THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2569 of 2015

ORDER:

The unsuccessful 1st defendant in O.S.No.404 of 2012 on the file of the Court of the learned II Additional Junior Civil Judge, Kurnool, filed this revision petition, under Article 227 of the Constitution of India, assailing the intermediary orders of the said Court, whereby, the Court ruled that the document, dated 30.03.2009, styled as 'Hakku Vidudala Khararu' is inadmissible in evidence and cannot be permitted to be exhibited in evidence of the 1st defendant (DW1) as the same is not registered though compulsorily registerable.

2. I have heard the submissions of *Sri O.Manohar Reddy*, learned senior counsel appearing for the revision petitioner/1st defendant, and of Sri *Mir Wajid Ali Kanil,* learned senior counsel appearing for the 1st respondent/plaintiff. I have perused the material record.

3. The facts necessary to be stated as a prelude to this order, in brief, are as follows:

The 1st respondent/plaintiff (hereinafter 'plaintiff') brought the suit for eviction of the defendants from the plaint schedule house and for recovery of vacant possession of the same and arrears of monthly rents and for costs. The 1st defendant is resisting the suit by filing a written statement. During the course of trial, the 1st defendant, during his examination as DW1, tendered the document, dated 30.03.2009, viz., 'Hakku Vidudala Khararu' (relinquishment conformation deed), (herein after 'the document in question') for being marked. The plaintiff, who is no other than the brother of the said 1st defendant, objected for exhibiting the same on the ground that it cannot be admitted in evidence as it is not registered though compulsorily registerable. The trial Court having heard the learned counsel for both the sides upheld the

objection of the plaintiff and refused permission to the 1st defendant to exhibit the same in his evidence. Therefore, the 1st defendant is before this Court.

4. The learned senior counsel appearing for the 1st defendant would submit as follows: "The objection raised by the plaintiff for marking the document in question is untenable. The Court below failed to properly appreciate the recitals in the document. The recitals in the document clearly show that the plaintiff and the 1st defendant who are parties to the said document agreed for execution of a regular registered deed in future in respect of the property covered by the said document, that is, on the 1st defendant/beneficiary therein paying the balance amount of Rs.10,000/- to the plaintiff/the executant of the said document. Thus, under the said document, plaintiff and the 1st defendant agreed for execution of a regular registered deed, in future. Therefore, the intention of the parties is not to convey any right, title and interest in the immovable property covered by the document under the very same document, but the intention is to execute a regular registered document at a later point of time on the 1st defendant paying the balance amount of Rs.10,000/- to the plaintiff. Therefore, under the said document, no right, title and interest was conveyed by the executant to the beneficiary. Hence, the document is not compulsorily registerable as erroneously held by the trial Court. The learned senior counsel would further submit that the document in question is a 'Hakku Vidudala Khararu' ('agreement to relinquish') but, not a deed of relinquishment as the parties agreed for execution of a further registered document, pursuant to the document in question." Further, he has drawn the attention of the Court to the recital in the document, wherein, it is declared that on payment of the balance amount of Rs.10,000/- by the beneficiary to the executant of the document, the executant shall execute a regular registered document in favour of the beneficiary or his nominee and further submitted that the entire document has to be read for deciding the nature of the transaction contained in the document and that the title of the document

or the nomenclature of the document as mentioned in the document or in the pleadings of the parties is not relevant and what is relevant is only the nature of the transaction contained in the document for determining as to whether the document is compulsorily registerable or not. He alternatively submitted that the document can be permitted to be marked for collateral purpose, after complying with the statutory requirement, if any, in regard to payment of stamp duty and penalty, if any, payable on the said document.

5. On the contrary, the learned senior counsel appearing for the plaintiff while supporting the orders of the Court below had contended that the document in question not only, as per its nomenclature, but also as per its recitals is a relinquishment deed and that under it right, title and interest in immovable property are conveyed by the executant to the beneficiary of the document and that in view of Section 17 of the Indian Registration Act, 1908, the document is a compulsorily registerable document and since it is not registered as required under law, the same is inadmissible and therefore, the Court below has rightly refused to accord permission to the 1st defendant (DW1) to exhibit the same. He further contended that the 1st defendant is the beneficiary under the document and that the plaintiff is the executant of the document and further pointed out that in the written statement, the 1st defendant has categorically pleaded to the following effect: '...and that on the settlement of a dispute outside the Court proceedings in O.S.No.521 of 2008 on the file of the Court of the Principal Civil Court, Kurnool, a sum of Rs.3,30,000/- was paid to one G.Zubeda Begum as agreed to between the plaintiff and the 1st defendant herein and hence, the contention of the plaintiff that he is still the joint owner of the plaint schedule house is false and the plaintiff has no right over the plaint schedule house as he has relinquished his share therein in favour of the defendant.' The learned senior counsel has also drawn the attention of this Court to the recital in the document in question whereby, the executant of the document, the plaintiff herein, stated

that from the date of the execution of the document, he and his legal heirs have nothing to do with the property covered by the document in question. Thus, placing reliance on the aforesaid contents of the written statement and the recital in the document in question, the learned senior counsel contended that the document in question is a relinquishment deed and the transaction contained therein is a relinquishment in respect of the share of the plaintiff in immovable property and as the document deals with relinquishment of right, title and interest in the immovable property by the executant in favour of the beneficiary, the document is required to be stamped in accordance with law and is compulsorily registerable.

5.1 He placed reliance on the following decisions:

(i) Madala Jyothi v. Karanam Tirupalaiah[1]
(ii) T.Arthi v. K.Anand Reddy[2]
(iii) Vangala Laxmamma Reddy v. Pasham Narsi Reddy[3]
(iv) Telugu Kishna Mohan v. Smt. Boggula Padmavathi[4]

All the decisions are relied upon in support of the legal propositions - that a deed of relinquishment requires registration; that a document containing a transaction of relinquishment of a definite share in immovable property requires registration under Section 17 (b) of the Indian Registration Act, 1908; that if by recitals in the document absolute rights are conferred in immovable property, then such document requires registration; that unregistered and unstamped documents, which are required to be stamped and registered are inadmissible in evidence; and that insufficiently stamped and unregistered relinquishment deed is inadmissible in evidence.

There is no dispute with the said legal propositions. But, the question as to what is the nature and character of the transaction contained in the document in question is a question of fact.

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[1] 2015 (5) ALD 587
[2] 2006 (5) ALD 1
[3] AIR 2010 ANDHRA PRADESH 158
[4] 2009 (5)ALT 132

6. I have given detailed and thoughtful consideration to the facts. I have given earnest consideration to the submissions. I have carefully gone through the plaint and the written statement and also the document in question in entirety.

7. Before proceeding further, it is apt to note that in the plaint, the plaintiff who is no other than the brother of the 1st defendant averred that the plaintiff and the 1st defendant are the joint owners of the plaint schedule house bearing House No.24/93/A, Gani-galli, Kurnool; and that after purchasing the said house, the plaintiff constructed upstairs on the existing house with his own funds and that the 1st defendant is the tenant in the ground floor and that the 2nd defendant is the tenant in the first floor of the said house. The suit is brought for eviction and recovery of vacant possession of the plaint schedule house from the defendants 1 and 2 and recovery of arrears of rent and costs not withstanding the document in question. On the contrary, the 1st defendant filed a written statement resisting the suit and *inter alia* contending that there is no tenancy between the plaintiff and the 1st defendant in respect of the suit schedule house and that the 1st defendant is not a tenant in the subject property and that the suit for eviction from the plaint schedule house is not maintainable and that the contention of the plaintiff that he is the joint owner of the plaint schedule house is false and that the plaintiff has no right over the plaint schedule house as he has relinquished his share therein in favour of the 1st defendant. Thus, the plaintiff, despite the existence of the document in question, contends that he and the 1st defendant are the joint owners of the plaint schedule house. Whereas, placing reliance on the very same document in question, the 1st defendant contends that in view of the said document, which is a relinquishment deed, the plaintiff can no longer claim that he is the joint owner of the plaint schedule house having relinquished his share therein in favour of the 1st defendant. Be that as it may. When the 1st defendant

tendered the said document in question for being marked as an exhibit on his side, the objection as to its admissibility was raised by the plaintiff on the ground that it is a compulsorily registerable document and cannot be admitted in his evidence as it is not registered. The plaintiff contended in the plaint that he is the joint owner of the house along with his brother, the 1st defendant. Now he contends that the document in question is a relinquishment deed though he claimed in the suit that he is a joint owner along with the 1st defendant who is no other than his brother. On the other hand, the 1st defendant now contends that the document in question is an agreement to execute a relinquishment deed in future and that the document is not a relinquishment deed in itself; therefore, it is admissible in evidence without the requirement of registration, it being an agreement to relinquish but not a deed of relinquishment. However, he contended in the written statement that the plaintiff is not the joint owner having relinquished his rights in the property in his favour by executing the document in question. Thus, both the parties have taken inconsistent and self-contradictory stands in the *lis*. The fact of the matter is, if the plaintiff wants to contend that the deed in question is a relinquishment deed, he can no longer claim a share and joint ownership in the property. Similarly, if the defendant wants to contend that the deed in question is an 'agreement to relinquish' but not a 'deed of relinquishment' then he can no longer contend that he is the owner of the house to the exclusion of the plaintiff.

8. There is no dispute with the proposition that the nature or substance of the transaction and also the requirement of stamp duty payable, if any, on the document and the compulsory requirement of registration of the document have to be determined with reference to the recitals in the document and the substance of the transaction embodied in the document/instrument and not with reference to the title or caption or the mere nomenclature of the instrument. The nomenclature of or the caption given to the document is not

determinative and the nature or the substance of the transaction embodied in the document is only the determinative factor. Therefore, mere description of the document either as a 'Hakku Vidudala Khararu' or 'agreement to relinquish' or 'deed of relinquishment' is immaterial, rather not much of relevance. Similarly, the language employed in the pleadings of the parties in regard to description of the document is not conclusive. The court need not necessarily agree with the description of the document in question as stated in the pleadings of the parties as the Court has to make its own decision on the said aspect as per the substance of the transaction embodied in the document, which is the only determinative factor.

9. Keeping in view the contentions and rival contentions and the above stated principles, it is now necessary to examine the recitals in the document to find out the nature and the character of the transaction and the substance of the transaction embodied in the document in question. The recitals in the document are to the following effect: "In the property, which is more fully described in the schedule annexed to the document, both the parties to the document, i.e., the plaintiff, the executant, and the 1st defendant, the beneficiary, are having equal shares. They both sold the said property for Rs.4,60,000/- and took advance of Rs.2,60,000/- and shared that advance amount equally between them. But, the 1st defendant expressed his desire not to sell his share and hence, returned the advance taken and that from the remaining amount the plaintiff received Rs.90,000/- from the 1st defendant. The 1st defendant has still to pay the balance of Rs.10,000/- to the plaintiff. The plaintiff agreed to execute the registered document in favour of the 1st defendant or his nominee as and when the balance of Rs.10,000/- is paid by the 1st defendant to the plaintiff. From the date of this document, i.e., 30.03.2009, the plaintiff or his legal heirs have nothing to do with the property covered by the document." Thus, in the document styled as 'Hakku Vidudala Khararu' while stating in the earlier sentence that the plaintiff and the 1st

defendant are having equal shares and that the plaintiff has yet to pay balance of Rs.10,000/- and that as and when the said amount is paid, the registered document would be executed; nevertheless in the next recital, following the above recital, it is stated that from the date of the document the plaintiff and his legal heirs have nothing to do with the property covered by the document. If one goes by the earlier recital that a registered deed is yet to be executed, then the document in question does not require registration as under the said document, no right, title and interest in the immovable property covered by the document is conveyed and as the parties intended to have a registered document later, on payment of the balance amount of Rs.10,000/-. But, if one goes by the next recital wherein it is stated that from the date of the document, the executant and his legal heirs have nothing to do with the property, it appears that there was a relinquishment of interest of the executant in the property under the very same document. However, a harmonious consideration of all the recitals of the document, in the well considered view of the Court indicate that no right, title and interest is conveyed by the executant/plaintiff in favour of the 1st defendant under the document and that both the parties intended to have a regular registered document in respect of the property as and when the 1st defendant pays the balance of Rs.10,000/- to the plaintiff. Further, the later recital only shows that the executant and his legal heirs have nothing to do with the property. The said recital does not reflect that the right, title and interest was conveyed by the executant to the beneficiary under the document and that whatever rights, the executant has got in the half share of the property were relinquished once and for all in favour of the beneficiary of the document. The specific recital that Rs.10,000/- is yet to be paid in respect of the transaction and the further recital whereby there was a contemplation to execute a regular registered deed at a later point of time on payment of the said balance amount clinch the issue. Had the document been a deed of relinquishment, there was

no need for the parties to agree for execution of a registered deed at a later point of time.

10. Viewed thus, this Court finds that the document styled as 'Hakku Vidudala Khararu' is only a document dealing with a transaction whereby the executant agreed to relinquish his half share in the property covered by the document in favour of the beneficiary and further agreed to execute a registered document on the beneficiary paying balance of Rs.10,000/- to him. In that view of the matter, this Court finds that the order of the Court below calls for interference.

11. On the above analysis, this Court holds that the document in question is not compulsorily registerable as the transaction embodied therein is an 'agreement to relinquish' but not an out and out relinquishment of the plaintiff's share in favour of the 1st defendant in the immovable property covered by the document.

12. In the result, the Civil Revision Petition is allowed. As a sequel, the order of the trial Court holding that the document is compulsorily registerable and is, therefore, inadmissible in evidence for want of registration, is set aside. As this Court noticed from the copy of the document filed, that the document is engrossed on a stamp paper of the value of Rs.110/-only and since the document is held to be an 'agreement to relinquish' and not a 'deed of relinquishment' and as the said transaction pertains to immovable property of a value of more than Rs.100/-, it is made clear that the 1st defendant is obligated to pay the required stamp duty and penalty, if any, payable on the document as per the relevant Article of the Indian Stamp Act, 1899. Hence, only on ascertainment of sufficiency of stamp duty on the transaction ['agreement to relinquish'] contained in the document and on collecting deficit stamp duty and penalty, if any, collectable on the document, the trial Court shall permit the 1st defendant to exhibit the document, however, without

insisting on the requirement of its registration as it is now held that the document is not compulsorily registerable.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th January, 2017
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