

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.2729 of 2018

ORDER:

Aggrieved by the refusal of the Court below to allow her to mark an agreement of sale as an exhibit, the plaintiff in a suit for declaration and injunction has come up with the above revision.

2. Heard Mr. R. Srikanth, learned counsel for the revision petitioner and Sri P. Prabhakara Rao, learned counsel for the respondents.

3. The petitioner herein originally filed a suit for a bare injunction. Subsequently, she included a prayer for a declaration that she is the absolute owner and in possession and enjoyment of the suit property. Her entire claim was based upon a possessory agreement of sale.

4. When the matter was taken up for trial, the petitioner sought for the appointment of an Advocate Commissioner for recording her evidence due to ill-health. The application was allowed.

5. When an attempt was made by the petitioner to mark the possessory agreement of sale as an exhibit, the learned counsel for the defendants raised an objection. Therefore, the learned Advocate Commissioner filed a memo seeking clarification. On the memo, the Court below passed an order directing the Advocate Commissioner to mark all other documents except the possessory agreement of sale on the ground that it was an unregistered document. Aggrieved by the said order, the plaintiff has come up with the above revision.

6. The main contention of the petitioner is that though the possessory agreement of sale was originally inadequately stamped, the said defect was overcome and sufficient stamp duty was paid. The District Registrar, Vijayawada, also made an endorsement on the reverse of the first page of the agreement that the document was duly stamped.

7. But the document is nevertheless unregistered. Therefore, in view of Section 49 of the Indian Registration Act, the trial Court refused to permit the document to be registered.

8. The contention of the learned counsel for the petitioner is that the defect on account of insufficient stamping having already been rectified, the document could be marked at least for a collateral purpose. Drawing my attention to the judgment of the Supreme Court in **Yellapu Uma Maheswari v. Buddha Jagadheeswararao**¹, it is contended by the learned counsel for the revision petitioner that though an unstamped instrument is inadmissible in evidence even for collateral purposes, an unregistered document can be relied upon for collateral purposes.

9. I have absolutely no difficulty in accepting the said contention. But the purpose for which the petitioner is seeking to mark this document in exhibit, cannot be termed as a collateral purpose. The reliefs sought in the suit are as follows:

“The plaintiff therefore prays that the Hon’ble Court may be pleased to pass a decree and judgment in favour of plaintiff and against the defendants for:

¹ 2016 (1) ALD 40 (SC)

- a) for a possessory declaration that the plaintiff is absolute owner and she is in possession and enjoyment of an extent of 100.44 sq.yds. of site along with tiled portion;
- b) consequential relief of permanent injunction restraining the defendants, their men, agents, relatives, from ever interfering with the peaceful possession and enjoyment of the plaintiff in the plaint schedule property in any manner whatsoever,
- c) award costs of the suit proceedings.

10. The only claim of the petitioner in her suit is that she came into possession of the property by virtue of the possessory agreement of sale and that therefore, she is entitled to a declaration and injunction. In other words, the possessory agreement of sale is the lifeline of the very case of the plaintiff. If so, I do not know how the petitioner can contend that she is relying upon the document for a collateral purpose. The petitioner is actually relying upon the document for the main purpose of establishing her possession as well as right to title. Hence, the Court below was right in refusing to allow the petitioner to mark the document as an exhibit.

11. I see no reason to interfere with the order of the trial Court. Hence, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 02-05-2018

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