

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5965 of 2017

ORDER:

1) Aggrieved by the order dated 13.07.2017, passed by the I Additional Junior Civil Judge, Rajamahendravaram, in O.S.No.269 of 2014, with regard to admissibility of the gift deed dated 26.12.2011, the petitioner, who is the plaintiff in the suit filed the present Civil Revision Petition under Article 227 of the Constitution of India.

2) Heard both sides.

3) A perusal of the material on record would show that the petitioner/plaintiff filed a suit for declaration to declare the title of the petitioner over the plaint schedule property as well as for consequential mandatory injunction directing the defendant to effect mutation of the records in the name of the petitioner. The case of the petitioner is that the petitioner got the said property from his grandfather through a Will dated 26.12.2011. It is stated that his grandfather executed his last Will on 26.12.2011, wherein he specifically transferred all the rights, title and interest over the schedule property, in favour of the petitioner. The said Will being an un-registered document, the respondents raised an objection that it is not admissible in evidence as the same requires registration under the provisions of the Registration Act. The trial Court having construed the document held that the recitals of the document clearly show that the executant has

relinquished his right over the property and transferred the same in favour of the petitioner and upheld the objection raised by the respondents stating that the same is not admissible in evidence. Challenging the same, the present Civil Revision Petition came to be filed.

4) On perusal of the document, the recitals of the same would show that the executant had transferred all his rights, title and interest over the schedule property in favour of the petitioner. Basing on the said document, the petitioner filed the suit seeking declaration of his title as well as mandatory injunction seeking a direction to the respondents to mutate his name in the records. It is not the case of the petitioner that the said document is marked only for collateral purpose. When the said document is the very foundation for institution of the suit, such a document has to be more carefully dealt with before arriving at a conclusion as to whether the same is admissible or not.

5) Now the question is whether the impugned document is admissible in evidence.

6) [Section 17](#) of the Registration Act, 1908 specifies the documents, which require registration. Under Clause (a) [Sub-Section 1](#) thereof, instruments of gift of immovable property require registration. Under Clause (b) other non-testamentary instruments, which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title

or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, also require registration. Under this provision, a right has to be created or extinguished whether in present or in future and whether such right is vested or contingent, by the very document itself in order that a document is attracted by it.

7) Under [Section 49](#) of the Registration Act, no document, required by [Section 17](#) or by any provisions under the [Transfer of Property Act](#), 1882, to be registered, shall affect any immovable property comprised therein, unless it has been registered and the same shall not be received as evidence of any transaction affecting such property or conferring such power.

8) In *Nalajala Jagannadham vs Veerepally Mangamma*<sup>1</sup> this Court held as under:

“The question of admitting the document in evidence will arise only after the same is impounded when it was found to be not properly stamped by collecting the duty payable on the instrument along with the penalty contemplated under law. In this case the stage of admitting the document has not yet arisen and it is still at the stage of impounding the same by collecting proper stamp duty with penalty. Unless that process is completed the same cannot be admitted in evidence. 9. A reading of [Section 38](#) says that if the party who filed the document wants it to be admitted in evidence then only the Court shall collect the stamp duty and penalty and then admit

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<sup>1</sup> 1997 (1) ALT 725

the instrument in evidence. But if the party instead of requiring the document to be admitted in evidence merely wants the Court to send it to the Collector to be dealt with Under [Section 40](#) the Court has no option but to send it to the Collector as provided in [Section 38 \(2\)](#).”

9) It is not in dispute that the document which is sought to be marked is an un-registered document. A reading of the said document makes it clear that the grandfather of the petitioner transferred his right, title and interest over the schedule property in favour of the petitioner. Section 17 of the Registration Act makes it clear that any document transferring rights over the property, to be made admissible in evidence, requires Registration. Hence, the impugned document requires registration since the recitals of the document creates right over the property.

10) In view of the judgment referred to above and having regard to the facts and circumstances of the case, this Court is of the view that the order of the trial Court warrants no interference.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

02.05.2018  
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