

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.3263 OF 2018

ORDER

The petitioners are the defendants in O.S.No.848 of 2006 on the file of the learned V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. They are aggrieved by the Docket Order dated 06.03.2018 passed therein rejecting their objections raised, *vide* Memo bearing SR No.1440 of 2017, as to the marking of certain unregistered documents by the respondents-plaintiffs for collateral purposes.

Heard Sri Shyam S. Agarwal, learned counsel for the petitioners-defendants, and Sri Parsa Ananth Nageswara Rao, learned counsel the respondents-plaintiffs.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.848 of 2006 was filed by the plaintiffs seeking declaration of their title over the suit schedule property, being the lands admeasuring Acs.4.00 guntas in Sy.No.300 and Acs.10.20 guntas in Sy.No.301 of Gundla Pochampalli Village, Medchal Mandal, Ranga Reddy District, and for costs. While so, the plaintiffs sought to rely upon an unregistered sale deed dated 11.02.1968 and an unregistered release deed dated 18.07.1985. The defendants objected to the marking of these documents on the ground that they were compulsorily registrable under Section 17 of the Registration Act, 1908 (*for brevity*, 'the Act of 1908'). According to the plaintiffs, these documents were necessary to prove their actual possession over the suit schedule property. It is not in dispute that these documents were impounded for payment of deficit stamp duty and the same was duly collected. The plaintiffs claimed that they could therefore be looked into for collateral purposes as per Section 49 of the Act of 1908. The trial Court thereupon

took note of the fact that requisite stamp duty along with penalty had been paid upon these unregistered documents and held that notwithstanding the fact that they did not comply with the provisions of Section 17 of the Act of 1908, they could be admitted in evidence for limited collateral purposes. The objections raised by the defendants, *vide* their Memo in SR No.1440 of 2017, were accordingly disposed of keeping open the objection raised by them on the issue of inadmissibility of these documents for want of registration.

The procedure adopted by the trial Court was in conformity with that suggested by the Supreme Court in *BIPIN SHANTILAL PANCHAL V/ s. STATE OF GUJARAT*¹. Therein, the Supreme Court observed that whenever an objection is raised during evidence as to the admissibility of any material or item of evidence, the trial Court can make a note of such objection and mark the document tentatively as an exhibit in the case or record the objected part of the oral evidence, subject to such objections being decided at the last stage in the final judgment. The Supreme Court however added the caveat that if the objection related to deficiency of stamp duty payable on a document, the trial Court would have to decide the said objection before proceeding further.

It is fairly well settled that the *proviso* to Section 49 of the Act of 1908 permits an unregistered document to be received either as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction, not required to be effected by a registered instrument.

Dealing with the admissibility of an unregistered sale deed in a suit for declaration and consequential permanent injunction, a learned Judge of this Court in *CHIKKALA RAMULU V/ s. VADDADI ATCHIYAMMA*² observed that once Section 49 of the Act of 1908 permitted admission in evidence of

¹ AIR 2001 SC 1158

² 2016 (6) ALD 583

an unregistered document which is compulsorily registrable for collateral purposes, it would be premature for this Court to determine what that collateral purpose should be. The learned Judge further observed that an unregistered sale deed could be admitted for the collateral purpose of proving actual physical possession but not the character of such possession.

This Court is in respectful agreement with the view expressed in the above decision. The trial Court would therefore have to be mindful of this distinction. When the plaintiffs seek to rely upon the unregistered documents in question in the context of their possession, the character of their possession as emanating from such documents cannot be categorized as a collateral purpose but only the factum of actual physical possession can be proved through such documents, if they contain suitable recitals.

Subject to the above clarification, this Court finds no grounds to interfere with the order under revision.

The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

20th SEPTEMBER, 2018

Svv