

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1621 of 2017

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the docket order dated 09.02.2017 passed in O.S.No.154 of 2011 by the Senior Civil Judge, Adoni, admitting unregistered agreement of sale of immovable property in a suit for injunction simpliciter.

The suit was filed before the trial Court for injunction simpliciter based on possession by virtue of unregistered agreement of sale, but the objection raised by the Court that it is inadmissible as it is compulsorily registerable document under Sections 17 and 49 of the Registration Act which debars the Court for receiving such document in evidence.

The trial Court overruled the objection and permitted to mark the same as it is admissible in evidence in a suit for injunction for collateral purpose.

Aggrieved by the said order, the present revision is filed reiterating the objection raised before the trial Court referring to Sections 17 and 49 of the Registration Act.

During hearing, learned counsel for the petitioner/defendant No.1 reiterated the contention urged in the grounds of revision and contended that the Court has to decide whether it is for main purpose or collateral purpose while deciding admissibility of the

document and prayed to set aside the order passed by the trial Court.

Learned counsel for the respondents/plaintiffs supported the order passed by the trial Court in all respects and prayed to dismiss the revision.

As seen from the material on record, the suit was filed for permanent injunction alleging that the plaintiffs purchased the property under agreement of sale dated 22.04.2010 since then they are in possession and enjoyment of the property. The possession of the property is based on agreement of sale; the maintainability of the suit for injunction simpliciter is not in dispute before this Court in the present revision. However, admissibility of the document is in question. In view of specific objection as to the admissibility of document as per bar under Section 49 of the Registration Act, it is apposite to extract the Section 49 of the Registration Act for better appreciation.

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**¹”, 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 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**²” Similarly, an unregistered sale deed is admissible in evidence for the collateral purpose to the

¹. AIR 1957 Madras 472 (DB)

². 2011 (14) SCC 66

limited extent of showing possession as held by this Court in **“K. Ramamoorthi v. C. Surendranatha Reddy”**³. 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”**⁴. 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.”**⁵. Even an unregistered document can be received in evidence to prove possession since it is ‘collateral purpose’. The words ‘collateral purpose’ means not for the purpose of proving sale 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

³. 2012 (6) ALD 163

⁴. 2013 (5) ALD 170

⁵. AIR 2008 SC (Supp.) 850

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. In “**Ranga Reddy v. Sadhu Padamma**”⁶, this 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.

Therefore, the order of the trial Court admitting the unregistered document in evidence to prove possession is not erroneous, warranting interference by this Court exercising power under Article 227 of the Constitution of India and, consequently, the revision is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. However, it is left open to the petitioner herein to raise all contentions with regard to delivery of possession etc. at the end of trial and also entitled to raise any other contention permissible under law. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.11.2018
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⁶. 2002 (6) ALD 752