

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7021 OF 2018

ORDER:

Heard both sides.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.29.10.2018 in I.A.No.695 of 2018 in O.S.No.2967 of 2016 of the file of the XX Junior Civil Judge, City Civil Court, Hyderabad.

3. Petitioner herein is the defendant in the suit.

4. Respondents filed the said suit against the petitioner for mandatory injunction to demolish the illegal construction allegedly made by the petitioner in the space disowned by him on the eastern side of the ground floor portion admeasuring 12' X 8' meant for two wheeler parking of respondents 1 and 2, who are the joint possessors and owners of the upper floor of the suit schedule property, and for perpetual injunction restraining the petitioner from carrying out any further illegal construction therein.

5. The issue in the suit is between the brothers and it is the case of the respondents that the petitioner executed a declaration dt.06.10.2016 in favour of the respondents disowning the space admeasuring 12' X 8' on the eastern side of the ground floor for two wheeler parking in favour of the respondents/plaintiffs; and that the petitioner later made construction preventing the respondents from using the said area.

6. Written statement was filed by the petitioner opposing the grant of relief to the respondents and also disputing the declaration dt.06.10.2016 set up by the respondents. He also specifically contended that the said document is not a registered document and hence cannot be acted upon.

7. During the course of evidence of PW.1, the said declaration dt.06.10.2016 was filed along with the chief examination affidavit, which was served on the petitioner, but it was marked in the absence of the counsel for the petitioner and petitioner.

8. On the same day, petitioner filed I.A.No.695 of 2018 objecting to the marking of the document and contending that it has to be sent to the registration authority to verify whether it requires proper stamp duty and registration.

9. Counter affidavit was filed by respondent No.2 opposing the said application and contending that the copy of the chief examination affidavit was served on the counsel for the petitioner much prior to the examination and marking of documents. He also contended that the declaration only permits the use of certain areas for parking of two wheelers and it did not require any stamp duty and registration.

10. By order dt.29.10.2018 the Court below dismissed the said application. It merely stated that its examination of the said declaration indicated that it was only a permission for parking and there was no transfer of property and no relinquishment of property.

11. Assailing the same, this Revision is filed.

12. Counsel for the petitioner contended that the language used in the declaration dt.06.10.2016 and in particular the usage of word 'disown' suggests that there is relinquishment of right, title and interest of the petitioner in favour of the respondents, which requires registration, because of Section 17(1)(b) of the Registration Act, 1908 (for short, 'the Act') and that the document having been executed on Rs.100/- stamp paper is also insufficiently stamped.

13. Counsel for the respondents however contended that petitioner had ample opportunity to oppose the marking and admission of the document, but he did not do so and he precluded from now doing so.

14. I have noted the contentions of both sides.

15. The document i.e., the declaration, dt.06.10.2016, reads as under:

"... That, on mutual understanding and upon our family settlement, I do hereby disowned the space on Eastern side of my house admeasuring 12X8 for Two wheeler parking to the possession of my brothers namely Mohammed Abdul Salam son of Late Mohd. Abdul Aziz and Mohammed Abdul Hakeem S/o. Late Mohd. Abdul Aziz, who are the owners of the upper floors of the said building.

That, they are bound to park only two wheelers in the said area admeasuring 12X8 only.

That, the above contents are true and correct to the best of my knowledge, belief and executed this declaration with my free will and consent before the witnesses.

Hence this Declaration."

16. The word 'disowned' in the above document clearly indicates that there is a relinquishment of right of the petitioner in favour of the respondents. Such relinquishment requires registration under

Section 17(1)(b) of the Act. Since the intention of the respondents in adducing the said document in evidence is to prove the primary purpose that the petitioner had allowed them to park vehicles in the said area, and it is not their intention that it should be marked for collateral purpose, therefore the said document cannot be received in evidence because it is not registered. The Court below has not only ignored this aspect, but also did not go into the question whether the document is properly stamped or not.

17. In **R.V.E.Venkatachala Gounder Vs. Arulmigu Visweswaraswamy and V.P.Temple and another**¹, the Supreme Court held:

“19. Order 13 Rule 4 CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the court, which endorsement signed or initialled by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the court to the person from whose custody it was produced.

20. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In

¹ AIR 2003 SC 4548

the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.”.....

18. The objection in the instant case is to the admissibility of the document itself and merely because it was marked as an exhibit, the Court below is not precluded from going into the objection as to the admissibility even at a later stage, as held in the above decision.

19. Therefore, in my opinion, the order dt.29.10.2018 in I.A.No.695 of 2018 in O.S.No.2967 of 2016 of the XX Junior Civil Judge, City Civil Court, Hyderabad, cannot be sustained. It is accordingly set aside, and I.A.No.695 of 2018 is allowed; and it is held that the said document i.e., declaration dt.06.10.2016 marked as Ex.A6 should be de-exhibited and cannot be admitted in evidence for any purpose.

20. The Civil Revision Petition is allowed with the above directions. There shall be no order as to costs. Pending Miscellaneous Petitions, if any, shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

Date:19.06.2019

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