THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2266 OF 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the defendants 1 to 3 having been aggrieved of the intermediary order, dated 20.02.2018, of the learned Senior Civil Judge, Kandukur, passed in O.S.No.25 of 2011.

2. I have heard the submissions of *Sri M. Ravindra*, learned counsel for the petitioners, and of *Sri I. Koti Reddy*, learned counsel for respondent No.1 – plaintiff. I have perused the material record.

3. The facts that are necessary to be stated as a prelude to this order, in brief, are as follows: - 'In a suit for partition, which is being resisted by the contesting defendants, including the petitioners herein, during the course of trial, on the side of the plaintiff, a document, dated 29.11.2009 (hereinafter referred to as 'the subject document'), was tendered for being marked as an exhibit. An objection was raised on behalf of the petitioners – defendants 1 to 3 for marking the subject document on the grounds that it is chargeable with duty and that it is not sufficiently stamped and that it is compulsorily registerable. The trial Court having examined the contents of the subject document and having regard to the settled legal position that the name/caption given to a document is not a determinative factor and that the aspect as to whether the document is chargeable with duty and is compulsorily registerable has to be determined having regard to the transaction embodied in the document, came to a conclusion that the subject document is required to be stamped and is chargeable with duty and is compulsorily registerable. The trial Court, however, held that the subject document, though not registered, can be admitted for collateral purpose, provided the stamp duty and penalty are paid and collected. Aggrieved thereof, the defendants 1 to 3 filed the present revision petition.'

4. Be it noted that section 49 of the Indian Registration Act, 1908, deals with the effect of the non-registration of the documents required to be registered. The proviso appended to Section 49 of the said Act reads as under:-

> ***"Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 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 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."***

A plain reading of the above proviso shows that an unregistered document affecting immovable property and required by the Act to be registered may be received as evidence of any collateral transaction not required to be effected by a registered instrument. But, as rightly contended by the learned counsel appearing for the petitioners – defendants 1 to 3, even when a original document is tendered for being marked for collateral purpose, either it should be duly stamped or the duty & penalty, if any, payable shall be paid and collected before according permission for admitting the document in evidence for collateral purpose. Unless the document is sufficiently stamped or stamp duty & penalty, payable are paid, an unregistered document cannot be admitted in evidence even for collateral purpose. In the decision in the case of ***Avinash Kumar Chauhan v. Vijay Krishna Mishra***[1], the Supreme Court referred to the following ratio in the decision in the case of ***T. Bhaskar Rao vs. T. Gabriel and other***[2].

> **"It is now well settled that there is no prohibition under section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under section 35 of the Stamp Act."**

5. However, in the impugned order itself, the trial Court observed that the subject document can be marked in evidence for collateral purpose after the stamp duty and penalty are paid.

6. In that view of the matter and in view of the settled legal position, this Court is of the considered view that this revision petition can be disposed of with necessary observations, while confirming the order impugned.

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[1] 2009 (1) ALD 109 (SC)
[2] AIR 1981 AP 175

7. In the result, the Civil Revision Petition is disposed of confirming the order impugned. Accordingly, it is made clear that the respondent/plaintiff is at liberty to pay the required stamp duty and penalty, if any, payable on the subject document and then make a request to the trial Court for permission to exhibit the same for collateral purpose, i.e., for consideration as evidence of any collateral transaction not required to be affected by registered instrument, i.e., for the purpose other than the main purpose as contemplated under law. In such a case, it is needless to state that the trial Court shall give an opportunity of hearing to the revision petitioners – defendants 1 to 3 before considering the said request of the respondent/plaintiff.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

August 09, 2018
MD