



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
CIVIL REVISION PETITION NO: 6022 OF 2018

Between:

1. G BALAMANI Balamani w/o late Suryanarayana aged 55cys,D.no.73-16-1/3,Gopal Nagar, Rajahmandry-4
2. G.Sudheer Babu S/o late Suryanarayana Rao, 33 years,.D.no. 73-16-1/3,Gopal Nagar,Rajahmundry-4

...PETITIONER(S)

AND:

1. PARIMI MANGA DEVI W/o Krishnarjunarao,aged 46 years, Inamdarini,Gowravaram Post,Jagayyapeta Mandal, Kishna District

...RESPONDENTS

Counsel for the Petitioner(s): S SREERAMACHANDRA MURTHY

Counsel for the Respondents:

The Court made the following: ORDER



2019:APHC:15804

HIGH COURT OF ANDHRA PRADESH

WEDNESDAY, THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND NINETEEN



:PRESENT:
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION NO: 6022 OF 2018

Petition under Article 227 of the Constitution of India, aggrieved by the docket order of the I Additional Senior Civil Judge, Rajamahendravaram in O.S 596/2013 dated 07-08-2018.

Between:

1. G Balamani, w/o Late Suryanarayna Rao, age 55 years, D.No.73-16- 1/3, Gopal Nagar, Rajahmandry-4
2. G.Sudheer Babu, S/o late Suryanarayana Rao, age 33 years, D.No. 73-16-1/3, Gopal Nagar, Rajahmundry-4

.....Petitioners

AND

1. Parimi Manga Devi, w/o Krishnarjunarao, aged 46 years, Inamdarini, Gowravaram Post, Jagayyapeta Mandal, Kishna District

.....Respondent

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to order stay of all further proceedings pursuant to the impugned docket order dated: 7-8-2018 in O.S.No. 596/2013 on the file of the I Additional Senior Civil Judge, at Rajamahendravaram.

Counsel for the Petitioners: SRI. S. SREERAMACHANDRA MURTHY

Counsel for the Respondent: None Appeared

The Court made the following: ORDER

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO****CIVIL REVISION PETITION No.6022 OF 2018****ORDER:**

1. Challenge in this Civil Revision Petition, at the instance of defendants, is to the docket order, dated 07.08.2018, in O.S.No.596 of 2013 passed by the learned I Additional Senior Civil Judge, Rajamahendravaram (for short, 'the trial Court'), partly allowing the objections of the petitioners against marking of the photostat copies of Sale Deeds and partly rejecting their contentions against marking of original memorandum of deposit of title deeds dated 14.12.2010 holding that the said memorandum can be marked in evidence after paying stamp duty and penalty, if any.
2. The respondent/plaintiff filed O.S.No.596 of 2013 against the defendants alleging that they borrowed from her Rs.5,00,000/- on different occasions and executed promissory notes and further, on 14.12.2010 first defendant agreed to mortgage her immovable property described in the plaint schedule by way of equitable mortgage by depositing two Sale Deeds with the plaintiff with an intent to create equitable mortgage over the plaint schedule property.
3. The plaintiff averred that the defendants deposited photostat copies of the title deeds on the pretext that the original Sale Deeds were misplaced. Later, the defendants failed to discharge the loan and, hence, the suit for passing preliminary decree directing the defendants



to deposit Rs.8,60,000/- and, on their failure to do so, for passing a final decree for sale of the mortgage hypotheca. The defendants contested the suit.

4. While so, when the matter was coming up for plaintiff's evidence and when the plaintiff sought to mark certain documents through PW1, the defendants raised an objection for marking of memorandum of title deeds and photostat copies of the Sale Deeds. The defendants filed objection memo contending that the memorandum of deposit of title deeds dated 14.12.2010 is not admissible in evidence because in the said memorandum, the name of one of the executants is mentioned as Guthala Suryanarayana, but in the signature part his name is mentioned as Guthala Suryanarayana Rao. They further contended, under Section 58(f) of the Transfer of Property Act, 1882 (for short, 'the Act of 1882'), equitable mortgage will be created only by deposit of original title deeds, but not photostat copies and therefore, in the instant case, valid mortgage is not created and hence the said memorandum and the photostat copies of the title deeds are not admissible in evidence.

5. The trial Court, as already observed *supra*, partly upheld and partly negated the contentions of the defendants. The objection against marking of the original memorandum dated 14.12.2010 is concerned, it observed that the genuinity and validity of the said document cannot be decided at the preliminary stage and the defendants were at liberty to submit their objections at the time of



marking of the document, which would be decided at the time of disposal of the main case. On this observation the trial Court embarked upon marking the original memorandum dated 14.12.2010. The title deeds are concerned, the trial Court held that the photostat copies of the Sale Deeds cannot be marked. Thus, ultimately the trial Court allowed marking of original memorandum dated 14.12.2010 on payment of stamp duty and penalty while rejecting the photostat copies of the Sale Deeds.

Hence, the Civil Revision Petition.

6. Heard Sri S.Sriramachandra Murthy, learned counsel for the petitioners. Though notice was served on the respondent, none appeared for the respondent.
7. Severely fulminating the order of the trial Court, learned counsel would argue that the trial Court committed a grave error by treating the memorandum dated 14.12.2010 and photostat copies of the Sale Deeds as two separate entities of the mortgage transaction and then admitting the memorandum in evidence on payment of stamp duty and penalty on the ground that it is an original document while rejecting the Sale Deeds as they are photostat copies. He would argue that the memorandum and Sale Deeds together constitute the transaction of equitable mortgage and therefore, his objections may be viewed and decided accordingly.



8. He would submit, under Section 58(f) of the Act of 1882, to create an equitable mortgage, mortgagor has to deposit his original title deeds, but not the photostat copies. Since, in the instant case, photostat copies of title deeds were deposited, no valid mortgage can be said to have been created. Therefore, the trial Court ought to have rejected the memorandum as well as the photostat copies of title deeds. Secondly, he argued that an equitable mortgage by deposit of title deeds can be validly created by mere deposit of title deeds, without the necessity of executing any document. However, if the parties to the mortgage transaction enter into a written document evidencing the creation of mortgage, the said document requires stamp duty as well as registration. In the instant case, he would submit, the trial Court admitted the memorandum on payment of stamp duty and penalty leaving aside the exigency of compulsory registration of the document. Mere payment of stamp duty and penalty will not purge the document of its impurity of non-registration. Therefore, the Memorandum and photostat copies of the Sale Deeds are liable to be rejected *in toto* for want of registration. The trial Court, without considering the above legal aspects in right perspective, admitted the memorandum in evidence which is illegal, he argued.



9. In the light of the above arguments, the points that arise for consideration in the C.R.P. are as under:

- (1) Whether a valid equitable mortgage can be created by deposit of certified/photostat copies of title deeds?
- (2) Whether memorandum of deposit of title deeds dated 14.12.2010 is inadmissible in evidence for want of registration?

10. **POINT No.1:** The definition of mortgage by deposit of title deeds is given under Section 58(f) of the Act of 1882, which can be usefully extracted thus:

“(f) **Mortgage by deposit of title deeds** --- Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.”

11. An analysis of above definition shows that the following are the important ingredients of this type of mortgage:

- (i) Mortgage by deposit of title deeds can be created by the mortgagor in Calcutta, Madras and Bombay or any other town notified for this purpose by the concerned State Government in the Official Gazette.
- (ii) Mortgage can be created by delivering the documents of title to immoveable property to the creditor or his agent.



- (iii) Such a delivery is made with an intent to create a security for the loan obtained from the mortgagee.

12. In *K.J.Nathan v. S.V.Maruty Reddy*¹, the Apex Court delineated three requisites of a mortgage by deposit of title deeds as under:

- (i) debt,
- (ii) deposit of title deeds, and
- (iii) an intention that the deeds shall be security for the debt. Whether there is an intention that the deeds shall be security for the debt is a question of fact in each case. The said fact will have to be decided on the basis of evidence.

13. Be that as it may, as can be seen, the statute only employed the words “*documents of title to immoveable property*”, but not specifically mentioned the word “*original*” qualifying the term “*documents of title to immoveable property*”. In that view, the question is, whether original documents of title deeds relating to immoveable property are necessarily to be deposited with the creditor by the mortgagor or is it suffice to deposit the certified or photostat copies. On this aspect, we have to necessarily depend on judicial pronouncements.

14. In *Ride Master Rims Private Limited v. ING Vysya Bank Limited*², a learned single Judge of the High Court of Madras happened to deal with similar question *i.e.*, whether there can be

¹ MANU/SC/0235/1964 = (1964) 6 SCR 727

² AIR 2007 Madras 34 = MANU/TN/7071/2006



creation of equitable mortgage by deposit of xerox copy of a particular document. Learned Judge referred some judgments to answer this question. They are:

(i) **C.Assiamma v. State Bank of Mysore**³ wherein it was held that:

By '*documents of title*' we mean the legal instruments which prove the right of a person in a particular property. When a person who is acclaimed and recognized by law as the owner of property transfers his rights by an instrument which satisfies all the requirements of law, the instrument of transfer is a title deed in respect of the property so far as the transferee is concerned.... A copy of a deed of transfer is not ordinarily a document of title for the purposes of an equitable mortgage. It is the original deed of transfer that is the document of title..... At the same time there may be cases where the original document is lost and there are no chances of that document being made use for any purpose. In the absence of the original deed of transfer the next best evidence of the owner's title to the property is a certified copy of that document. A certified copy in such cases may with sufficient safeguards be received as a document of title.

(ii) The same view was taken by a Division Bench of this High Court in **M.A.V.R. Nataraja Nadar & Sons, Virudhunagar, etc. v. State Bank of India, Virudhunagar Branch, etc.** (1993 I LW 456), wherein for the question whether the equitable mortgage can be created without depositing, all the relevant documents, there were number of decisions taken for consideration and they are as follows:

MANU/TN/0199/1974: AIR 1974 Mad 16, and ultimately it was held that the view of the Kerala High Court in MANU/KE/0034/1990: AIR1990Ker157 was correct and the same is as follows (AIR 162):

³ (1992) 74 Company Cases 139



At the same time there may be cases where the original document is lost and there are no chances of that document being made use for any purpose. In the absence of the original deed of transfer the next best evidence of the owner's title to the property is a certified copy of that document. A certified copy in such cases may with sufficient safeguards be received as a document of title.

(iii) In a subsequent case before the Division Bench of this Court reported in **Rajagopal v. State Bank of Travancore** MANU/TN/0591/1994 : (1995) 1 MLJ 175 , it has been held that in order to create a valid equitable mortgage it is not necessary the original documents, of title to the property should be deposited and deposit of copy of the title deeds are sufficient to create an equitable mortgage and it is only the intention of the parties that is the prime factor to be considered.

15. Therefore, since in Section 58(f) the qualifying word "*original*" has not preceded to the phrase "*document of title to immoveable property*" and also in view of the precedential jurimetrics resounding that for creation of equitable mortgage, it is not necessary the original documents of title to the property should be deposited and that the deposit of copies of title deeds is sufficient to create an equitable mortgage and it is only the intention of the parties is the prime factor to be considered, it can safely be concluded that equitable mortgage can be created by deposit of either original title deed or certified copies or photostat copies of the title deeds. It is for the mortgagee, who shores his case upon certified copies/photostat copies, shall, to the satisfaction of the Court, establish that mortgagor for a valid reason has deposited certified copies/photostat copies with him,



indeed with an intention to create equitable mortgage. It is a question of fact for appreciation of the Court on consideration of the evidence placed on record before it.

16. For the above reason, the contention of the petitioners that no valid equitable mortgage was created by deposit of photostat copies of title deeds cannot be countenanced. As already stated *supra*, it is a question of fact which the respondent/plaintiff has to establish by placing cogent evidence for appreciation of the trial Court and the trial Court shall give a finding, on merits, with reference to the evidence on record as to whether or not equitable mortgage was created in the given set of facts. This point is answered accordingly.

17. **POINT No.2:** This point is concerned, it must be noted that in the objections filed by the petitioners/defendants against marking of memorandum of deposit of title deeds dated 14.12.2010, it is only pleaded that the said document is not admissible because in the said memorandum, the name of one of the executants is mentioned as G.Suryanarayana while in the signature portion it is mentioned as G.Suryanarayana Rao. The petitioners/defendants have not raised any plea that the memorandum is inadmissible for want of registration. Such a plea is raised only in this Civil Revision Petition. Since such a plea is based on question of law, the same requires consideration. As the said plea was not taken before the trial Court, it observed that the original memorandum of deposit of title deeds dated 14.12.2010 can be received and marked and its validity can be decided at the time of



disposal of the main suit. In my considered view, whether memorandum dt.14.12.2010 requires registration or not needs to be decided before the document is admitted in evidence. Since the trial Court had no occasion to give a finding on the above aspect, in my considered view, the petitioners/defendants can be permitted to agitate this aspect before the trial Court to enable it to give a finding. This point is answered accordingly.

18. In the light of above findings, the Civil Revision Petition is disposed of with the following directions:

i) An equitable mortgage by deposit of title deeds can be created even by delivery of original or certified copies or photostat copies of the title deeds. The predominant factor is there must be an intention on the part of the mortgagor to create equitable mortgage. Therefore, in the instant case, the photostat copies of the title deeds can be admitted in evidence for the time being. However, the plaintiff at the end of trial, shall establish to the satisfaction of the Court that the petitioners/defendants have, for a valid reason, deposited photostat copies with her, indeed with an intention to create equitable mortgage.

ii) Memorandum of deposit of title deeds dated 14.12.2010 is concerned, the trial Court shall hear both parties on the aspect of its admissibility in evidence for



want of registration and pass an order on merits. It is noticed that the trial Court has already directed that the stamp duty and penalty has to be paid in respect of the memorandum. That apart, the trial Court shall decide its admissibility on the aspect of the requirement of registration also.

19. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

SD/- K. JAGAN MOHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice U. Durga Prasad Rao)
(For his Lordships Kind Perusal)

To,

1. The I Additional Senior Civil Judge, Rajahmahendravaram, East Godavari District.
2. 9 LR Copies.
3. The Under Secretary, Union of India, Ministry of Law, Justice and company Affairs, New Delhi.
4. The Secretary, Andhra Pradesh Advocates Association, Library, High Court Buildings, Hyderabad.
5. One CC to Sri S. Sreeramachandra Murty, Advocate (OPUC)
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Phai



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HIGH COURT

DATED:17/04/2019

Rs. 1800

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ORDER

CRP.No.6022 of 2018

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