

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1631 of 2018

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 04.01.2018 passed in I.A.No.38 of 2015 in O.S.No.73 of 2010 on the file of the Court of the II Additional Senior Civil Judge, Mahabubnagar.

2 Heard the learned counsel for both parties.

3 A perusal of the record reveals that the respondent filed O.S.No.73 of 2010 on the file of the Court of the II Additional Senior Civil Judge (FTC), Mahabubnagar against the petitioners for a declaration to declare him as owner of the suit schedule property and recovery of possession. The respondent also claimed mesne profits from the petitioners. After completion of respondent/plaintiff's side evidence, the petitioners/defendants filed the present interlocutory application under Section 65 of the Indian Evidence Act r/w section 151 CPC to receive photo copy of an unregistered sale deed dated 30.11.1994 as secondary evidence. The trial court, after considering the material available on record, dismissed the petition. Hence the present revision.

4 The point that arises for consideration in this Civil Revision Petition is 'whether there is any illegality or irregularity in the impugned order?'

5 The learned counsel for the respondent has drawn the attention of this Court to the decision reported in ***Kiran Bansal v.***

T.Chandra Kala¹ wherein this Court held at para Nos.24, 26 and 27 as under:

24. In J.Yashoda Vs. K.Shobha Rani (2007) 5 S.C.C. 730), the Supreme Court held that secondary evidence as a general rule, is admissible only in the absence of primary evidence and that in order to enable a party to produce secondary evidence it is necessary for the party to prove the existence and execution of the original document. It also held that the conditions laid down in the said section must be fulfilled before secondary evidence can be admitted and the secondary evidence of the contents of a document cannot be admitted, without non-production of the original being first accounted for in such a manner as to bring it within one or the other of the clauses provided for in that Section.

26. In Benga Behera and another Vs. Braja Kishore Nanda and others (2007) 9 S.C.C. 728), the Supreme Court also held that to adduce secondary evidence of a document invoking Section 65 (c) of the Evidence Act, the loss of the original has to be proved beyond all reasonable doubt.

27. Having regard to the above legal position, in the present case, the very existence and execution of the original of the rental agreement dt.10-08-1999 or the original receipt of Rs.9,60,000/-cannot be said to have been established by the petitioner. Also as regards the photo copy of the receipt dt.10-08-1999 for the sum of Rs.9,60,000/-, it cannot be said that the petitioner has been able to establish it's loss beyond reasonable doubt.

6 It is an admitted fact that after closure of respondent/ plaintiff's side evidence, the petitioners filed the I.A.No.38 of 2015 to receive the photo copy of an unregistered sale deed 30.11.1994, under which they claim to have purchased the suit schedule property. It is the further case of the petitioners that basing on the simple sale deed dated 30.11.1994, the revenue authorities issued validation certification under Section 5-A of the ROR Act in their favour. The learned counsel for the petitioners submitted that the respondent filed appeal before the authorities concerned challenging the issuance of 5-A certificate in favour of the petitioners.

¹ 2016 (1) ALD 24 = 2015 (6) ALT 670

7 It is needless to say that while deciding interlocutory applications, the court ought not to have expressed any opinion touching the merits of the main case. It is a settled principle of law that an unregistered sale deed cannot be received and marked in view of Section 17 of the Indian Registration Act. The petitioners are intending to mark the photo copy of the simple sale deed. When the simple sale deed itself cannot be marked in view of the legal embargo, question of marking photo copy of the same does not arise at all.

8 The trial court considered the material available on record in right perspective and arrived at a conclusion that the petition is liable to be dismissed. I am fully endorsing with the findings recorded by the trial court. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, there is no merit in the contention of the petitioners. There is no illegality or irregularity or impropriety in the impugned order, warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India.

9 Accordingly, this Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand dismissed.

T. SUNIL CHOWDARY, J.

Dt: 03.07.2018

Kvsn