



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE FOURTH DAY OF MAY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 1038 OF 2019

Between:

1. SIRIGIRI OBULESU S/o.Nagaiah,
Hindu, aged about 40 years,
R/o.Singaiahcheruvu, Ramnagar,
Podalakur, SPSR Nellore District

...PETITIONER(S)

AND:

1. DUGGINENI VENKATESDWARLU S/o.Singaiyah,
Hindu, aged about 58 years,
R/Podalakur Village and Mandal, SPSR Nellore District
2. Duggineni Kotamma S/o.Singaiyah,
Hindu, aged about 78 years,
R/Podalakur Village and Mandal,
SPSR Nellore District
3. Renangi Ratnam S/o.Subbaiah,
Hindu, aged about 65 years, R/o.Ramnagar, Podalakur, SPSR Nellore District
4. Renangi Ravanamma W/o.Ratnam,
Hindu, aged about 58 years, R/o.Ramnagar, Podalakur, SPSR Nellore District
5. Sirigiri Pedda Pitchaiah S/o.Obaiah,
Hindu, aged about 58 years,
R/ o. Singaiyahcheruvu, Ramnagar, Podalakur, SPSR Nellore District
6. Settipalli Lakshmaiah W/ o. Pitchaiah,
Hindu, aged about 78 years,
R/o.Singaiyahcheruvu, Ramnagar, Podalakur, SPSR Nellore District
7. Bandikarla Ratnam S/o.Gunnaiah,
Hindu, aged about 48 years, R/o.C/o.Pandpati Mastanaiah, (RTC Driver),
R/o.Singaiyahcheruvu, Ramnagar, Podalakur, SPSR Nellore District
8. Sk.Kalesha Kukkala Kalesha S/o.Mastan Saheb,
Muslim, aged 58 years,
R/o.Ramnagar Gate Center,
Podalakur, SPSR Nellore District
9. Sirigiri Obaiah S/o.Obaiah,
Hindu, aged about 66 years,
R/ o. Singaiyahcheruvu, Ramnagar,
Podalakur, SPSR Nellore District
10. Sirigiri Obulesu S/o.Chenchaiah, Hindu, aged about 53 years, Working as
Junior Assistant in APSRTC, R.M. Office,
Nellore, SPSR Nellore District
11. Renangi Mastanaiah S/o.Penchalaiah,
Hindu, aged about 43 years, R/o.Singaiyahcheruvu, Ramnagar, Podalakur,
SPSR Nellore District
12. Renangi Bujjaiah S/o.Penchalaiah,
Hindu, aged about 38 years, R/o.Singaiyahcheruvu, Ramnagar, Podalakur,
SPSR Nellore District



13. Mandhapalli Narasaiah S/o.Penchalaiah,
Hindu, aged about 48 years,
R/ o. Singaiahcheruvu, Ramnagar, Podalakur, SPSR Nellore District

2022:APHC:14124

(Respondents 3 to 14 are not necessary Parties to the proceedings)

...RESPONDENTS

Counsel for the Petitioner(s): C SUBODH

Counsel for the Respondents: K PALLAVI

The Court made the following: ORDER

**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI****Civil Revision Petition No.1038 of 2019****ORDER:**

This revision petition, under Article 227 of the Constitution of India, is preferred against the order, dated 18.03.2019, passed in O.S.No.84 of 2014 on the file of the Court of VII Additional District Judge, Gudur, Nellore District, not allowing the documents at Sl.Nos.1 to 22 in the chief affidavit for making in evidence, as per the docket orders, dated 30.10.2018.

2. The revision petitioner is the 7th defendant in the suit. The respondents 1 and 2 are the plaintiffs. The respondents 3 to 13 are the other defendants who are shown as not necessary parties to this revision. The suit is filed for declaration of title, recovery of possession and mandatory injunction. When the 7th defendant filed affidavit as DW1 intending to file (24) documents mentioned in the affidavit, objection was taken by the plaintiff on 30.10.2018 on the ground of want of registration and insufficiency of stamp duty on the agreements of sale as it is recited 'delivery of possession' was effected under those documents. On 30.10.2018, the trial Court recorded the objection and adjourned the case to 05.11.2018, stating that it was of the view that it was proper to pass orders regarding admissibility of the documents while marking the documents and hence posted for appearance of DW1 on 05.11.2018. The docket order of the trial Court, dated 30.10.2018, reads as follows:

" *When the counsel for defendants intend to mark the agreements of sale mentioned in the chief affidavit, the counsel for plaintiffs raised objection stating that the document was executed on insufficient stamped document and recitals of the documents*



goes to show that possession was delivered, as such the documents cannot be received in evidence. In support of his arguments he relied upon case in between **Yerramreddy Chandra Reddy v. Thumma Kasapa Reddy and another** reported in 2015(6) ALD.

On that the learned counsel for defendants argued that the agreements can be received in evidence for collateral purpose and the above citation is helpful to their case and the amendment to Section 17 of Registration Act was effected from 01.12.2012 and the documents relate to prior to 2012 as such they do not require registration. In support of his argument on that proposition he relied upon case in between **K. Murugan v. B.Ramalingam** in C.R.P.No.4576/2011.

Heard both the counsels. Perused the documents. The argument of the learned counsel for defendants that amendment to Sec.17 of Registration Act was effected from 01.12.2012 and the documents relates to prior to 2012 as such they do not require registration by relying upon the case in between **K.Murugan v. B.Ramalingam** in C.R.P.No.4576/2011 is not tenable as the said amendment referred in the citation is with regard to Tamilnadu Act 29 of 2012 which came into force w.e.f., 01.12.12. As such, the citation is not applicable to the present case. As seen from the record, there are number of agreements. Hence, this Court is of the view that it is proper to pass orders regarding admissibility of documents while marking the documents. Hence posted for appearance of DW1. Call on 05.11.2018.”

On 18.03.2019, the trial Court recorded as follows:

“DW1 was examined for further chief, exhibits B1 to B4 marked. Documents mentioned at serial numbers 1 to 22 in chief affidavit not marked as per docket orders dated 30.10.2018. Cross examination by counsel for plaintiff, deferred at request posted to 25-03-2019.”

3. Being aggrieved by the order of rejection to receive the documents in evidence, the present revision was filed stating that refusal to receive the documents mentioned at Sl. Nos. 1 to 20 in the



affidavit is contrary to law and they can be marked for collateral purpose and that the trial Court erred in not taking into consideration the judgment relied on by the petitioner. It is further stated that these documents can be received in evidence for collateral purpose as they relate to the period prior to 2012 and they do not require registration.

4. Heard Sri C.Subodh, learned counsel for the revision petitioners and Smt. K.Pallivi, learned counsel for the respondents.

5. Though, originally, (25) documents were mentioned in the affidavit, there is a correction in the affidavit by deleting the document mentioned at Sl.No.21 and renumbering the document at Sl.Nos.22 to 25 as Sl.Nos.21 to 24. Out of (24) documents, the document mentioned at Sl.No.5 is a registered partition deed, dated 29.03.2010, and documents mentioned at Sl.Nos.22 to 24 are property tax receipt, water tax receipt and electricity bills. Therefore, all the other documents which are not received in evidence are agreements of sale. The trial Court refused to receive all those documents in evidence. Therefore, the order of the trial Court that documents at Sl.Nos.1 to 22 were not received in evidence must be understood as accepting the document at Sl.No.5, which is a partition deed and also document relating to property tax receipts shown originally at Sl.No.23, but subsequently renumbered as Sl.No.22.

6. As such, now what is to be examined is whether rejection of all the documents of agreements of sale bearing different dates at one stroke is valid?

7. A document can be rejected to be received in evidence, among other grounds, mainly on the ground of want of registration or/and



want of proper stamp duty. Both these aspects are governed by two different enactments.

8. Insofar as registration of a document is concerned, Section 17 of the Registration Act, 1908 lists the documents which require registration. Section 49 of the same Act speaks about effect of non-registration of documents required to be registered. An instrument of agreement of sale of immovable property of value of Rs.100/- and upwards was made compulsorily registerable by an amendment to Section 17 of the Registration Act, 1908, by incorporating Section 17(1)(g) by Act 4 of 1999, which came into force with effect from 01.04.1999. Therefore, a document of agreement of sale executed prior to 01.04.1999 does not require registration and cannot be objected to be received in evidence on the ground of want of registration. If we adopt this test, only two documents shown at Sl.Nos.7 and 14, viz., agreements of sale, dated 21.12.2009 (originally written as 1999, but corrected as 2009) and agreement of sale, dated 16.09.2004 require registration.

9. Section 49 of the Registration Act, 1908 reads as under:

49. Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall:

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer



of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.”

10. Since they are not registered, they cannot be received in evidence except for collateral purpose, which is permitted under Section 49 of the Registration Act.

11. As the suit is for declaration of title based on these agreements of sale with possession, the main purpose is to establish title of ownership which is not even transferred under a document of agreement of sale. Even relief for recovery of possession or mandatory injunction is consequent to establishing title of ownership. No other collateral purpose for which they can be received in evidence is shown by the petitioners. Therefore, irrespective of want of stamp duty, they cannot be received in evidence for want of registration.

12. Insofar as documents at Sl.Nos.8, 19 and 20 which are agreements of sale, dated 25.01.1997, 20.03.1999 and 20.03.1999 is concerned, since they fall in the category of documents executed prior to 01.04.1999, they do not require registration. But they require stamp duty as per Section 3 read with Article 47A of Schedule 1A of the Indian Stamp Act, 1899.

13. Relevant portion of Section 3 of the Indian Stamp Act reads as under:

“3. Instruments chargeable with duty—Subject to the provisions of this Act and the exemption contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor, respectively that is to say:



(a) xxx xxxx xxxxxx xxxxx

(b) xxx xxxx xxxxxx xxxxx

(c) xxx xxxx xxxxxx xxxxx

[Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in Clause (a) or (c) of this Section or in Schedule I, the amount indicated in Schedule 1-A shall, subject to the exceptions contained in that schedule, be the duty chargeable on the following instruments]

(aa) every instrument, mentioned in Schedule 1-A as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in the State of Andhra Pradesh on or after the first day of April, 1992;

(bb) xx xxx xxx xx."

Schedule 1A of the Stamp Act was amended regarding 'agreement of sale with possession' by AP Act 21 of 1995, which came into effect from 01.04.1995. Stamp duty chargeable for an agreement of sale is provided under Article 6 of Schedule 1A of the Stamp Act. Rule 6B deals with sale agreement with possession and its proper stamp duty is 4% adjustable. In any other case, the stamp duty is Rs.100/-. Article 47A of Schedule 1A of the Stamp Act contains explanation (1) brought into the enactment by substitution by Act 21 of 1995 making an agreement to sell followed by or even delivery of possession of the property agreed to be sold chargeable as a sale and its proviso clarifies that where subsequently a sale deed was executed in pursuance of the said agreement of sale etc., the stamp duty, if any, already paid or recovered is adjustable towards total duty leviable on the sale deed. Thus, it is clear that agreement of sale with possession is chargeable to duty on par with a sale deed, if executed on or after 01.04.1995.



When this test is applied, the documents of agreement of sale at Sl.nos.1 to 4, 6, 8 to 13, 15 to 17 and 21 (renumbered) fall under the category of documents executed before 01.04.1995. Therefore, they do not require stamp duty on par with sale deed, but they can be received in evidence, if they are executed on stamp paper worth Rs.100/-, because, obviously the value of the property involved in all these documents is more than Rs.100/-. Thus, it is only documents at Sl.nos.7, 14, 18, 19 & 28 chargeable to stamp duty on par with a sale deed.

14. It was already observed by this Court that document at Sl.Nos.7 and 14 are not admissible in evidence for want of registration. Thus, it is only documents at Sl.Nos.18, 19 and 20 which are referred above, chargeable to stamp duty on par with sale deed. These documents are not executed on papers worth of stamp duty as required. Section 35 of the Stamp Act, 1899 makes it clear that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive in evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped and Section 33 says the officer specified therein shall impound the document not duly stamped, produced before such officer and further obligates such officer, for that purpose, to examine every document produced or coming before him. In view of the same, document at S.Nos.18, 19 & 20 are not admissible in evidence without paying stamp duty and penalty.

15. Therefore, the rest of the documents of agreements of sale, not being hit by the amended provisions of the Stamp Act or the



Registration Act, cannot be objected to be received in evidence on ground of want of registration or stamp duty, provided they are executed by paying stamp duty worth Rs.100/-.

16. The trial Court, without examining all these details, erroneously rejected at one stroke all the documents of agreements of sale to be received in evidence. Further, on 30.10.2018, the trial Court did not decide the admissibility of the agreements holding that it was not proper to pass orders on admissibility at the time of marking documents. Yet, on 18.03.2019, the trial Court did not even mark the documents without deciding admissibility. On the other hand, it surprisingly observed that those documents were not marked as per docket order dated 30.10.2018. On 30.10.2018, the trial Court just recorded the submissions of counsels on both sides and expressed opinion that the decision relied by defendants is not applicable and their argument was held untenable. As noted above, no decision as to admissibility was taken on 30.10.2018 and a view was taken not to decide it at the time of marking them. Thus, for all the reasons, the impugned order is liable to be set aside.

17. In the result, the Civil Revision Petition is allowed setting aside the order, dated 18.03.2019, passed in O.S.No.84 of 2014, and the trial Court shall proceed to receive documents in evidence as per the observations made herein above. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

04th May, 2022
RAR

B.S BHANUMATHI, J