

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.6474 of 2016

ORDER:

The revision petitioners are the plaintiffs in O.S.No.19 of 2015 on the file of Senior Civil Judge at Nalgonda, a suit for partition maintained against the 3 defendants who are the revision respondents.

2. Before commencement of trial it appears that the plaintiffs moved I.A.No.663 of 2010 under Section 33 of the Indian Stamp Act to send the document Sulahnama dated 27.12.1971 to the Collector (now District Registrar) for impounding. The petition was ended in dismissal by the learned Senior Civil Judge vide order dated 07.07.2010 holding that Sulahnama being a partition deed cannot be impounded. They preferred a revision in CRP.No.2935 of 2010 before this Court and another Bench of this Court dismissed the same on 15.07.2010. They filed another application in I.A.No.69 of 2011 before the trial Court to admit the Sulahnama as if a settlement deed and the same was dismissed on 25.03.2011. Against the same, they preferred CRP.No.1644 of 2011 and the same was dismissed on 01.07.2011. It is thereafter the present I.A.No.1674 of 2012 is filed under Section 49 of the Registration Act to admit the Sulahnama dated 27.12.1971, for collateral purpose. It is dismissed by the impugned order dated 28.11.2016, against which the present revision is maintained. There is an interim order passed by this Court dated 03.01.2017 in C.R.P.M.P.No.8493 of 2016 of stay of all further proceedings in

the suit pending disposal of the revision and same is extending from time to time which is in force till date.

3. The core issue revolving in the lis is the contents of the Sulahnama whether it is a document creating rights or extinguishing rights within the meaning of Section 17 of the Registration Act as a compulsory registerable and even not registered whether comes within one of the provisos to Section 49 of the Registration Act, despite A.P. amendment to Section 17 of the Act to admit for collateral purpose and if so, without impounding can the question of admitting for collateral purpose for want of registration arises to consider?

4. Section 49 of the Registration Act is an exception to Section 17 of the Act, which is carved out to meet three contingencies to admit an unregistered document (1). for purpose of evidence in relation to suit for specific performance of the contract for sale, (2). in relation to the doctrine of part performance (which is no doubt subject to Central amendment with effect from 24.09.2001 amending Section 53-A of Transfer of Property Act and Section 49 of the Registration Act) and (3). for any collateral purpose.

5. The learned Senior Civil Judge in the initial order in I.A.No.663 of 2010 dated 07.07.2010 observed that as it is an unregistered partition deed which creates rights in favour of the parties being a compulsory registerable under Section 17 of the Registration Act, even the document is sent for impounding to the District Collector (District Registrar as the case may be) it is inadmissible still for want of registration and thereby sending of

the document for impounding is a futility and referred a judgment of this Court in **Saleema Bee Vs. Syed Abdul Nayeem and Others**¹. The text of the judgment no doubt not before the Court. In the revision covered against the impugned order in C.R.P.No.2935 of 2010 dated 15.07.2010 supra, it is observed particularly at Para 7 referring to the expression of the Apex Court in **K.B.Saha & Sons. (P) Ltd. Vs. Development Consultant Ltd.**² by extracting Para 34 of said expression, where it says 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.

¹ 2008 (5) ALD 513

² (2008) 8 SCC 564

6. From the above principles, a document which creates rights or extinguish or relinquish rights required to be registered compulsorily, the terms cannot be read for collateral purpose and part of the document if even inadmissible, other portion of the document is if divisible, that portion which does not require registration can be admitted for collateral purpose and collateral purpose is thereby such that, that itself is not effected by registering document and what is further stated in clause (2) is an unregistered document can however be used as provided in the proviso to Section 49 of the Registration Act. The expression of the Apex Court clearly says, Section 49 provides for collateral purpose even a compulsory registered document if not registered to admit, however contents of the document cannot be directly read if it requires interpretation of the document. It is referring to said expression, the revision order of this Court another bench says there is no collateral purpose which is required to be considered in the given facts and circumstances and in view of that observation of the trial Court there is nothing to interfere by sitting in revision.

7. A perusal of said Sulahnama speaks that the plot of land is measuring 1200 square yards in joint with 3 rooms in which for some time there was a construction and Godamma and her children are staying who are also closely related. A piece of 200 square yards is left towards north eastern side and the balance areas is sub divided between the other 2 i.e., Yashodamma 675 square yards towards southern side and Andamma 352 square yards towards northern side and agreed to get this partition entered in Government records. So far as 200 square yards out

of 1200 square yards with construction and Godamma to which it is left over concerned, it is a past transaction and so far as 1000 square yards to divide as 625 and 325 respectively. It is creating rights by virtue of the terms of the document, it requires registration and for want of registration, it cannot be admitted. However, collateral purpose is something which is not connected with the terms of the document if any that could be considered under Section 49 of the Registration Act still, but not from the reading of the terms of the unregistered document in question. Once the revision Court came to the conclusion confirming the dismissal order of the learned Senior Civil Judge in the application to refer to the Collector (Registrar) for impounding and even a subsequent application in construing the document as a settlement deed that was also dismissed including by confirming in revision; it is squarely a partition deed and it is within the instrument of partition under Section 2(15) of the Stamp Act.

8. So far as 1000 square yards concerned, for this Court to admit for a collateral purpose against the dismissal order of the lower Court impugned in the present revision, there is nothing to interfere for the reasons that unless the original document is impounded under Section 33 of the Stamp Act, question of admitting the unregistered unstamped document even for a collateral purpose under Section 49 of Registration Act despite want of registration under Section 17 of the Act does not arise vide **Chilakuri Gangulappa Vs. RDO, Madanapalle**³. Here basically the original order of the learned Senior Civil Judge in I.A.No.663 of 2010, though rightly construed for the 1000 square

³ (2001) 2 MLJ 33 (SC)

yards as unregistered partition deed requires registration and also stamp duty; however not referred for impounding concerned by saying as inadmissible, without considering the scope that under Section 49 of the Act though terms of the unregistered document for want of registration are not admissible to prove any collateral purpose, other than from terms of the document, it can be was missed consideration. The observation saying when the terms of the document are inadmissible, collateral purpose does not arise concerned to that extent it is incorrect though otherwise confirmed in the revision by this Court referring to the expression of the Apex Court in **K.B.Saha supra**. In fact **K.B. Saha supra** clearly say for other than terms of the document, for collateral purpose, the document can be admitted.

9. Having regard to the above, the remedy of the petitioner is elsewhere if at all to seek for correctness of the order in I.A.No.663 of 2010 confirmed in revision in CRP.No.2935 of 2010 dated 15.07.2010, and not filing one petition after another before trial Court and by revision against such orders, without cause rectifying the original order supra.

10. With these observations, the Civil Revision Petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.04.2017
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