an extent of Ac.10-00. After completion of

respondents' side evidence, the first petitioner entered into witness box as D.W.1. When the document in question was tendered for marking, the learned counsel for the first respondent raised objection that an unregistered sale deed cannot be marked in view of Section 17 of the Registration Act. The trial Court after hearing both sides, upheld the objections raised by the first respondent. Hence the present Civil Revision Petition.

7 To substantiate the arguments, the learned counsel for the petitioners has drawn the attention of this Court to the following decisions:

***Golla Dharmanna vs. Sakari Poshetty*¹**, wherein this Court held that a document required to be registered compulsorily is not admissible in evidence even if the requisite stamp duty and penalty are paid as per the provisions of Stamp Act and the decision as to admissibility of such a document in evidence need not be postponed to the final stage of delivery of judgment.

***Vengalapudi Manga v. Paluri Kannabbai*²** wherein this Court held at para Nos.7 and 9 as follows:

7. What is collateral purpose has been explained by the Apex Court as well as this Court in various decisions. As per the well-settled principle of law, any purpose other than the one which relates to establishment of title to the property can be treated as collateral.

9. Thus it is clear that the plaintiff intends to rely upon the document in question to prove his title to the suit schedule property, but not for any other purpose. Therefore, the contention that the document can be looked into for collateral purpose is without substance. In the facts and circumstances of the case, I am of the opinion that the question of looking into the said document as evidence of any collateral transaction does not arise at all.

¹ 2013 (6) ALT 205

² 2013 (5) ALD 170

8 As per the principle enunciated in the case cited supra, an unregistered document can be received in evidence to prove the possession of the party to the proceeding over the schedule property, but it cannot be received for the purpose of proving the title to the property.

Vangala Laxmamma vs. Pasham Narsi Reddy³ wherein this Court held at Para Nos.12 and 13 as follows:

12. It is provided under Section 49 of the Registration Act that no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall affect any immovable property comprised therein or be received as evidence of any transaction affecting such property unless it is registered. As per the provision made in the proviso to that Section such a document may be received as evidence of any collateral transaction not required to be effected by registered instrument. It has consistently been held by Courts of law that an unregistered document of transfer which is required to be registered and not registered is admissible in evidence to prove the date of entering into the fact of possession of the transferee and to show the character of his possession. Though an unregistered document required to be registered under law is not admissible in evidence to claim any right under it, it would be admissible in evidence for a collateral purpose i.e. for a purpose other than that for which the document was created. It has always been held that a vendee under an unregistered sale deed, who comes into possession under it, though the document is inadmissible in evidence to prove title or any rights under it, it will be admissible in evidence to show the character of possession of the vendee viz., whether it is in his own right or whether it is with permission like that of a lessee or licensee and if he continues in such possession for over the statutory period he acquires title to the property not on account of the unregistered sale deed, but on account of the fact of his having been in possession for over the statutory period in his own right adversely to the real owner. Similarly, if a lessee comes into possession of immovable property under an unregistered lease deed which requires to be registered under law, certainly, it would be admissible in evidence to show the character of his possession, viz., that his possession is that of a lessee and therefore permissive in nature, since a lessor, who parts with physical possession to a lessee, under law is always considered to be in constructive possession through the lessee. Therefore, so long as the possession of the lessee is permissive, he cannot prescribe any title hostile to his lessor.

13. It is also well settled that if an unregistered document is sought to be relied on for collateral purpose under proviso to Section 49, the party has to pay the stamp duty and penalty, vide decision of this Court in Palampalli Rama Subba Reddy v. Palampalli Subba Reddy (7) 2005 (6) ALT 601 : 2005 (5) ALD 274.

K. Ramamoorthi v. C. surendranatha Reddy⁴ wherein this Court held at Para Nos.30 and 32 as follows:

³ 2010 (3) ALD 382

30. 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 Alupal (2 supra) 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 (4 supra)).

(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alupal (2-supra), Bondar Singh (15-supra) and A. Kishore (16-supra)).

32. When we apply the above crystallized legal position to the facts of the case, I am of the opinion that the unregistered sale deed is admissible in evidence for the collateral purpose to the limited extent of showing possession of the plaintiff. As discussed hereinabove, the Courts have been consistently holding that in a document of sale, possession is treated as collateral to the main transaction affecting the immovable property. Therefore, I am of the considered opinion that for the limited purpose of proving the petitioner's possession, the unregistered document, which is impounded, is admissible in evidence.

Bondar Singh v. Nihal Singh⁵ wherein the Hon'ble apex Court

held at Para No.5 as follows:

..... Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land.

9 On the other hand, the learned counsel for the first respondent has drawn the attention of this Court to the following decisions:

⁴ 2012 (6) ALT 786

⁵ (2003) 4 SCC 161

K.B.Saha and Sons Private Limited vs. Development

Consultant Limited⁶ wherein the Hon'ble apex Court at Para No.34 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, if unregistered 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.

10 It is not in dispute that the first petitioner herein as D.W.1 tendered an unregistered sale deed dated 10.09.1969 for the purpose of marking and receiving the same in evidence. I am very much conscious that while deciding the revision petition, the Court should not express any opinion with regard to the genuineness or otherwise of the unregistered document dated 10.09.1969. Basically what is to be considered is whether the unregistered sale deed can be received in evidence, if so for what purpose?

11 A fascicular reading of Section 17 in juxtaposition with Section 49 of the Indian Registration Act clearly demonstrates that a document, which requires compulsory registration, if not registered, cannot be received in evidence. However, the proviso to Section 49 facilitates that an unregistered document can be used for collateral purpose.

⁶ (2008) 8 SCC 564

12 A perusal of the impugned order clearly reveals that the trial Court placed reliance on the ratio laid down in Golla Dharmanna case (1 supra) and Vengalapudi Manga case (2 supra) on the sole ground that they are later in point of time. As rightly pointed out by the learned counsel for the petitioners whether an unregistered document can be used for collateral purpose or not is not the point for consideration in Golla Dharmanna case (1 supra). More over, the ratio laid down in Vangala Laxamma case (3 supra) and K. Ramamoorthi case (4 supra) has neither been referred nor considered in Golla Dharmanna case (1 supra) and Vengalapudi Manga case (2 supra). The trial Court has not properly considered the principle enunciated in Vengalapudi Manga case (2 supra).

13 As per the principle enunciated in Vangala Laxamma case (3 supra), an unregistered document can be received in evidence for collateral purpose to show the character of the possession of the vendee. The facts of the case in K. Ramamoorthi case (4 supra) are almost identical to the facts of the case on hand. As per the principle enunciated in K. Ramamoorthi case (4 supra) an unregistered sale deed can be received in evidence for collateral purpose to the limited extent of showing the possession of the parties to the proceedings over the suit schedule property. As per the principle enunciated in Bondar Singh case (5 supra) an unregistered sale deed can be received in evidence for collateral purpose i.e. to prove the nature of possession of the parties to the proceedings over the suit schedule property.

14 The first petitioner is intending to place reliance on an unregistered sale deed to prove that his father, thereafter himself has

been in possession and enjoyment of the suit schedule property to an extent of Ac.1.39 guntas in Sy.No.667. The first petitioner is intending to mark the document only to prove his possession but not to establish his title to the suit schedule property. If the unregistered document which requires registration under the Indian Registration Act is introduced in evidence in order to establish the title of the party over the suit schedule property, certainly it cannot be received. If the party to the proceedings wants to place reliance on an unregistered document for the purpose of proving his possession over the suit schedule property, it amounts to collateral purpose or transaction. Merely because the document is tendered in evidence for the purpose of proving nature of possession, it cannot be treated for the purpose of proving the title.

15 A perusal of the record clearly reveals that the first petitioner filed a memo before the trail Court for impounding the document. The record clearly reveals that the trail Court impounded the document by collecting stamp duty and penalty. The document in question satisfies the ingredients of Section 35 of the Indian Stamp Act. This Court is very much conscious that mere payment of stamp duty and penalty cannot be equated with that of registration of the document as contemplated under Section 17 of the Indian Registration Act. Section 35 of the Indian Stamp Act and Section 17 of the Registration Act operate in different situations. As per the ratio laid down in Vangala Laxmamma case (3 supra) and K. Ramamoorthi case (4 supra) if a document is impounded under Section 35 of the Indian Stamp Act, the same can be received in evidence for collateral purpose.

16 Viewed from any angle, I am of the considered view that the first petitioner tendered an unregistered sale deed dated 10.09.1969 in his evidence is intending to mark the document for the purpose of proving his possession over the suit schedule property, therefore, the same can be received in evidence.

17 The trial Court has not considered the scope of proviso to Section 49 of the Indian Registration Act in right perspective. When an unregistered document is tendered in evidence, the Court has to consider the purpose for which the document is sought to be marked. The trial Court failed to consider the distinction between collateral purpose and main purpose and dismissed the petition under a misconception. Therefore, the finding of the trial Court that an unregistered sale deed cannot be used for collateral purpose is not sustainable in view of the ratio laid down in the cases cited supra. If the order of the court below is allowed to stand, certainly it would amount to miscarriage of justice.

18 Ex facie there is an error in the order impugned in this revision. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to exercise the jurisdiction under Article 227 of the Constitution of India to set aside the impugned order.

19 In the result, the Civil Revision Petition is allowed, setting aside the order dated 14.03.2016 passed in O.S.No.22 of 2012 on the file of the Court of the VI Additional District Court, Godavarikhani. The trial Court is hereby directed to mark and receive the document in question in evidence for collateral purpose only. No order as to costs.

Consequently, miscellaneous petition if any pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 21st April, 2017
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