HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No. 3301 OF 2012

ORDER:

1. This Civil Revision Petition is preferred against the docket order dated 28.03.2012 passed in O.S.269 of 2008 on the file of Principal Junior Civil Judge-cum-V Metropolitan Magistrate, Medchal, Ranga Reddy District.

2. The trial Court by impugned docket order dated 28.03.2012 having considered the oral submissions of both the parties and case laws relied on by them with regard to admissibility of the document, observed and ordered " *In a suit for bare injunction simplicitor, there is no need for the Court to investigate into the title of plaintiff and what all required is possession. As per unregistered sale deed, the defendant alienated the property to the plaintiff in the year 2000 after receiving sale consideration and possession was delivered. Only for proving the possession, the unregistered sale deed can be looked into for collateral purpose. Accordingly the said document can be received in evidence*"

3. The contention of the petitioner/first defendant is that the unregistered sale deed dated 12.05.2000 sought to be marked in evidence by the first respondent/plaintiff for collateral purpose to show possession requires to be compulsorily registerable and liable for stamp duty and penalty. Without stamp duty and penalty, it cannot be received in evidence even for collateral purpose.

4. Though this matter is listed under the caption 'for orders' today, none appeared for the first respondent/plaintiff nor is made representation on his behalf. In the circumstances, this Court has no option except to dispose of the matter on merits based on the material available on record.

5. Now the point that arises for determination is:

" Whether the unregistered sale deed dated 12.05.2000 can be received in evidence for collateral purpose without paying stamp duty and penalty ?"

6. The first respondent/plaintiff filed suit in O.S.No.269 of 2008 for perpetual injunction claiming his legal possession under the unregistered sale deed dated 12.05.2000. The sale deed is engrossed on Rs.100/- stamp paper and notarized.

7. It is not in dispute that the alleged sale deed was executed by the petitioner/first defendant and possession was also delivered to the first respondent/plaintiff as on the date of execution of the sale deed. The first respondent/plaintiff intends to mark the said notarized and unregistered sale deed which was engrossed on Rs.100/- stamp paper. The trial Court considering the same passed the impugned docket order finding that the petitioner/first defendant having received the entire sale consideration from the first respondent/plaintiff executed the sale

deed on Rs.100/- stamp paper and delivered the possession of the suit schedule property and that said unregistered sale deed can be looked into for collateral purpose. Accordingly the trial Court ordered to receive the said unregistered sale deed in evidence.

8. In the case relied on by the petitioner/first defendant in ***ABDUL MAJEED Vs. YADRAM SURESH AND ANOTHER*** {2001(2)ALD 525} this Court held that for the purpose of Section 17 of the Registration Act, a document which purports to create, declare, assign, limit or extinguish any right tile or interest requires registration even though the execution had no title and that the said document needs to be registered and properly stamped.

In the case of ***CHIKKALA RAMULU Vs. VADDADI ATCHIYAMMA AND ORS*** {2017 (3) ALT 7166} it was held that when a suit was filed for permanent injunction and declaration with consequential relief of injunction based on unregistered sale agreement, such unregistered sale agreement is admissible either for part performance of the contract or as to nature of possession. Similarly in ***K. RAMAMOORTHI Vs. C. SURENDRANATHA REDDY*** {2012 (6) ALD 163} this Court held that for limited purpose of proving petitioner's possession, unregistered document, which is impounded, is admissible in evidence. In ***K.B. SAHA AND SONS PRIVATE LIMITED Vs. DEVELOPMENT CONSULTANT LIMITED*** {(2008) 8 SCC 564} the Apex Court held that a document required to be registered, if unregistered, is not admissible in evidence under Section 49 of the Registration Act,; such unregistered document can however be used as an evidence for collateral purpose as provided in Section 49 proviso of the Registration Act,; a collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration;, a collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating etc., any right, title or interest in immovable property of the value of one hundred rupees and upwards;, and if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose. In ***GOLLA DHARMANNA Vs. SAKARI POSHETTY AND OTHERS*** {2013 (6) ALT 205} this Court held that a document required to be registered is not admissible in evidence under Section 49 of the Registration Act. Merely because stamp duty and penalty have been paid under Section 35(a) of the Stamp Act, it would not automatically make the said document admissible in evidence, if as per law, the document is also required to be registered compulsorily.

9. In the case on hand, it is the case of first respondent/plaintiff that he purchased the suit schedule property under the unregistered sale deed dated 12.05.2000 for total sale consideration of Rs.70,000/- and possession was also delivered as on the date of execution of the said sale deed. From the date of

purchase, the first respondent/plaintiff is in possession of the suit property. When the first respondent/plaintiff wants to mark the said document in evidence, the trial Court observed as stated supra. Since the document which is unregistered sale deed is intended to be marked for collateral purpose, the same is inadmissible in evidence as provided under Section 49 of the Registration Act, however, such unregistered document can be used as an evidence for collateral purpose as provided in proviso to Section 49 of the Registration Act. The possession of the suit property was delivered to the first respondent/plaintiff as on the date of execution of the sale deed on receiving the entire sale consideration. The first respondent/plaintiff wants to mark the said document for collateral purpose to show his possession. If that be so, the said document is required to be impounded, then only the same can be received in evidence for limited purpose of proving possession by the first respondent/plaintiff. It is also well settled that even though the stamp duty and penalty is paid as required under Section 35(a) of the Stamp Act, it would not automatically make the said document admissible in evidence and will not cure the defect as 'sale deed' and it requires registration. Therefore such unregistered document requires registration.

10. In view of the foregoing discussion, I am of the considered view that the order of the trial Court in ordering to receive the unregistered sale deed in evidence for collateral purpose requires to be modified by holding that unless the first

respondent/plaintiff pays requisite stamp duty and penalty even for collateral purpose as envisaged under Section 49 of the Registration Act, the said document cannot be received.

11. Accordingly the docket order 28.03.2012 passed in O.S.269 of 2008 on the file of Principal Junior Civil Judge-cum-V Metropolitan Magistrate, Medchal, Ranga Reddy District is modified and it is hereby ordered that the trial Court shall receive the unregistered sale deed dated 12.05.2000 alleged to have been executed by the petitioner/first defendant on condition of payment of requisite stamp duty and penalty.

12. The Civil Revision Petition is accordingly disposed of. No order as to costs.

13. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 8th November, 2018.
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