

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2973 of 2018

ORDER:

1) The present Civil Revision Petition came to be filed, assailing the docket order, dated 07.02.2018, passed in O.S.No.698 of 2010 on the file of the I Additional Senior Civil Judge, Rajamahendravaram, wherein the objection of the plaintiffs that the document ie., deposit of title deeds letter dated 14.08.2010, which is sought to be marked requires registration, was considered, thereby rejected to receive the same in evidence.

2) Heard learned counsel for the petitioner. In spite of service of notice there is no representation on behalf of the respondents.

3) A perusal of the material on record would show that the respondents/ plaintiffs filed O.S.No.698 of 2010, for specific performance of agreement of sale dated 03.05.2010, directing the defendants 1 to 3 to execute a registered sale deed in favour of the plaintiffs after receiving the balance sale consideration by conveying the plaint schedule property in favour of the plaintiffs, or in alternate to pass a decree for a sum of Rs.4,15,213/- together with subsequent interest thereon with a charge on the plaint schedule property. Written statement came to be filed in the month of April,

2011, denying the averments made in the plaint. During the course of trial, the defendants intend to mark a document styled as deposit of title deeds dated 14.08.2010, which was objected to by the plaintiffs on the ground that the said document requires registration and stamp duty. After hearing both sides, the Court rejected the contention of the defendants and held that the document requires registration as such the same cannot be received in evidence.

4) It is to be noted here that the document styled as deposit of title deeds is a letter dated 14.08.2010. The contents of the document show that the executant deposited the registered sale deed dated 29.02.2010 along with the link documents and also the bank loan discharge receipts, towards security for the amount of Rs.9,00,000/- borrowed by her husband and her mother-in-law. The said letter contains the details of the property which is sought to be deposited.

5) Relying upon the judgment of this Court in *M.Lavanya Dutt v. The Jawaharlal Nehru Technological University, Hyderabad and others*¹ the trial Court accepted the plea of the plaintiffs. The judgment of the Division Bench of Court cited by the Trial Court has no bearing to the facts in issue. It was a case filed by a student, who appeared in B.F.A., X

¹ (1996) 3 ALT 609 (D.B.)

Semester examination and has been declared unsuccessful by the university as she was awarded Zero marks in the external paper, which was challenged in a writ petition.

6) Situation some what identical to the case on hand came up for consideration before this Court in M/s. Siddhi Vegetable Oil Products and Another v. Government of A.P., and others². In the said case, this Court while dealing with Section 59 of the Transfer of Property Act, held that the Transfer of Property Act provides for mortgages of different categories, mentioned in Section 58. One of them relates to deposit of title deeds. As per Section 59 of the Transfer of Property Act, where the principal money secured is one hundred rupees or upwards, a mortgage other than a mortgage by deposit of title deeds can be affected only by a registered instrument signed by the mortgager and attested by two witnesses. Where the principal money secured is less than one hundred rupees, a mortgage may be affected either by a registered instrument signed and attested as aforesaid or except in the case of a simple mortgage by delivery of the property. Hence, it was held that “it is not necessary to execute a registered deed, to bring about a transaction of mortgage by deposit of title deeds.”

² AIR 2007 AP 196

7) Having regard to the circumstances under which the mortgage properties are sought to be sold and to curb the practice, the Government amended Schedule 1-A to the Indian Stamp Act, providing for registration of Memorandum, evidencing deposit of title deeds. Pursuant to which, stamp duty was paid at 0.5% on the value of the transaction subject to a maximum of Rs.50,000/-. Later, basing on the representation made by the Small Scale Industries, the Government issued G.O.Ms.No.316, Revenue (Registration-I) Department, dated 14.03.2006, reducing the stamp duty chargeable under Article 7 (a) and (b) of Schedule 1-A, to Rs.10,000/- in respect of the documents executed by the Small Scale Industries. This Court further held as under:

“As pointed earlier, it is not necessary to execute a registered deed, to bring about a transaction of mortgage by deposit of title deeds. The transaction takes place with the advancement of money and deposit of title deeds. The subsequent execution of a memorandum, confirming deposit of title deeds is a step, over and above the requirement of the transaction of mortgage of that particular category, and would have no bearing upon the existence of the mortgage. In his counter-affidavit, the 2nd respondent pleaded that since the loan was sanctioned, on the basis of deposit of title deeds, and since the transaction is a continuous one, the document must be treated as a mortgage. He does not dispute that the title deeds were already deposited and what is presented before the 3rd respondent is only a Memorandum, evidencing deposit of title deeds.”

8) The judgment of this Court referred to above answered the query raised herein. If it is a case of document creating mortgage the same does not require any registration, however in view of the amendment of the Stamp Act, the petitioner has to pay stamp duty and penalty, if any.

9) Having regard to the above, the Civil Revision Petition is allowed, directing the trial Court to receive the document in accordance with law on payment of stamp duty and penalty.

10) There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.07.2018
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