HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.3150 OF 2013

ORDER:

Heard Mr.P.V.Srinivasa Rao for revision petitioners and Mr.Chandraiah Sunkera for respondent No.1.

Defendants 1 and 3 in O.S.No.68 of 2008 in the Court of Senior Civil Judge, Sircilla are the revision petitioners. The 1st respondent filed O.S.No.68 of 2008 for declaration that the registered sale deed document No.2645/2006 dated 11.08.2006 executed by plaintiff in favour of defendants/revision petitioners 1 and 2 and 2nd respondent herein as null and void.

The CRP is directed against the docket order dated 25.06.2012 overruling the objections raised against the document dated 11.08.2006 relied on by the 1st respondent.

For the purpose of appreciating the objection in fact, and legal effect on this objection, the averments in the plaint and the written statement are briefly adverted to .

The 1st respondent alleges that he is the owner and possessor of agricultural land of 0.05½ gts. in Survey No.29, 0-19½ gts. in Survey No.30, 0-29gts. in Survey No.35, 0-26½ gts. in Survey No.36, Acs.2-35 gts. in Survey No.1135 and 0-32 gts. in Survey No.1136 at Repaka Village, Ellanthakunta Mandal, Karimnagar District. The total extent of these survey numbers is Acs.5-27 ½ gts.

The 1st respondent alleges that on negotiations held between the parties, agreed to sell the suit land in favour of respondent No.2 herein and petitioners. The total sale consideration agreed was Rs.2,45,000/-. On 11.08.2006, the 2nd respondent called the 1st respondent for registration, however, paid Rs.1,00,000/- and for the balance amount of Rs.1,45,000/-, the 2nd respondent executed a deed and promised to pay Rs.1,45,000/- within six months from 11.08.2006. In default of paying Rs.1,45,000/-, it is averred that the 1st respondent has right to cancel the registered sale deed dated 11.08.2006.

The revision petitioners admit the registration of sale deed dated 11.08.2006 document No.2645/2006 and dispute that the 1st respondent merely received Rs.1,00,000/- instead of Rs.2,45,000/- total sale consideration and that a deed was executed agreeing to pay Rs.1,45,000/- within six months from 11.08.2006. The revision petitioners and 2nd respondent in all fours denied the execution of deed dated 11.08.2006 and also that the deed is illegal and unenforceable in law.

The 1st respondent is adducing evidence and at that stage the document dated 11.08.2006 is sought to be marked as one of the exhibits. The revision petitioners objected to admitting the deed dated 11.08.2006 in evidence and the trial Court through the order under revision overruled the objection. Hence, the C.R.P.

Deed dated 11.08.2006 reads thus:

"సరియగు తేదీ 11-08-2006 రోజున సింగిరెడ్డి రమణారెడ్డి S/O రాజిరెడ్డి గ్రామము రేపాక, మండలము ఇల్లంతకుంట, జిల్లా కరీంనగర్ గారికి అరువ మోహన్ రెడ్డి S/O పాపి రెడ్డి, ఇంటి నం.17-18/6, సాయిరాంనగర్, ఉప్పల్, హైదరాబాద్ గారు సబ్-రిజిస్ట్రార్ కార్యాలయము సిరిసిల్ల ఆవరణలో వ్రాయించి ఇచ్చిన కాగితము ఏమనగా, మీరు మీ పేర రేపాక గ్రామము లో ఉన్న వ్యవసాయ భూములు సర్వే నం 29,30,35,36,1135,1136 లో గల వాటిని నా పేర మరియు పాక్కులూరి బావా నారాయణ, కడప స్వరూప పేరున రూపాయలు 2,45,000/- లకు విక్రయించి రిజిస్ట్రేషన్ చేయడానికి అంగీకరించినారు. అందులకుగాను నేను రూ.లు 1,00,000/-(అక్షరాల ఒక లక్ష రూపాయలు) నగదుగా మీకు ఇచ్చాను. మిగతా రూ.లు 1,45,000/- (అక్షరాల ఒక లక్ష నలుబది ఐదు వేల రూపాయలు) ఈరోజు నుండి 6 నెలల రోజులలోగా మీకు చెల్లించి నా కాగితము నేను వాపసు తీసుకోనగలను, లేని యెడల మీరు ఈరోజు చేసే రిజిస్ట్రేషన్ రద్దు చేసుకొని, భూమిని స్వాధీనము చేసుకోగలరు. ఇది నా ఇష్టపూర్వకముగా వ్రాయించి ఇచ్చిన దస్తావేజు సహి."

Mr.Srinivasa Rao contends that the order impugned in the revision does not distinguish the objection available under the Stamp Act and the Registration Act. The payment of deficit stamp duty, according to him at best cures defect under Indian Stamp Act. A document, if is otherwise compulsorily registerable under Section 17 of the Registration Act, admitting or receiving the document and marking an exhibit is contrary to Section 17 and Section 49 of the Registration Act. He contends that on 11.08.2006, respondent executed registered sale deed in favour of revision petitioners and the 2nd respondent. The registered sale deed refers to payment of full consideration etc. Thus in law the registered sale deed dated 11.08.2006, for all purposes completes the transaction of sale and purchase between the parties. The unregistered deed dated 11.08.2006 now purports to cancel the right created through registered deed dated 11.08.2006 and confers right of cancellation in favour of 1st respondent. According to him, the recitals in unregistered deed dated 11.08.2006 are contrary to recitals in a registered deed, and purport to affect right of revision petitioners in immovable property worth beyond Rs.100/- and such document is compulsorily registered for admission as evidence. In support of his submission, he places reliance on Sunil Kumar Roy v. Bhowra Kankanee Collieries Ltd.[1], Raghunath v. Kedarnath[2], Abdul Majeed v. Yadram Suresh[3] and Grandhi Padmanabham v. Nagula Kanaka Venkata Madhusudhana Rao[4] and Shyam Narayan Prasad v. Krishna Prasad[5] and he prays for setting aside the docket order by allowing the CRP.

Mr.Chandraiah contends that the deed dated 11.08.2006 does not require registration as the deed by itself does not create or extinguish the right created under registered document No.2645/2006. He does not dispute the ratio in the decisions relied on by the revision petitioners, but contends that those decisions are not applicable to the facts and circumstances of this case.

I have taken note of the submissions made by the counsel appearing for the parties and perused the record. Let

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[1] AIR 1971 SC 751
[2] AIR 1969 SC 1316
[3] 2001 (2) ALT 417
[4] 1996 (2) Andhra Weekly Reporter 104 (DB)
[5] (2018) 7 SCC 646

me construe the effect of unregistered deed dated 11.08.2006 before actually applying the ratio in the decisions relied on by petitioners. The deed dated 11.08.2006 was stated to have been executed by 2nd defendant/2nd respondent herein, whereas the registered document No.2645/2006 stands in favour of the revision petitioners and the 2nd respondent. The 1st respondent contends that the non-payment of full sale consideration is recorded in unregistered deed and the amount of Rs.1,45,000/-, if is not paid within six months from 11.08.2006, the 2nd respondent declared that the registered sale deed dated 11.08.2006 be cancelled and possession of the land resumed. The emphasis laid by Mr.Chandraiah on unregistered deed dated 11.08.2006 is that on account of non-performance of alleged understanding between the respondents herein the legal effect of sale effected through registered document No.2645/2006 is cancelled, rescinded or recalled. This Court after carefully perusing the obligation undertaken by 2nd respondent through unregistered deed dated 11.08.2006 and the fallout of such non-performance, is of the view that the unregistered deed dated 11.08.2006 affects, recalls or cancels the right created in immovable property through registered deed No. 2645/2006. The question on the applicability of Section 17 and the necessity of execution of registered document etc. in affecting rights in immovable property is no more *res integra*. This Court merely refers to the binding precedents, before concluding the point under deliberation.

In Sunil Kumar Roy case (supra 1), it is held as under:

> "No attempt was made by Mr. Sen to persuade us to reverse this conclusion. Even on the assumption that a mutual arrangement or agreement as evidenced by Exh. A-4 was arrived at between the appellant and the Eastern Coal Co. Ltd. we are unable to agree that any reduction in the rate of royalty could have been effected by means of Exh A-4 which had not been registered under the provisions of the Indian Registration Act. It is well settled by now that a document which varies the essential terms of the existing registered lease, such as the amount of rent, must be registered : See Durga Prasad Singh v. Rajendra Narain Bagchi (1910) ILR 37 Cal 293 which was approved by the Full Bench in Lalit Mohan Ghosh v. Gopal Chuck Coal Company Ltd.(1912) ILR 39 Cal.284 (FB) (2) . The decision of the Madras High Court in Obai Gounden v. Ramalinga Ayyar(1899) ILR 22 Mad 217, taking a contrary view has not been followed by the High Courts in India and the consistent view that has been taken is that registration ,of an agreement is necessary which reduces the rent of an existing registered lease : See Mulla on Indian Registration Act, 7th Edn. pp. 75-76.

In Raghunath case (supra 2), it held as under:

> Section 4 of the Transfer of Property Act states "The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Registration Act, 1872.
>
> And Ss. 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908". Section 54 of the Transfer of Property Act reads " "Sale" is a transfer of ownership in exchange for a price paid or promised or part- paid and part-promised.
>
> Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in

the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property".

Section 17 of the Registration Act states:

"17. (1) The following documents shall be registered if the property to which they relate is situate in a district in which, and, if they have been executed on or after the date on which, Act No. XVI of 1864 or the Indian Registration Act, 1866 or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

(a) instrument of gift of immoveable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

(c)non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent;.

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards-, to or in immoveable property".

Section 49 of the Registration Act prior to its amendment in 1929 read :

"No document required by section 17 to be registered shall-

(a)affect any immoveable 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".

By section 10 of the Transfer. of Property (Amendment) Supplementary Act, 1929, section 49 was amended as follows.-

"No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall-

(a)affect any immoveable 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 immoveable 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 11 of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be affected by registered instrument".

The inclusion of the words "by any provision of the Transfer of Property Act, 1882" by the Amending Act, 1929 settled the doubt entertained as to whether the documents of which the registration was compulsory under the Transfer of Property Act, but not under section 17 of the Registration Act were affected by section 49 of the Registration Act. Section 4 of the Transfer of Property Act enacts that "sections 54, paragraphs, 2 and 3, 59 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908". It was previously supposed that the effect of this section was merely to add to the list 'of documents of which the registration was compulsory and not to include them in section 17 so as to bring them within the scope of section 49. This was the view taken by the Full Bench of the Allahabad High Court in Sohan Lal's case, ILR 50 All 986= (AIR 1928 All 726 (FB) (supra). The same view was expressed in a Madras Case Rama Sahu v. Gowro Ratho, ILR 44 Mad 55=(AIR 1921 Mad 337 (FB) and by MacLeod C.J. in a Bombay case Dawal v. Dharma, ILR 41 Bom 550= (AIR 1917 Bom.203). We are however absolved in the present case from examining the correctness of these decisions. For these decisions have been superseded by subsequent legislation i.e. by the enactment of Act 21 of 1929 which by inserting in section 49 of the Registration Act the words "or by any provision of the Transfer of Property Act, 1882" has made it clear that the documents in the supplemental list i.e. the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act fall within the scope of section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction affecting any immoveable property comprised therein, and do not affect any such inmmovable property. We are accordingly of the opinion that Ex. A-26 being unregistered is not admissible <u>in evidence. In our opinion, Mr. Sinha is unable to make good his argument on this aspect of the case</u>.

In Abdul Majeed case (supra 3), it is held as under:

"The question of any further transfer or relinquishment is not there but it only records the non-existence of any such right and, therefore, there being no creation or extinction of any right, title or interest, the provisions of

> Section 17 of the Registration Act are not attracted. However, it has to be seen that if a transaction is entered into with a vendor, who himself has already parted with the property, no doubt no title would pass and if any such vendee tries to rely on such document, it can safely be held that the said vendee did not get any title. However, when there is an admission of non-existence of any such right or giving up claim in pursuance of the sale deed, which though did not confer any title, more so on receipt of consideration as pointed out under the document, it certainly reiterates, reasserts that such executant had no right title or interest which only results into the relinquishment or release of the rights in whatever form. In view of the same, for the purpose of Section 17 of the Registration Act, a document which purports to create, declare, assign, limit or extinguish any right title or interest requires registration even though the executant had no title. Therefore, the said document needs to be registered and properly stamped. It cannot be said that it is only an assertion or reiteration or declaration of a fact, which does not in any way affect any right title or interest. However, once a document is sought to be executed with such reiteration or even a declaration, it certainly touches upon creation, declaration and assignment limiting or extinguishing whatever right title or interest whether valid or invalid. In view of the very terms as such, it can in no circumstances be said that the said document is an agreement falling under Articles 5 and 6 of the Stamp Act. I am also fortified in this view of mine by the decision of a Division Bench of the Lahore High Court in Abdul Rahman v. Gurdit Singh wherein while considering the provisions of Sections 17 and 49 of the Registration Act, it was held that a document which purports to declare that the executants held no title in the house and have relinquished their action, requires registration and if unregistered is inadmissible in evidence.

In Grandhi Padmanabham case (supra 4), it is held as under:

11. In view of the above, the important question that arises for consideration is:

"Whether an agreement, which abridges the absolute right created under a registered gift deed and creates a right in favour of the donor to revoke the gift deed on the failure of the donee paying the maintenance, requires registration or is exempted under sec.17(2)(v) of the Registration Act?

12. The facts which are proved from the material evidence on record are that the second defendant executed a gift deed on 15-9-1966, Ex.A.2, in favour of the appellant-plaintiff and the third defendant gifting certain properties including the suit house. On 15-9-1966, the appellant executed an agreement, Ex.B-1, in favour of the second defendant agreeing to pay monthly maintenance of Rs.200/- and also assuring that for recovery of maintenance the second defendant can proceed against his properties and in case he (appellant) fails to fulfill the conditions regarding payment of maintenance, the second defendant can cancel or revoke the gift deed. Section 123 of the Transfer of Property Act says that for the purpose of making gift of immovable property worth more than Rs.100/-, the transfer must be effected by a registered instrument singed by or on behalf of the donor and attested by at least two witnesses. Thus, the transfer of gifted immovable property, must be effected only by way of a registered instrument. Section 126 of the Transfer of Property Act provides that the donor and donee may agree that on the happening of any specified event, which does not depend on the will of the donor, a gift shall be suspended or revoked. It further provides that the gift, which the parties agree, shall be revocable wholly or in part at the mere will of the donor, is void wholly or in part, as the case may be. Thus, the donor and the donee can agree for revocation of gift deed and the condition to revoke the gift deed can be incorporated in the gift deed deed itself. Where the property is transferred by a registered gift deed with a condition of revocation, the property is said to be transferred to the donee subject to condition of revocation mentioned in the gift deed. Where the property is transferred under a registered gift deed without any condition of revocation,

absolute rights in the property will be transferred to the donee from the donor and the donor will have neither the right to revoke the gift deed nor to deal with the property in any way. Once the gift is completed, then the absolute rights are conferred on the donee. In the present case, there is no condition in the gift deed, Ex.A-2, that the donor has a right to revoke the gift deed on the failure of payment of maintenance amount by the donee. On the other hand, it is stated that the gift deed is executed with the free will and volition of the donor. Under Ex.A-2, gift deed, all the rights stood transferred to the appellant-donee. On the same day, the agreement (Ex.B-1) was executed separately by virtue of which a right is created in favour of the donor-second defendant by the donee-appellant to revoke the gift deed in case the donee fails to pay the maintenance amount. Thus, the agreement (Ex.B-1) altered the rights created under the gift deed (Ex.A-2) in favour of the appellant. According to Sec.17(1)(b) of the Registration Act, the document which creates, declares, assigns, limits or extinguishes, any right, title or interest to or in immovable property, requires registration. Section 17(2)(v) reads:

"(2) Nothing in clause (b) and (c) of sub-section (1) applies to-

(i) xxxx xxxx

(ii) xxxx xxxx

(iii) xxxx xxxx

(iv) xxxx xxxx

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or"

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The decisions of the Privy Council and the Supreme Court in Tika Ram's case and Kashinath Bhaskar's case respectively, vividly lay down; (i) Where an agreement, though simultaneously executed along with a registered document, which creates, extinguishes, reduces or diminishes the right conferred by the earlier registered document, requires registration, and (ii) Where an agreement, which simply creates a right to obtain another document without altering, limiting, extinguishing the rights conferred by the earlier document and contemplates execution of another document whereunder rights are conferred, does not require registration and is exempted under Sec.17(2) (v) of the Registration Act."

In Shyam Narayan Prasad case (supra 5), it is held as follows:

"Section 49 of the Registration Act, 1908 provides for the effect of non-registration of the document, which is as under:

"49. **Effect of non-registration of documents required to be registered**:- No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 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:"

"Section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Registration Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Registration Act. Since, the deed of exchange has the effect of creating and taking away the rights in respect of an immovable property, namely, RCC building, it requires registration under Section 17. Since the deed of exchange has not been registered, it cannot be taken into account to the extent of the transfer of an immovable property."

After considering and applying the binding precedent to the question whether the recitals of deed dated 11.08.2006 require registration or not, this Court holds that the unregistered document cancels the transfer created through registered sale deed dated 11.08.2006 and the value of which is more than Rs.100/- in immovable property, the deed dated 11.08.2006 cannot be received in evidence unless registered and accordingly the document dated 11.08.2006 for want of registration cannot and could not be received in evidence even if the document has been impounded at the instance of 1st respondent. The order impugned in the CRP for the above reasons is set aside. The CRP is allowed. The trial Court considers and disposes of the suit as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order. The parties, if do not cooperate in completing the suit within the time stipulated by this Court, the learned trial Judge is given liberty to record reasons and proceed in the matter in accordance with law.

No order as to costs.

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

S.V.BHATT, J

Date:28.08.2018

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