

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.2017 of 2014

ORDER:

Heard Mr.T.Sujan Kumar for revision petitioner. No representation for respondents, in spite of service of notice.

The application filed under Order 7 Rule 14 of Code of Civil Procedure (CPC) for leave of the Court to receive the documents dated 16.07.1979 is rejected by the trial Court. Hence, the Civil Revision Petition.

Mr.Sujan Kumar contends that the trial Court refused the prayer on an erroneous assumption that there is no foundation in the plaint on deed dated 16.07.1979. To point out the error committed by the trial Court, he refers to paragraph 2 of the plaint. Therefore, he contends that the very basis for the order under Revision is unsustainable and that the effort of the revision petitioner is relied on deed dated 16.07.1979 to prove possession i.e., for collateral purpose.

The contention is noted and this Court is of the view that the revision petitioner seeks leave to introduce a Photostat copy. The said Photostat copy as per the description stated, is unstamped and unregistered. The trial Court has considered each one of the deficiencies in the document including the custody of it is not stated by the revision petitioner. The reasoning given by the trial Court reads thus:

“Point: At the very outset, it must be mentioned that document is unregistered sale deed Dt:16-7-1979.

Therefore, as per Section 17 of Registration Act, such sale deed must be registered. On failure of such registration as mandated by the Act, the Court can not receive the document. It must be mentioned here that, defect of deficit stamp duty is curable in nature as such document may be impounded and deficit stamp duty may be collected. But when defect is with registration of document, such defect is incurable and party relying of such document can not bring it in evidence.

Further, the unregistered sale deed Dt:16-7-1979 is not original but is photocopy. As such same can not be received as bar appear in S.63 of Indian Evidence Act. It is admitted fact the photocopy is not primary document as defined in Section 62 of Indian Evidence Act, therefore such photocopy fall into category of secondary evidence. In order to fall under the category of secondary evidence, such document must be the copies made from the original by mechanical process which in themselves, ensure the accuracy of the copy, and copies compared with such copies or copies made from or compared with the original. In the present case, the photocopy of unregistered sale deed Dt:16-7-1979 is sought to be received in evidence on behalf of petitioner/plaintiff, this is not permissible as per Indian Evidence Act.

It is further pleaded in the petition that the unregistered sale deed Dt.16-7-1979 can be received in evidence for collateral purpose as per proviso to section 19 of Registration Act. The term collateral refer to an transaction that is not connected to the main transaction but it support the main transaction. In the present case, petitioner/plaintiff filed suit for declaration, the document ie/. Photocopy of unregistered sale deed Dt:16-7-1979 is said to be a document whereby petitioner/plaintiff's vendor got title to the suit

property. Therefore, the said document can be treated as link document to the title document of petitioner/plaintiff as such it will not fall within the ambit of collateral purpose as pleaded by petitioner/plaintiff.

The respondent in the counter has rightly raised objection on the ground that petitioner/plaintiff did not plead about the existence o photocopy of unregistered sale deed Dt.16-7-1979 in the plaint. It is the cardinal rule of evidence, that “plead first and lead next” without pleading a fact, evidence can not be lead to prove such fact, and any exercise in proving such fact would end in futility.”

This Court, after carefully going through the record and the reasons excerpted above is of the view that there is no merit in the Civil Revision Petition.

Hence, the Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

The trial Court considers and disposes of the suit as expeditiously as possible, preferably within a period of two months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 11.10.2018
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