THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.803 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 20.12.2017 passed in O.S.No.217 of 2008 on the file of the Principal Junior Civil Judge at Shadnagar.

2. A perusal of the record reveals that the petitioners herein have filed O.S.No.217 of 2008 on the file of the Principal Junior Civil Judge at Shadnagar against respondent Nos.1 to 10 for declaration and recovery of the suit schedule property. After closure of the petitioners/plaintiffs' side evidence, the respondents herein have filed I.A.No.365 of 2017 to receive the documents. The trial Court allowed the said petition. The petitioners did not challenge the orders passed in I.A.No.365 of 2017 in O.S.No.217 of 2008. When the respondents herein tendered Exs.B.1 to B.11, the petitioners/plaintiffs' counsel raised an objection for marking of Exs.B.1 and B.3. The trial Court marked Exs.B.1 and B.3 subject to objection. Feeling aggrieved by the order of the trial Court, the petitioners/plaintiffs preferred the present revision petition.

3. The predominant contention of the learned counsel for the petitioners is that Exs.B.1 and B.3 are unregistered sale deeds; therefore, they cannot be exhibited for any purpose. The further contention of the learned counsel for the petitioners is that the respondents/defendants are intending to establish their title basing on Exs.B.1 and B.3.

4. *Per contra,* the learned counsel for the respondents submitted that unregistered sale deeds cannot be marked for collateral purpose. He further submitted that the respondents are not placing reliance on the above said documents to establish their title.

5. A perusal of the record reveals that Exs.B.1 and B.3 are unregistered sale deeds dated 12.12.1985. It is the case of the respondents/defendants that they have purchased the property under the above said two sale deeds. It is the further case of the respondents that they have been in possession and enjoyment of the part of the suit schedule property by virtue of Exs.B.1 and B.3 unregistered sale deeds. It is needless to say that Section 17 of the Registration Act mandates the registration of the sale deed.

6. It is a settled principle of law that an unregistered document can be received in evidence for collateral purpose. As seen from the written statement, the respondents/defendants are intending to place reliance on the above said documents to establish their possession over the part of the suit schedule property.

7. In order to substantiate the arguments, the learned counsel for the petitioners is placing reliance on the following decisions:

Vengalapudi Manga v. Paluri Kannabbai[1] 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.

[1] 2013 (5) ALD 170

> 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.

8. This Court is placing reliance on the following decisions:

Vangala Laxmamma vs. Pasham Narsi Reddy[2] 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 Reddy[3] wherein this Court held at Para Nos.30 and 32 as follows:

---

[2] 2010 (3) ALD 382
[3] 2012 (6) ALT 786

> 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 Alumal (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 Alumal (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 Singh[4] 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. As per the principle enunciated in the case cited supra, an unregistered document can be received in evidence to prove the

[4] (2003) 4 SCC 161

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.

10. The respondents/defendants are entitled to place reliance on Exs.B.1 and B.3-unregistered sale deeds to prove their possession over the suit schedule property. However, it is made clear that the respondents are not entitled to place reliance on the above said documents to establish their right or title over the suit schedule property. The trial Court considered the material available on record in right perspective and allowed the respondents to mark the above said documents. I am fully endorsing the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order passed by the trial Court, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

11. In the result, the Civil Revision Petition is dismissed. However, the trial Court is hereby directed to consider Exs.B.1 and B.3-unregistered sale deeds to prove the possession of the respondents and not for establishing their right or title over the suit schedule property. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21.06.2018
Ivd