

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.247 of 2014

ORDER:

This civil revision petition is filed questioning the docket order, dated 30.10.2013, in O.S.No.2855 of 2012 on the file of learned XX Junior Civil Judge, City Civil Court, Hyderabad.

2. Respondent No.1 herein is the plaintiff and the petitioner and respondent No.2 herein are defendant Nos. 1 and 2, respectively, in the suit *viz.*, O.S.No.2855 of 2012. The parties are hereinafter referred to as they are arrayed in the suit.

3. The plaintiff has filed the suit for perpetual injunction restraining the defendants, their men, agents, henchmen or any person or persons acting under them from interfering with the plaintiff's peaceful possession and his business in respect of the suit schedule property, which is the premises bearing No.20-2-592 to 595 consisting of ground and first floors. The plaintiff has claimed to be in possession of the suit schedule property and therefore, he prays for injunction.

4. The defendants, at the time of trial, have raised an objection to the marking of Ex.A-1, which is a receipt-cum-undertaking, dated 22.06.2012 (hereinafter referred to as 'the document in question'). Defendant No.1 has filed a memo in that regard before the lower Court stating that the document in question requires registration under Section 17 of the Registration Act, 1908 (for short 'the Registration Act'). The plaintiff has filed a counter/reply to the said memo. Then, the impugned docket order came to be passed by the lower Court. Although the impugned order mentions that the objection taken by the defendants is sustained, the same has not been upheld. The lower Court has held that registration of the document in question does not fall under Section 17 of the Registration Act. Questioning the said order, defendant No.1 filed the present Civil Revision Petition.

5. This Court has heard Mr.K.Jamali, learned counsel for the petitioner/defendant No.1 and Mr.Mirza Shah Nawaz Baig, learned counsel for respondent No.1/plaintiff.

6. The learned counsel for the petitioner/defendant No.1 has argued that the document in question requires registration because an interest is created in the form of 50% of the income derived from the business, which is being claimed on the basis of the said document. The learned counsel also argues that if the document in question is treated as mortgage deposit of title deeds as security for the hand loan, an interest is created in the immovable property and that therefore, as per Section 58 of the Transfer of Property Act, 1882 (for short 'the Act') read with Section 17 (1) (b) of the Registration Act, the document in question is compulsorily registrable. The learned counsel further submits that the lower Court has committed an error in overruling the above objections.

7. In reply to the above submissions, the learned counsel for respondent No.1/plaintiff submits that the document in question by itself does not create any interest in the immovable property as it only deals with handing over of a sale deed in relation to another property viz., property bearing No.20-1-350-E-1, which does not relate to the suit schedule property. The learned counsel also submits that

what all the document in question states is that till repayment of the hand loan, respondent No.1/plaintiff will be entitled to continue his business and get 50% of the income derived therefrom as per the oral contact. In addition, the learned counsel also points out that as per the objections raised by defendant No.1, the said defendant cannot participate in trial and his right to file written statement itself was forfeited. Therefore, he submits that there is no error in the impugned order.

8. This Court, after hearing the learned counsel for both the parties, notices that the document in question deals with a hand loan of Rs.8,00,000/- and as a security thereto, a sale deed, dated 15.02.2000, bearing document No.144/2000, was handed over. The plain language interpreted in the document in question shows that the executant states that he has handed over the sale deed on payment of the hand loan of Rs.8,00,000/-. It does not show that he has been handing over the sale deed in praesenti. From the above, it is clear that the “handing over” of the sale deed had occurred at a prior point of time. Therefore, this Court is of the opinion that the document in question, by itself, does

not record the handing over of the sale deed. It is also settled law that if a document by which handing over of a title deed as security for repayment of a loan is recorded, it will not require stamping because for creation of an equitable mortgage what is necessary is the intention to create such mortgage by depositing the title deed. The intention is manifest from the plain language in the document in question is that as security to the hand loan, mortgage is created. In addition, Section 17 of the Registration Act deals with compulsory registration of documents, which by itself create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in the immovable property. In the case on hand, no such right is created by the document in question, which only refers to a prior transaction and nothing more. Therefore, this Court is of the opinion that emphasis on Section 58 of the Act and Section 17 of the Registration Act is not of much help. The document in question records a prior deposit of a title deed and that by itself it does not create interest in the immovable property and that therefore, it does not require

registration. With regard to the last submission of the learned counsel for respondent No.1/plaintiff regarding forfeiture of the defendants' right to file written statement etc., even though the right of the defendants is nullified and the written statement is not received, still the law permits the defendants to cross-examine the plaintiff's witnesses and also to take steps to deny the case of the plaintiff. The law is well settled on this aspect. Therefore, the objections of the learned counsel for respondent No.1/plaintiff are overruled. This Court, accordingly, comes to a conclusion that the document in question does not, by itself, create any right over any property and hence, it does not require registration under Section 17 of the Act. This Court finds no legal error in the impugned order.

9. The Civil Revision Petition is, therefore, dismissed.

10. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous.

D.V.S.S.SOMAYAJULU, J

10th December, 2018

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