

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Civil Revision Petition No.2710 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.03.09.2019 passed in Original Suit No.95 of 2010 on the file of the XXV Additional Chief Judge, City Civil Court, at Hyderabad.

2. The Revision Petitioners herein are defendant nos.3 to 6 in the above suit.

3. The said suit was filed by respondents herein against the petitioners for declaration of title and recovery of possession of the suit schedule property from the deceased-1st respondent who died during pendency of the suit. Her legal representatives were also brought on record.

4. In the above suit, the respondents / plaintiffs have sought to mark an unregistered agreement of rent to show that one Smt. Bhagirathi Bhai allowed Smt. Venku Bai to stay in the subject suit schedule property as a tenant, but the said document was not registered as lease deed. Though it was also unstamped, the stamp duty was paid along with the penalty.

5. Thereafter, objection as to admissibility of the document on the ground that it was not registered was taken up by the Court below.

6. The Court below held that the document can be marked by the respondents for the limited collateral purpose of proving possession of Late Smt. Venku Bai as a tenant of the suit schedule property under proviso to Section 49 of the Indian Registration Act, 1908.

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

8. On 12.12.2019, interim stay of the order dt.03.09.2019 passed in Original Suit No.95 of 2010 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad was granted.

9. Though the counsel for Revision Petitioners sought to rely on the decision in **V. Madhusudhan Rao and others vs. S. Nirmal Bai and others**¹ to hold that an unregistered document is not admissible even for the purpose of proving the nature of possession which is a collateral purpose, I do not agree with the said view since even in the said decision **K.B. Saha and Sons (P) Ltd. Vs. Development Consultant Ltd.**² was cited where it was held that an unregistered document can be used as an evidence of collateral purpose as provided in proviso to Section 49 of the Indian Registration Act, 1908.

10. That apart, a learned single Judge of this Court in **K. Ramamoorthi vs. C. Surendranatha Reddy**³, referred to other decisions of the Supreme Court reported in **Satish Chand Makhan**

¹ 2019 (3) A.L.D. 297 (A.P.)

² (2008) 8 S.C.C. 564

³ 2012 (6) A.L.D. 163

and others vs. Govardhan Das Byas and others⁴, M/s. Sms Tea Estates P. Ltd. Vs. M/s. Chandmari Tea Co. P. Ltd.⁵, Bondar Singh and others vs. Nihal Singh and others⁶ and Avinash Kumar Chauhan vs. Vijay Krishna Mishra⁷ and held as under :

“24. On a compendious reference of the case law discussed above, the followings conclusions emerge:

i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17(b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.

ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.

iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.

v) The phrase "collateral purpose" is with reference to the transaction and not to the relief claimed in the suit.

⁴ A.I.R. 1984 S.C. 143

⁵ 2011 (5) A.L.D. 149 (S.C.)

⁶ (2003) 4 S.C.C. 161

⁷ 2009 (1) A.L.D. 109 (S.C.)

vi) *The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.*

vii) *Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document.*

25. *Having culled out the legal propositions, the discussion on this issue will be incomplete if a few illustrations as to what constitutes collateral transaction are not enumerated as given out in Radhomal Alumat (2 supra) and other Judgments. They are as under:*

a) *If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendant's possession.*

b) *An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: *Queen-Empress v Rama Tevan*, *P.V.M.Kunhu Moidu v T.Madhava Menon* and *Vani v Bani*).*

c) *In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (*Hanmantapparao v Ramabai Hanmant*).*

d) *An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by virtue of deed of gift but by setting up the plea of adverse possession (*Varada Pillai* (4 supra)).*

(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alumal (2-supra), Bondar Singh (15-supra) and A.Kishore (16-supra).

The above instances are only illustrative and not exhaustive. There may be many more situations where a transaction can be collateral to the transaction which affects the immovable property. The Courts will have to carefully decide on a case to case basis in the light of the legal principles contained in the above discussed and various other judgments holding the field.”

11. Therefore, I am of the opinion that though the document in question in the instant case is an unregistered lease deed / rental agreement it is still admissible in evidence for the collateral purpose to the limited extent of showing nature of possession of Late Smt. Bhagirathi Bhai.

12. I, therefore, do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No order as to costs.

13. The interim order granted earlier in Interlocutory Application No.1 of 2019 in Civil Revision Petition No.2710 of 2019 is vacated.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 24.01.2020

Ndr/*