

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVILREVISION PETITION Nos. 5670 & 5765 OF 2017

COMMON JUDGMENT:

1. The revision petitioner/4th plaintiff preferred these Civil Revision Petitions aggrieved by the common order dated 01.06.2017 in I.A.Nos.304 of 2017 and I.A.No.303 of 2017 respectively in OS.No.61 of 2012 on the file of learned Senior Civil Judge, Bobbili, dismissing the aforesaid interlocutory applications.

2. The contentions of the learned Counsel for the petitioner/4th plaintiff is that the trial Court grossly failed to understand that the unregistered sale deed dated 09.10.1985 is filed along with the suit, and stamp duty and penalty is also paid, and hence it should have been marked for collateral purpose and given opportunity to the petitioner/4th plaintiff.

3. The petitioner/4th plaintiff along with nine others filed I.A.No.303 of 2017 in OS.No.61 of 2012 to reopen the evidence of plaintiffs, and I.A.No.304 of 2017 in OS.No.61 of 2012 to recall the evidence of P.W.1 to mark the sale deed dated 09.10.1985 in order to appraise the case coupled with facts and to arrive at just conclusion.

4. Brief case of the petitioner/4th plaintiff is that on behalf of the plaintiffs, four witnesses were examined and their evidence was closed on 7.4.2017 and the suit is posted for

evidence of defendants side to 12.4.2017. The plaintiffs filed unregistered sale deed dated 09.10.1985 and the same was impounded by the Court below and they have paid Rs.3883/- through challan of State Bank of India vide challan No.4035, dated 24.08.2015. The said document is required to be marked as exhibit otherwise they will be put to great hardship and irreparable loss which cannot be adequately compensated by awarding pecuniary damages. It is the prime document and their entire case is solely depend on that document. It is further stated that since the date of unregistered document dated 09.10.1985 they are in physical possession and enjoyment of the property and to prove the same, the said document is necessary. Hence the suit should be reopened for further evidence of plaintiff and to recall PW.1 for marking the said document.

5. Per contra, the respondents contended that the Court already considered the said unregistered document dated 09.10.1985 at the time when tendered into evidence through PW.1 on 24.01.2017 and passed the detailed speaking order in the evidence of PW.1 by not admitting into evidence. Hence these revision petitions are not maintainable. It is further contended that the petitioner suppressed the fact of rejection of admission at the time of tendering to mark the same through PW.1 and filed the present revision petitions and hence passing further order on the same aspect is not maintainable. If the petitioner is having any grievance against the said order, they should have filed revision petition and got favourable orders. In

view of the same, the Court rightly dismissed the impugned applications through the order under revision which does not suffer from any legal infirmities warranting interference and hence the present civil revision petitions are liable to be dismissed.

6. POINT:

Now the point that arises for consideration is,

“whether non mentioning of the details of the order of the trial Court, through which admission of the unregistered sale deed dated 09.10.1985 was rejected, in the revision petitions amounts to suppression of fact and whether the order under revision petitions suffers from any legal infirmities warranting interference.”

7. Learned Counsel for the petitioner contended that the entire case of the petitioner/4th plaintiff is based on the unregistered sale deed dated 09.10.1985 and they have paid stamp duty and penalty; therefore it can be received for collateral purpose and non mentioning of the earlier order of rejection does not amount to suppression.

8. Per contra, the respondents/defendants contention is that the earlier order of rejection of the same document which was in the similar proceedings and between the same parties, is binding and non mentioning of the said order in the present revision petitions is certainly suppression of fact and, more so,

without agitating the said earlier order, filing of present revision petitions against the impugned order are not maintainable.

9. Pertinent to note, originally the petitioner and 9 others filed the suit and subsequently, due to death of second plaintiff, the sellers-Plaintiffs 11 to 14 were brought on record as plaintiffs as per the order of the trial Court in I.A.No.750 of 2013, dated 3.1.2014. The said suit is for declaration that the plaintiffs are the absolute owners of the plaint schedule property and consequently to restrain the defendants, their men, agents from interfering with their peaceful possession and enjoyment of the suit schedule property. It is also undisputed fact that on behalf of the plaintiffs, PWs.1 to 4 were examined and their evidence was closed on 7.4.2017 and posted the suit for the evidence of defendants side to 12.4.2017.

10. Now the petitioner and others filed I.A.No.303 of 2017 seeking to reopen the suit and I.A.No.304 of 2017 seeking to recall P.W.1 for marking unregistered sale deed dated 09.10.1985, on 12.4.2017. It is also the fact that as per the order of the trial Court, stamp duty and penalty of Rs.3883/- was paid on 21.08.2015.

11. In ***SATYANDHYAN GHOSAL AND ORS. Vs. SMT. DEORJIN DEBI AND ANR*** (AIR 1960 SC 941) the Apex Court held that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a Court, whether

the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter against at a subsequent stage of the same proceedings. It was further held therein that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken can be challenged in an appeal from the final decree or order. 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. RAMAMOORTHY 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 ***M.MANJULA AND OTHERS Vs. GAJAM CHANDRAIAH (DIED) AND OTHERS*** {2011 (6) ALD 109} this Court held that the subject document being unregistered sale deed of the year 1996 would fall within the ambit of the protection afforded by Section 17(1A) of the Registration Act, 1908 and they would continue to be governed by the unamended Section 53-A of the Transfer of Property Act, 1882. In ***S.KALADEVI Vs. V.R. SOMASUNDARAM AND OTHERS*** { (2010) 5 SCC 401} the Apex Court held that by admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of the Registration Act, 1908 is affected; rather the Court acts in consonance with the proviso appended to Section 49 of the Registration Act 1908. 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.

12. In the case on hand, it is the specific case of the petitioner/plaintiff that they have purchased the plaint schedule property under an unregistered sale deed on 9.10.1985 for a consideration of Rs.6,000/- and the same was impounded by the trial Court and they have paid stamp duty and penalty through SBI challan No.4035, dated 24.08.2015. When the petitioner/plaintiff wants to prove their possession by way of unregistered sale deed dated 9.10.1985 and when the said document was tendered to mark through P.W.1, the trial Court in the deposition itself observed as *“Perused the document though the document titled as sale agreement the contents do not show any content to register the document in future and from the date of the document itself the property was delivered and also gave the entire right of title, gift and hence contents attracts sale deed, but not the sale agreement, hence it do not contain the sufficient stamp duty, mere payment of penalty for the sale agreement will not cure the defect as sale deed as the penalty paid for the stamp of sale agreement and registration is necessary and hence it is not admissible in evidence, hence objection is sustained.”* Thus it is evident from the said order of the trial Court that when the unregistered sale deed dated 9.10.1985 was tendered to mark through PW.1, it was objected by the defendants. The trial Court observed that the unregistered sale

deed does not show any content to register the document. The possession of the property was delivered to the plaintiffs as on the date of sale deed. Mere payment of penalty for the sale deed will not cure the defect as 'sale deed' and it requires registration and therefore such unregistered sale deed is inadmissible in evidence. This order is not a final order. The interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken can be challenged in an appeal from the final decree or order. The order extracted in the deposition of P.W.1 came to be passed when document which is the unregistered sale deed tendered for marking through P.W.1 is with regard to inadmissibility of the document. Now the petitioner/plaintiff wants to mark the said document to show their nature of possession. Therefore when the plaintiffs sought to mark the unregistered sale deed dated 9.10.1985 which was undisputedly duly impounded before the trial Court by way of paying penalty and stamp duty through SBI challan dated 24.08.2015 is either for part performance of the contract or as to prove the nature of possession.

13. After considering the above judgments and principles laid down therein, as referred hereinabove, it is evident that (1) a document required to be registered is not admissible into evidence under Section 49 of the Registration Act; (2) Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the

Registration Act; (3) A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration; (4) 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 (5) 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 providing an important clause would not be using it as a collateral purpose.

14. The petitioner/plaintiff and nine other plaintiffs filed the present suit for declaration and injunction on the plea that they have become owners of the property by virtue of unregistered sale deed dated 9.10.1985. The petitioner/plaintiff claimed to have entered into possession of the suit schedule property on the basis of unregistered sale deed which is now requires to be received for collateral purpose to show their claim to be in continuous possession since the date of purchase. Ever since the date of purchase, late Chinnam Naidu was in peaceful possession and enjoyment of the plaint schedule property till his death openly, publicly to the knowledge of every body including his vendors and their successors-in-interest in his own right. Thus he perfected his title by virtue of adverse possession , even though the sale deed dated 9.10.1985 is not registered in

consonance of the provisions of the Registration Act, 1908. After the death of late Chinnam Naidu, the plaintiffs succeeded to the same under the provision of the Hindu Succession Act, 1956 and the plaint schedule mentioned property is in peaceful possession and enjoyment of the plaintiffs and they are enjoying the same jointly without any hindrance. While so, when the defendants with active assistance, abatement and instigation of some people, who are inimically disposed towards the plaintiffs, late Chinnam Naidu filed O.S.No.243 of 2009 for perpetual injunction and other reliefs against late Chinna Naidu. Having frustrated in their attempts, the instigators of defendants 1 and 2 got a sham, collusive and nominal document with out any consideration in favour of third defendant.

15. The petitioner/plaintiff sought to rely on the unregistered sale deed dated 9.10.1985 contending that eventhough the said document is unregistered and not admissible in evidence, as the same was impounded, it can be looked into for collateral purpose. In the present case, the collateral purpose to be seen is, the nature of their possession over the suit schedule property. It is their case that the document in question would at least show their initial possession and that their peaceful enjoyment and possession over the suit land is not illegal and unauthorized.

16. The objection raised by the respondents/defendants is for the receipt of the document. It is to be seen that the receipt of the document is for collateral purpose as envisaged under Section 49 of the Registration Act and it does not cause prejudice to the respondents/defendants when it was tendered in evidence for two reasons, that is, firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence; Such practice and procedure is fair to both the parties. Accordingly, I am of the view that the respondents/defendants raised prompt and timely objection when unregistered sale deed was tendered for making in evidence.

17. Thus, the facts and circumstances discussed hereinabove clearly go to suggest that when the unregistered sale deed dated 09.10.1985 was sought to be tendered for marking in evidence through P.W.1, the respondents/defendants raised objection and the Court below decided the same in the deposition of the P.W.1 itself regarding its in-admissibility in evidence. The said objection was raised during the course of trial when the un-registered sale deed document was sought to be

tendered in evidence for marking. The said order does not operate *res-judicata*. There is no finality in the said order. It is to be seen, the petitioner/plaintiff sought to mark the said document to prove the nature of possession, muchless, at least to show their possession is not illegal and unauthorized. The nature of possession is certainly a collateral purpose as envisaged under Section 49 of the Registration Act. It is does not in any way be a *res judicata* or cause prejudice to the respondents/defendants; rather, they have every right to cross examine the witness through whom the document is sought to be marked for collateral purpose and also have right to adduce rebuttal evidence. Since the petitioner/plaintiff wants to mark the document in question for collateral purpose, as per the orders of the Court below, the said document was got impounded and paid stamp duty and penalty through SBI challan dated 24.08.2015. In view of the same and for forgoing discussion of the legal position in regard thereto, the unregistered sale deed dated 09.10.1995 can be received for the limited purpose of proving the petitioner's/plaintiffs possession. In the view thereof, the impugned order of the Court below is accordingly liable to be set aside.

18. Accordingly, the Civil Revision Petitions are allowed with costs, while setting aside the common order dated 01.07.2017 passed in I.A.Nos.303 and 304 of 2017 in O.S.No.61 of 2012 on the file of learned Senior Civil Judge, at Bobbili. Consequently, I.A.No.303 of 2017 in O.S.No.61 of 2012 filed by

the petitioner/plaintiff seeking to re-open the evidence and I.A.No. 304 of 2012 in O.S.No.61 of 2012 filed by them seeking to re-call the evidence of P.W.1 to mark the unregistered sale deed dated 09.10.1985 to appraise the case coupled with facts and to arrive at just conclusion, stands allowed subject to the observations made hereinabove.

19. Miscellaneous petitions pending consideration if any in the Civil Revision Petitions stand closed in consequence.

DATED
Msnrx

FEBRUARY, 2018.

JUSTICE N. BALAYOGI



