

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5789 of 2018

ORDER :

This Civil Revision Petition is filed challenging the order dt.10.09.2018 passed in I.A.No.255 of 2018 in O.S.No.71 of 2018 on the file of the Senior Civil Judge, Gadwal.

2. The petitioners herein are defendants in the above suit.
3. The respondents filed the suit against petitioners for a perpetual injunction restraining petitioners from interfering with their alleged peaceful possession and enjoyment of the suit schedule property.
4. The respondents contended in the plaint that there was relinquishment deed dt.05.05.1986 executed in favour of their grandmother, viz., Smt. Shankaramma by the father of petitioners.
5. Written statement was filed opposing the suit claim.
6. The respondents filed I.A.No.255 of 2018 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908, and sought temporary injunction pending suit, and in the said I.A. they sought to mark the unregistered relinquishment deed dt.05.05.1986.
7. This was objected to by petitioners who contended that the said document is an unregistered document and it cannot be received in evidence, even for collateral purpose.

8. The respondents however refuted the said contentions and relied on a decision of this Court in **Lakkaraju Radha Krishna vs. P. Srirama Sharma**¹, wherein this Court held that an unregistered document can be received in evidence for collateral purpose, though not for the principal purpose.

9. The Court below followed the said decision and held that the unregistered relinquishment deed, though inadmissible in evidence, for the principal purpose of proving relinquishment can still be relied upon for collateral purpose, i.e., to ascertain nature of possession.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioners contended that nature of possession is not a collateral purpose and is the main purpose and relied upon the decision of the Supreme Court in **K.B. Saha and Sons Pvt. Ltd. vs. Development Consultant Ltd.**².

12. In that case, an unregistered lease deed was sought to be marked in evidence in a suit for eviction and the Court held that no clause of such unregistered lease deed can be taken into consideration even for collateral purpose. It referred to proviso to Section 49 of the Registration Act, 1908 and held that an unregistered document can however be admitted into evidence for proving collateral facts / or for collateral purpose, and that the terms of a compulsorily registrable document are nothing less than the transaction affecting the property

¹ 2007 (1) A.L.T. 460

² (2008) 8 S.C.C. 564

comprised in it. It explained that the term “*collateral purpose*” has a limited sense and meaning, and an unregistered document cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguished a right in the immoveable property.

13. In para 21 thereof, the Court held as under :

“21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that :

- 1. A document required to be registered, if unregistered 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.*
- 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 proving an important clause would not be using it as a collateral purpose.”*

14. Though the counsel for petitioners sought to contend that the nature of possession is not a collateral purpose, I am unable to agree with the said submission.

15. The nature of possession would be relevant in the instant suit, since it is a suit for injunction. While the respondents cannot be allowed to rely on the unregistered relinquishment deed to prove the actual relinquishment of right by the father of 1st petitioner in favour of the grandmother of respondents, it can be received in evidence to prove the nature of possession of the parties and for no other purpose.

16. The Court below has correctly appreciated the scope of the term “*collateral purpose*” and permitted the respondents to mark the said document for the limited collateral purpose of ascertaining the nature of possession and no exception to it can be taken to.

17. Therefore, the Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

18. The interim order granted earlier shall stand vacated.

19. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26.02.2019

Ndr/*