

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.4777 of 2018

ORDER:

The revision petitioners are the plaintiffs in O.S.No.61 of 2016 on the file of the learned Junior Civil Judge, Sullurupet, SPSR Nellore District, which suit is filed for permanent prohibitory injunction in respect of the so-called suit passage.

2. The plaint describes the schedule with enclosure of rough sketch of passage of ABCD for the ingress and egress to Sri Hari Kota road from the house of the plaintiffs and vice versa. It is in between there is a defendant's site and the plaintiffs shown it is a pathway marked as ABCD. The crucial aspect to be considered in the case is whether the property of the plaintiffs and defendants belongs to a common ancestor. If such is the case, irrespective of no document if it is only passage if at all available for the ingress and egress of the plaintiffs, there could be easement of necessity of the apparent and discontinuous easement under Section 13 of the Indian Easements Act, 1882.

3. It is premature to go into in the revision, but for to say so far the impugned order dated 04.05.2018 of the learned Junior Civil Judge, Sullurupet, concerned is from the objection raised upholding the same in refusing to mark the document in question executed on Rs.100/- stamp paper. The contents of the document speak the title as Free Sale Agreement (Vuchitha Vikraya Agreement). First paragraph

speaks about the alignment of houses and sites of the parties that is reflected even in the plaint rough plan. Second paragraph speaks about for the ingress and egress of the plaintiffs the defendants are providing 3 ft width of site of a length of 68 ft. It is further mentioned as if at all in future there is any *lis* in relation to it, they are going to resolve. In the last line, it is mentioned as it is out of volition referred as free gift. So far as the gift is concerned, it must be irrespective of the value of movable property by a registered document and its acceptance. There is no registered document much less duly stamped document herein. In the absence of which, the question of creating a gift and its acceptance does not arise. It is practically not a gift even loosely referred, leave about the nomenclature of loose reference is a document is not decisive, but the Court has to construe even for the purpose of impounding from the contents of the document as to nature of the document. If at all the document impounded by the District Registrar, that is made final for all purposes once duly impounded from the certification issued. The very perusal of the document in question speaks about creating an easementary right of oral grant or written grant as the case may be of 3 ft width site for ingress and egress. So far as the gift is concerned, it is absolute conveying of the property of the land in question. What the document refers as for ingress and egress it is only a limited right over the servient, a dominant heritage known as easement. Once an easement is created for right of ingress and egress over the property of another by retaining the ownership, there is no absolute conveyance by sale or

settlement or otherwise, but for at best it is a relinquishment to a limited extent of right to pass through, if not covered by easement. Once such is the case, if it is asked to be duly stamped by impounding, the next consideration is whether there is any collateral purpose. As even a document requires to be registered under Section 17 of the Registration Act, if not registered it comes within the proviso-three clauses of Section 49 of the Registration Act, it is admissible. One of the three conditions of the proviso is the collateral purpose. The collateral purpose is as to the nature of document and nature of possession given if any or nature of right created if any other than to construe from the contents of the document. Here the contents of the document once cannot be looked into, what it speaks about 3 ft width of land right orally created and confirmed if any, that can be considered for said collateral purpose provided the document is duly stamped as per settled law including from the latest expression of the three Judge Bench of the Apex Court in **Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar**¹. The learned Junior Civil Judge, Sullurupet in the impugned dismissal order did not advert to the facts, leave about the duty of the Court. Once the document wants to be placed reliance, firstly to impound and it is after impounding with the stamp duty and penalty, if willing to pay with ten times penalty to collect the same and remit the amount with copy of the document to the District Registrar and even at that stage if asked to refer to the District Registrar, the Court is bound to send for the District Registrar

¹ 2018 (5) ALT 27 (SC)

to impound and collect the stamp duty and certify to place reliance on it for collateral purpose even not registered.

4. Having regard to the above, the impugned order is set aside and the matter is remitted to the lower Court to consider with reference to the above after hearing both sides in arriving a correct decision.

Accordingly, this Civil Revision is disposed of to the above extent by setting aside the order of the lower Court. Consequently, miscellaneous petitions pending, if any, shall stand closed.

19.09.2018
MVA



Dr. B. SIVA SANKARA RAO, J