

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.6585 of 2017

ORDER :

Notice sent to the address mentioned in the plaint to the revision respondents/plaintiffs returned as insufficient address is a sufficient service as it is the duty of the plaintiff while filing of a plaint as contemplated by Order VII Rule 1(b) C.P.C., name, description and place of residence of the plaintiffs as far as can be ascertained. Thereby, taken as heard the revision respondents and heard learned counsel for the revision petitioners/defendant Nos.1, 2 and 4 for the other defendants endorsed not necessary parties. Perused the grounds urged in the revision and impugned order of the lower Court, dated 11.09.2017.

2. It is during the trial of the suit, while evidence of DW.1 was in progress while in marking of documents in chief-examination, an unregistered partition deed, dated 13.04.1958 and unregistered sale deed, dated 16.02.1961, when sought to mark plaintiffs raised an objection saying those are even stamped pursuant to the order of the District Registrar duly impounding in referring the document at request of the defendants to the Collector by the Court based on the order of this Court in C.R.P.No.3768 of 2014, dated 21.03.2016, for payment of the deficiency of stamp duty to be impounded, that despite duly stamped from the certification of the District Registrar, it cannot be marked for want of registration. In answering the objection, the

trial Court held by the impugned order of the documents cannot be exhibited, it is observed that as per the Single Judge expression of this Court in **B.Bal Reddy v. V.Ram Reddy**¹, at para, it was held as follows:

“In the instant case, the suit is filed for permanent injunction. The issue requires to be considered by the trial Court in a suit for permanent injunction is as to who is in possession of the property on the date of filing of the suit. Incidentally, the trial Court has to look into the title of the parties in relating to the suit property. Therefore, the respondents in the present case, sought to let in evidence by marking the said document for the principal purpose and not for collateral purpose and the same cannot be received in evidence for want of registration”.

3. In fact, the trial Judge mislead the judgment and that very portion incorporated from the judgment in B.Bal Reddy clearly speaks for colleateral purpose for want of registration to show nature of the document can be marked but not for primary purpose. Here, it is not the case of the defendants to mark for primary purpose but for collateral purpose.

4. The trial Judge further observed that the plaintiffs placed reliance on another judgment of this Court in **C. Udayakiran Reddy v. G.Ramakrishna Reddy**², from para 4, which reads as follows:

“In the instant case, the document in question is a deed of partition. It can be looked into for any purpose, other than proof of partition. The respondent wanted to establish that a partition of a particular type has taken place, under that document. Therefore, it is inadmissible even for collateral

¹ 2016 (2) ALD 435

² 2011 (3) ALT 600

purpose. It is a different matter, if the respondents intend to rely upon it, for any other purpose.”

5. The trial Judge held that the decision has no application. A perusal of the judgment shows the document can be looked into for any purpose other than proof of partition. Even from that it is very clear that other than the primary purpose of actual partition from terms for any other purpose it can be looked into a collateral purpose, thereby the learned Judge not even properly understood the purport of the second judgment referred supra. The learned Judge in para 3 of the order further observed that by referring to two more judgments placed reliance by the defendants one is of this Court in **P.M.Anand Babu and others. V. Mir Akbar Ali Khan and another**³ and of the Apex Court in **Bondar Singh v. Nihal Singh**⁴ and where from, it is quoted that “since the suit filed by the petitioners/plaintiffs is injunction simplicitor and the unregistered sale deeds sought to be relied on is only to prove their possession over the property, they can be admitted into evidence under the third proviso to Section 49 of the Registration Act.” Even from these expressions, the unregistered document when duly stamped can be looked into for collateral purpose, thereby can be marked for collateral purpose. However at para 4 of the impugned order of the learned trial Judge, it is observed that the document which the defendants intend to exhibit cannot be marked being unregistered in claiming title and possession based on

³ 2003 (4) ALD 461

⁴ (2003) 4 SCC 161

the unregistered document. In fact, this Court in **Buddha Jagadeeswara Rao v. Sri Ravi Enterprises, represented by its Proprietor, Kedarsetty Gurumurthy**⁵, by scanning the law, observed that though for want of registration, a document cannot be admitted for primary purpose even duly stamped, it can be received for collateral purpose. Once such is the case, the trial Court should have been marked the document for a collateral purpose to consider ultimately as to what is collateral purpose since Section 49 proviso of the Indian Registration Act clearly speaks despite a compulsorily registerable document under Section 17 of the Registration Act for want of registration can be admitted for collateral purpose.

6. Having regard to the above, the order of the lower Court refusing of marking the document is set aside with a direction to mark the document for collateral purpose and subject to other objections, if any, to ultimately decide as per the expression of the Apex Court in **Bipin Shantilal Panchal v. State of Gujarat and another**⁶.

7. Accordingly and in the result, the civil revision petition is allowed.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

14th December 2017.

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⁵ 2017 (2) ALT 736

⁶ AIR 2001 SC 1158