HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No. 6106 OF 2017

ORDER:

1. This revision under Article 227 of the Constitution of India is filed to set aside the order dated 30.08.2017 passed in O.S.No.145 of 2015 on the file of learned Senior Civil Judge, Bobbili, Vizianagaram District.

2. The contention of the revision petitioner is that the observation of the trial Court that though penalty and stamp duty was paid on unregistered mortgage cum conditional sale deed-Ex.B.1, it is inadmissible in evidence, is unsustinable as the said document was not questioned by the respondents 1 & 2/plaintiffs in the earlier round of litigation; therefore the same is nothing but doctrine of *Promissory Estoppel*.

Further contended that the unregistered mortgage deed dated 14.07.1957 can be looked into for collateral purpose and that it was marked as Ex.B.1 in O.S.No.22 of 2000 after impounded by the RDO. The judgments reported in ***GOLLA DHARMANNA Vs. SAKARI POSHETTY AND OTHERS*** {2013 (6) ALT 205} and ***VENGALAPUDI MANGA Vs. PALURI KANNABBAI AND OTHERS*** {2013 (4) ALT 710} are not relevant to the case on hand.

Per contra, it is contended by the learned Counsel for the respondents 1 and 2 the proceedings in O.S.No.22 of 2000 and the proceedings in O.S.No.145 of 2015 are different and that since the revision petitioner /defendant relied on Ex.B.1 to establish right, title and possession over the suit schedule property by way of adverse possession, though penalty and stamp duty has been paid, it is inadmissible in evidence and therefore such objection was taken when the said document was marked. The Trial Court properly appreciated the principles of law and came to the right conclusion which does not warrant any interference by way of present revision petition. In support of his contentions, he relied on the decision of the Apex Court in ***SHYAMAL KUMAR ROY Vs SUSHIL KUMAR AGARWAL*** {(2006) 11 SCC 331}.

3. The admitted facts are that the present Civil Revision Petition arises against the orders of the learned Senior Civil Judge, at Bobbili in O.S.No.145 of 2015 when an objection raised by the respondents 1 & 2/defendants for marking the document Ex.B.1–unregistered mortgage cum conditional sale deed dated 14.07.1957 was sustained. The material on record goes to suggest that respondents 1 and 2 herein/plaintiffs earlier filed O.S.No.22 of 2000 on the file of learned Principal Junior Civil Judge, Bobbili, against the petitioner herein, third respondent and one Devupalli Mariyamma for permanent injunction; whereas present suit being O.S.No.145 of 2015 is filed by respondents 1 and 2 herein on the file of learned Senior Civil Judge, at Bobbili for declaration. Therefore the proceedings in O.S.No.22 of 2000 on the file of learned Principal Junior Civil Judge, Bobbili is for permanent injunction and proceedings in O.S.No.145 of 2015 on

the file of learned Senior Civil Judge, Bobbili is for declaration; thus it is clear that the reliefs sought in both the suits are different and further that the said proceedings are in different Courts. In O.S.No.22 of 2000 there was a finding against respondents 1 and 2 herein that they have not established their possession as on the date of filing the suit and further on the additional issue, it was held that the possession of the first respondent herein was hostile to the real owner and amounted to a denial of his title to the property claimed and accordingly came to the conclusion by holding that the petitioner herein perfected title by way of adverse possession.

4. In appeal A.S.No.2007, the lower appellate Court by judgment dated 28.01.2014 held that the finding of the trial Court to the effect that the defendants have also perfected their right title on the additional issue, is unwarranted in the suit for permanent injunction and further held that the RDO was empowered to impound the un-registered mortgage deed cum conditional sale deed dated 14.07.1957.

5. The material on record further goes to suggest that in the evidence of Devupally Anandha Rao/first defendant/revision petitioner herein, he deposed as D.W.1 in O.S.No.145 of 2015 that the second plaintiff/second respondent herein approached his father for an amount of Rs.350/- on 14.07.1957 and executed an un-registered mortgagee deed cum conditional sale deed and also executed a pronote for the said sum. Thereafter, the borrower, second plaintiff/second respondent herein failed to pay the

amount of un-registered mortgage cum conditional sale deed to his father and as such he got possession of the said property as owner and ever since, his father has been in physical possession and enjoyment of the suit schedule property with absolute rights, to the knowledge of every body including the plaintiffs/respondent 1 and 2 herein. In the last, he deposed that they are in possession of the suit property since 50 years; as such in view of suich long possession of the suit property by them, the second defendant perfected their title over the suit property and that the claim of plaintiffs for declaration is barred by limitation. Therefore the deposition of D.W.1/revision petitioner herein would show that he intended to rely on unregistered mortgage deed cum conditional sale deed to establish their right, title and possession to the suit property by way of adverse possession.

6. Admittedly in O.S.No.22 of 2000 there was a finding and conclusion that the defendants/revision petitioner perfected their title by way of adverse possession. As can be seen from the evidence of D.W.1/revision petitioner herein, the trial Court observed in O.S.No.145 of 2015 that Ex.B.1 is an un registered mortgage cum conditional sale deed and held *"Ex.B.1 is certified copy of the registered sale deed dated 18.02.1980. The Advocate for the defendant seeks to mark unregistered mortgage cum conditional sale deed. The counsel for plaintiff raised objection stating that it is unregistered document though stamp duty and penalty is paid it cannot be marked. The counsel for defendant argued that since stamp duty and penalty paid, it is admissible for*

*all the purposes. Since the defendant did not seek to mark the document for collateral purpose when stamp duty and penalty paid, it is only admissible for collateral purpose, hence the objection is sustained…..*"

7. In the case of ***SHYAMAL KUMAR ROY Vs SUSHIL KUMAR AGARWAL*** {(2006) 11 SCC 331}, the Apex Court held that once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a Court of superior jurisdiction.

8. Similarly in the case of ***GOLLA DHARMANNA Vs. SAKARI POSHETTY AND OTHERS*** {2013 (6) ALT 205} this Court held as under:

> " I am also unable to accept the contention of the counsel for petitioner that because the requisite stamp duty and penalty has been paid by petitioner, in view of Section 35(a) of the Indian Stamp Act, 1899, the said document should have been admitted in evidence by the Trial Court. This contention of the petitioner is misconceived because an objection as to the admissibility of a document on the ground that it is not stamped or not properly stamped in

accordance with provisions of the Indian Stamp Act, 1899 is different fundamentally from an objection to the admissibility of a document on the ground that it is unregistered,. Merely because stamp duty and penalty have been paid and the provisions of the Indian Stamp Act, 1899 have been complied with, it would not automatically make the said document admissible in evidence, if as per law, the said document is also required to be registered."

9. In the present case, when the un registered mortgage cum conditional sale deed dated 14.07.1957 was marked to perfect right, title and possession over the suit schedule property by way of adverse possession by the petitioner/defendant, respondents 1 and 2/plaintiffs raised objection for its marking. Stamp duty and penalty was also paid by the revision petitioner as impounded by the RDO. Since respondents 1 and 2/plaintiffs have objection for its marking, the impugned order as stated supra came to be passed. Further, it is to be seen that the proceedings in O.S,.No.22 of 2000 on the file of learned Principal Junior Civil Judge, Bobbili for permanent injunction and the proceedings in the present suit O.S.No.145 of 2015 on the file of learned Senior Civil Judge, Bobbili for declaration are different from each other. In view of the same, I am unable to accept the contention of the learned Counsel for the petitioner that because of requisite stamp duty and penalty has been paid by him as required under Section 35(1) of the Indian Stamp Act, 1899, the document should have been admitted in evidence. Such contention is misconceived because objection as to admissibility of a document on the ground

that it is not properly stamped in accordance with provisions of the Indian Stamp Act, 1899 is different fundamentally from an objection to the admissibility of a document on the ground that it is unregistered. Merely because stamp duty and penalty have been paid and the provisions of the Indian Stamp Act, 1899 have been complied with, it would not automatically make the un-registered mortgage cum conditional sale deed dated 14.07.1957 admissible in evidence, if as per law, the said document is also required to be registered.

10. In fact the revision petitioner has also not disputed that the said document is compulsorily registerable under the provisions of the Indian Registration Act, 1908. This being so, there was no necessity for the trial Court to keep the issue hanging till the final stage of the suit and decide the issue of admissibility of the document just prior to delivery of judgment by it.

11. In ***VENGALAPUDI MANGA Vs. PALURI KANNABBAI AND OTHERS*** {2013 (4) ALT 710} this Court observed that when the plaintiff therein intends to rely upon the document in question to prove his title to the suit schedule property, but not for any other purpose; the contention that the document can be looked into for collateral purpose, is without substance. In the instant case also, from the evidence of D.W.1/revision petitioner and the contention advanced on his behalf and on behalf of other defendants/respondents 3 to 5 herein, it is clear that the

defendants want to rely on the un registered mortgage cum conditional sale deed dated 14.07.1957 to establish their right, title and possession over the suit schedule property. In the facts and circumstances of the case on hand, I am of the considered opinion that the question of looking into the registered mortgage cum conditional sale deed dated 14.07.1957 as evidence of any collateral transaction does not arise at all.

12. It is also settled law 8that an unregistered document cannot be received in evidence in a suit for declaration of title, even for collateral purpose also as contemplated under Section 49 of the Registration Act, 1908.

13. Having considered the facts in issue and foregoing discussion, I certainly agree with the observation made by the trial Court that the when the un-registered mortgage cum conditional sale deed dated 14.07.1957 which was marked through DW.1/revision petitioner, however, the respondents 1 and 2/plaintiffs raised objection stating that it is an unregistered document and though stamp duty and penalty paid, it cannot be marked in evidence. It was further held therein that since the defendant did not seek to mark the document for collateral purpose when stamp duty and penalty paid, it is only admissible for collateral purpose and hence the objection raised by the plaintiffs regarding its marking is sustained. Such finding is legal, valid and does not warrant interference.

14. The Civil Revision Petition is accordingly dismissed. No order as to costs.

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

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***JUSTICE N. BALAYOGI***

Dated 1st August, 2018.
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