

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.6320 OF 2017

Date:19.01.2018

Between:

Madhavapeddi Narsimha Reddy s/o. Sesa Reddy,
Aged 62 years, Occu: Govt.Employee, r/o. presently
At H.No.9-1-34/30/56/5D, Bapunagar, Hyderabad.

..... Revision Petitioner/
Plaintiff

and

Kethireddy Srilatha @ Poolamma, w/o. Soma Narsimha
Reddy, Aged 65 years, Occu: Housewife, r/o.H.No.2-4-1232,
Gandhinagar, Hanamkonda.

.....Respondent/
Defendant



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

O.S.No.22 of 2011 is filed on the file of I Additional Senior Civil Judge, Warangal, praying to grant decree directing the defendant to deliver vacant possession of suit schedule property and to grant mandatory injunction directing the defendant to construct the demolished wall and staircase as existed on 16.12.2010. In the said suit, defendant filed I.A.No.735 of 2017 under Section 45 of Indian Evidence Act, praying to send Ex.B1 to Handwriting Expert for comparison of the signature of attestor no.1 on Ex.B1 with that of the admitted signatures of the respondent/plaintiff available on the plaint, Vakalat and Ex.A1. The plaintiff contested the said application. However, trial Court, by order dated 11.09.2017, allowed the said application and Ex.B1-agreement of sale was directed to be sent to Expert for opinion. Aggrieved thereby, plaintiff instituted this revision.

2. Heard learned counsel Sri Bankatlal Mandhani for petitioner and learned counsel Sri Ashok Reddy Kanathala for respondent.

3. The facts on record would disclose that wife of the plaintiff executed registered gift deed dated 10.08.2010 in favour of plaintiff in respect of house bearing Municipal No.2-4-1231, admeasuring 150 square yards. Consequently, name of plaintiff was mutated in the municipal records and is paying the property tax. In the absence of plaintiff, defendant partly demolished the joint wall separating the house of plaintiff and defendant, erected a door and removed the staircase of the plaintiff's house. Hence suit is filed.

4. Opposing the stand of the plaintiff, defendant pleaded that by way of unregistered agreement of sale, dated 22.07.2004, the suit schedule property was sold to the defendant by the wife of plaintiff having accepted part sale consideration and to the said document, plaintiff is a witness and he appended his signature. The defendant, therefore, seeks that since plaintiff is aware of the sale transaction made in the year 2004, in order to disprove the stand of the plaintiff, the defendant wants to establish that the signature appended to the said agreement of sale is that of the plaintiff and, therefore, sought for reference of the document for verification of the signature.

5.1. Learned counsel for petitioner would contend that document on which reliance is placed by the defendant is not registered and, therefore, hit by provision in Section 17 (1)(g) of Indian Registration Act. He would further submit that in view of the provision contained in Section 49 of the Indian Registration Act, document which is compulsorily registerable under Section 17, if not registered cannot be relied upon even for collateral purpose. As document itself is not admissible in evidence, mere marking of document does not operate doctrine of estoppel to object sending the document to expert for comparison of signature of the plaintiff.

5.2. He would further submit that even assuming that petitioner is a signatory to the said document, but it was an unregistered document of the year 2004, whereas the very same property was gifted to the petitioner in the year 2010 by the owner of the property and the said document was registered and, therefore, identification of signature has no relevance to the cause in the suit

and, therefore, no useful purpose would be served by sending the document for signature verification.

5.3. He would further submit that the alleged signature stated to have been made by the plaintiff was in the year 2004 and cannot be verified vis-à-vis the signatures in the plaint and vakalat filed in the suit and such verification can be made by comparing with signatures of that period.

5.4. In a suit filed by petitioner for delivery of vacant possession of the suit schedule property and mandatory injunction, the defendant cannot seek to establish a transaction by way of an unregistered agreement of sale made between the original owner and the defendant even for collateral purposes.

5.5. In support of his contention, learned counsel placed reliance on the decision of Manipur High Court in **Kangabam Bira Singh v. Manipur Drivers' Union Co-operative Association Ltd., and other¹**.

6.1. Per contra, learned counsel for respondent would submit that alleged gift deed, on which reliance is placed by the plaintiff in support of ownership claim, is executed by none other than his wife. Wife being the owner of the property though sold the very same property with full knowledge of petitioner, received sale consideration, agreement was entered into evidencing sale transaction and possession was vested in the defendant, the alleged gift deed is brought into existence in favour of plaintiff fraudulently only to defeat the claim of defendant. He therefore

¹ Air 1957 Manipur 9

submitted that to prove the sham transaction between the plaintiff and the wife, he wanted to establish that signature appended to the agreement of sale as a witness is that of plaintiff and the plaintiff was fully aware of agreement of sale and possession.

6.2. He would further submit that no prejudice would be caused to the plaintiff by sending the document for expert opinion and whatever is contended can as well be raised in the suit after the expert furnishes his opinion and what is agitated now is premature and cannot be gone into at this stage.

7. The basic facts of the issue are not in dispute. The defendant does not deny the factum of the document on which reliance is placed is not registered and that said document is compulsorily registerable under Section 17 of the Registration Act. As per the provision contained in Section 49 of Registration Act read with Section 35 of Indian Stamps Act, no document, which is compulsorily registrable and attracts duty, is admissible in evidence or can be relied upon even for collateral purpose. *Prima facie*, what is sought by defendant is amounting to placing reliance on the said agreement of sale for collateral purpose i.e., to prove that the plaintiff was aware of the sale transaction between his wife and the defendant and he was a witness to the said transaction.

8. It is also not in dispute that claim in the suit by the plaintiff is alleged damage to the joint compound wall, erection of a door between two houses and construction of staircase on his property. The plaintiff places reliance on ownership of the subject property based on the registered gift deed executed by his wife in his favour. The signature appended to the agreement of sale dated 22.07.2004

even if by the plaintiff has no relevance for the purpose of considering rival claims on the relief sought in the suit. However, it is made clear that as suit is pending, Court is not expressing any opinion on several contentions urged. Suffice to note that trial Court erred in not appreciating the issue in proper perspective.

9. The Civil Revision Petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 19.01.2018
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