

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1504 OF 2018

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners - defendants challenging the docket order, dated 09.01.2018, in O.S. No.598 of 2011 passed by the learned II Additional Junior Civil Judge, Kurnool.

2. By virtue of the aforesaid order, the trial Court admitted the un-registered gift settlement deed, dated 19.07.1988, in the suit for injunction to prove the possession overruling the objection raised by the learned counsel for defendants as it was unregistered document and hit by Section 17 of the Registration Act, 1908 (for short 'Act, 1908') and Section 123 of the Transfer of Property Act, 1882 (for short 'Act, 1882'), but, the Court concluded that the unregistered gift/settlement deed can be admitted for collateral purpose and, particularly, to prove the possession of the respondent herein over the suit schedule property, relying on the principle laid down in **Radhomal Alumal v. K.B. Allah Baksh Khan Haji Muhammad Umar¹, K. Ramamoorthi v. C. Surendranatha Reddy² and Pittala Kistaiah v. Ganta Laxmi³**.

3. Aggrieved by the said docket order passed by the trial Court admitting the unregistered gift-settlement deed only for limited

¹. AIR (29) 1942 Sind 27

². 2012 (6) ALD 163

³. 2007 (2) ALD 81

purpose to prove possession in a suit for injunction. The present revision is filed under Article 227 of the Constitution of India raising specific contention that when the document is compulsorily registrable under Section 17 of the Act, 1908 and Section 123 of the Act, 1882, the same cannot be admitted in evidence for any purpose, but erroneously the trial Court concluded that it would fall within proviso to Section 49 of the Act, 1908 and, therefore, the docket order is erroneous on the face of record and requested to set aside the docket order passed by the trial Court.

4. During hearing, learned counsel for the petitioners while reiterating the contentions, placed reliance on two judgments rendered by different learned Single Judges of this Court in **K. Ramamoorthi²** and **Ranga Reddy v. Sadhu Padamma⁴**, and on the strength of the principles laid down in the said judgments, he contended that the document is admissible and the order is contrary to law laid down by this Court.

5. The suit was filed for grant of perpetual injunction by respondent - plaintiff alleging that father of plaintiff and defendants, late Venkatanna purchased the Vadlavandla chenu in an extent of Acs.01.84 cents in S.No.68 pyki including the plaint schedule property among other registered sale deed dated 04.06.1986. Late Y. Venkatanna had four sons, who are plaintiff and defendants and one Y. Vasudevudu, the elder brother of defendants and also blessed with

⁴. 2002 (6) ALD 752

four daughters, who are all married. During life time of Venkatanna, divided the said land into four equal shares allotting Ac.0.46 cents to each and gifted the same to his four sons by executing separate unregistered gift settlement deeds in favour of all sons, dated 19.07.1988 and delivered possession of the same to all sons, the defendants and others also attested the documents executed by their father. Since the date of unregistered gift/settlement deeds, they are in peaceful possession and enjoyment of the property, cultivating the same by raising different crops from time to time without any interruption from any corner, and the name of plaintiff is also mutated in the revenue records, obtained pattadar pass book and title deed from the revenue department and, thus, the plaintiff is claiming to be in possession in pursuance of the unregistered gift deed.

6. The main contention of the petitioners herein is that the unregistered gift settlement deed is inadmissible in evidence as it is compulsorily registrable document under Section 17 (1) of the Act, 1908 and Section 123 of the Act, 1882, but the respondent - plaintiff contended that it is only to prove his possession and not to prove gift/settlement deed executed by his father late Venkatanna in his favour, therefore, it falls within exception under proviso of Section 49 of the Act, 1908, and the trial Court accepted this contention and admitted the document in evidence. Section 49 of the Act, 1908 reads as under:

“49. Effect of non-registration of documents required to be registered-No document required by section 17 or by any

provisions of the Transfer of Property Act, 1882 to be registered shall:

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt; or
- (c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.”

Thus, the first part of the Section relates to the substantive law and that the second part of proviso deals with admissibility in evidence. But, as seen from the proviso, such document is admissible to prove collateral transaction. What is collateral purpose is not defined in the Act, but the Madras High Court in **Panchapagesa Ayyar v. K. Kalyanasundaram Ayyar**⁵, had an occasion to define the word ‘*collateral purpose*’; the Court held that it is difficult to define the word ‘collateral purpose’, but the real purpose can only be gathered from the facts and circumstances of each Case and also vary from case to case. Section 49 of the Act, 1908 makes it clear that a document which is compulsorily registrable, if it is not registered, will not affect the immovable property comprised therein in any manner, and a collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with the

⁵. AIR 1957 Madras 472 (DB)

transaction. In case of arbitration agreement which is valid and separable, the arbitrator can rely upon unregistered document for two purposes; (i) as evidence of contract in a claim for specific performance; (ii) as evidence of any collateral transaction which does not require registration as held in **SMS Tea Estates (P) Ltd. v. Chand Mari Tea Company (P) Ltd.**⁶ Similarly, an unregistered sale deed is admissible in evidence for the collateral purpose to the limited extent of showing possession as held by this Court in **K. Ramamoorthi**² which the learned counsel for the petitioners relied on. The collateral purpose means, any purpose other than one which relates to establishment of title to the property can be treated as collateral as held in **Venugalapudi Manga v. Paluri Kannabai**⁷. Therefore, there is difference between 'Collateral purpose' and 'collateral transaction', and collateral purpose is the purpose which is independent of or devisable from, purpose for which document was executed and of which the law required registration, and the 'collateral transaction' must be independent of, or divisible from, the transaction to which the law require registration. A collateral transaction must be a transaction not itself required to be affected by a registered document, i.e., a transaction creating any right, title or interest in immovable property of the value of one hundred rupees and upwards as held in **K.B. Shah and Sons (P) Ltd. v. Development Construction Ltd.**,⁸. Even an unregistered document can be received in evidence to prove possession since it is 'collateral purpose'. The

⁶. 2011 (14) SCC 66

⁷. 2013 (5) ALD 170

⁸. AIR 2008 SC (Supp.) 850

words 'collateral purpose' means not for the purpose of proving gift in favour of respondent. Therefore, whenever unstamped papers and unregistered documents are presented before the Court, the Court must examine the same cautiously and should not admit them in a routine manner in the name of using them for collateral purpose, but when the document is produced before the Court for limited purpose of proving possession which is collateral to the main transaction, the Court can receive such document in evidence. Therefore, in a suit for injunction, the unregistered document though required to be registered under Section 17 of the Act, 1908, can be received only for limited purpose to prove possession and not for any other purpose. The learned counsel for the petitioners though relied on the judgment of this Court in **K. Ramamoorthi**² which would not help him and, on the other hand, it supports the case of respondent. The other judgment relied on by the learned counsel for the petitioners in **Ranga Reddy**⁴, the Court carved out an exception to Section 17 (1) (a) of the Act, 1908 and concluded that the unregistered document can be received for collateral purpose.

7. Therefore, the order of the trial Court admitting the unregistered document in evidence to prove possession is not an erroneous, warranting interference by this Court exercising power under Section 277 of the Constitution of India and, consequently, the revision is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed, affirming the docket order, dated 09.01.2018, passed by the trial Court in O.S. No.598 of 2011. However, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

October 31, 2018

Mgr

