

THE HIGH COURT FOR THE STATE OF TELANGANA:: AT HYDERABAD

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CIVIL REVISION PETITION No.1439 of 2019

Between:

1. Smt. Kamala Devi, W/o. Raghunandan Tiwari, aged about 68 years, Occ : House wife, R/o.H.No.8-2-684/11/4, Road No.12, Banjara Hills, Hyderabad and others.

..... Petitioners.

And

1. Y.Anthi Reddy, S/o.Y.Raji, aged about 72 years, Occ: Agriculturist, R/o.Sravanthi Nagar, Venkatagiri, Hyderabad and 3 and others.

..... Respondents.

Date of Judgment pronounced on : 06-08-2019

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes
3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO****CIVIL REVISION PETITION No.1439 of 2019**

%06-08-2019

# 1. Smt. Kamala Devi, W/o. Raghunandan Tiwari, aged about 68 years, Occ : House wife, R/o.H.No.8-2-684/11/4, Road No.12, Banjara Hills, Hyderabad and others.

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Versus

\$ Y.Anthi Reddy, S/o.Y.Raji, aged about 72 years, Occ: Agriculturist, R/o.Sravanthi Nagar, Venkatagiri, Hyderabad and 3 and others.Venkataiah, died by L.Rs. 2 and 3 and others.

.....Respondents.

< **GIST:**

> **HEAD NOTE:**

!Counsel for the Petitioners : Sri S.Srinivas Reddy

^Counsel for respondent : Sri C. Raghu

? **Cases referred**

1. AIR 1984 SC 143
2. 2011(5) ALD 149 (SC)
3. (2003) 4 SCC 161
4. 2012 (6) ALD 163
5. 2008(6) ALD 92 (SC)
6. 2013(5) ALD 490
7. 2013(1) ALT 461

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO****CIVIL REVISION PETITION No.1439 of 2019****ORDER :**

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.16-04-2019 in O.S.No.539 of 2012 on the file of the VIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar.

2. Petitioners herein are defendant Nos.4 to 6 in the said suit.
3. The said suit was filed by 1<sup>st</sup> respondent herein against petitioners and other respondents for declaration that 1<sup>st</sup> respondent is the owner and possessor of the suit schedule property and to direct petitioners and other respondents to deliver peaceful possession of the schedule property to him.
4. During the course of evidence, petitioners wanted to mark three unregistered sale deeds Exs.B-18 to B-20 for collateral purpose during the further chief-examination of D.W.1.
5. It was the objection of the 1<sup>st</sup> respondent that these three documents being unregistered sale deeds, they cannot be marked by petitioners and other respondents, and the Court should hold that they are inadmissible in evidence.

6. It is the contention of the petitioners that these sale deeds had been revalidated by the District Registrar under Section 42 of the Indian Stamp Act, 1899 on 07-06-1997 and deficit stamp duty had also been collected thereon, and this makes them admissible in evidence. They contended that even if these documents are unregistered, they can be admitted for collateral purpose.

7. By order dt.16-04-2019, the Court below held that the suit having been filed by 1<sup>st</sup> respondent for the relief of declaration of title and possession, and since petitioners are contesting the claim of 1<sup>st</sup> respondent by setting up independent right, title and possession over the suit schedule property, these documents cannot be admitted in evidence since they are being relied upon by petitioners to prove their title over the suit schedule property. According to the Court below, proof of title cannot be treated as collateral purpose, and these documents cannot be marked as Exs.B-18 to B-20 in the further chief-examination of D.W.1 even if they had been revalidated subsequently by paying deficit stamp duty and penalty.

8. Challenging the same, petitioners have filed this Revision.

9. Learned counsel for petitioners contended that though the suit is filed by 1<sup>st</sup> respondent for declaration of his title and recovery of possession, it is the defence of the petitioners that they have perfected title to the property through adverse possession from 1995 and to prove the nature of their possession, they wish to rely on these

documents and that they are not relying on them to prove their title. They also pointed out that in the written statement they pleaded their uninterrupted possession from 15-12-1995 as owners and possessors and that the 1<sup>st</sup> respondent cannot challenge their title or possession after 17 years. Learned counsel for petitioners relied upon the decisions in **Satish Chand Makhan and others Vs. Govardhan Das Byas and others**<sup>1</sup>, **M/s.Sms Tea Estates P. Ltd. Vs. M/s.Chandmari Tea Co. P. Ltd.**<sup>2</sup>, **Bondar Singh and others Vs. Nihal Singh and others**<sup>3</sup>, **K.Ramamoorthi Vs. C.Surenderanatha Reddy**<sup>4</sup> in support his submissions.

10. Learned counsel 1<sup>st</sup> respondent refuted the said contentions and supported the order passed by the Court below. He relied upon the judgment of the Supreme Court in **K.B.Saha & Sons Pvt. Ltd. Vs. Development Consultant Ltd**<sup>5</sup>, **Golla Dharmanna Vs. Sakari Poshetty and others**<sup>6</sup>, and **Dangu @ Kadamenda Yellaiah (Died) per LRs., and others Vs. Ch.Sridhar Reddy and another**<sup>7</sup> to contend that an unregistered sale deed cannot be received in evidence in a suit for declaration of property even for collateral purpose under proviso to Section 49 of the Registration Act, 1908.

11. I have noted the submission of both sides.

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<sup>1</sup> AIR 1984 SC 143

<sup>2</sup> 2011(5) ALD 149 (SC)

<sup>3</sup> (2003) 4 SCC 161

<sup>4</sup> 2012 (6) ALD 163

<sup>5</sup> 2008(6) ALD 92 (SC)

<sup>6</sup> 2013(5) ALD 490

<sup>7</sup> 2013(1) ALT 461

12. From the facts narrated above, it is clear that three sale deeds are unregistered documents and though they were also insufficiently stamped, the deficit stamp duty was paid along with penalty under Section 42 of the Stamp Act, 1899 on 07-06-1997. So proper stamp duty is now paid on them.

13. In **Satish Chand Makhan** (1 supra), an unregistered lease agreement was sought to be marked by plaintiff in a suit for eviction against a tenant and also for mesne profits. Defendant contended that it was inadmissible in evidence for want of registration under Section 49 of the Registration Act, 1908. The trial Court admitted the document into evidence and marked it for being used by plaintiff for the collateral purpose of proving the term of the subsequent lease under proviso to Section 49 of the Registration Act and this was confirmed by the High Court. But the Supreme Court reversed it stating that an unregistered lease agreement is inadmissible in evidence except for the collateral purpose of proving *the nature and character of possession* of the defendant. It also observed that the terms of lease are not a collateral purpose within the meaning of proviso to Section 49 of the Act and for the said purpose, they cannot be marked in evidence.

14. This was reiterated in **M/s.Sms Tea Estates P. Ltd** (2 supra) and it was held that under proviso to Section 49, an unregistered document can be received evidence of contract in a suit for specific performance and also as evidence of any collateral transaction which

by itself is not required to be effected by a registered instrument. It explained that a *collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction.* In that case, it was held that an arbitration clause was contained in an unregistered lease agreement, but the said deed is admissible to prove the said collateral term relating to resolution of disputes by arbitration, unrelated to the transfer or transaction affecting the immovable property. It also observed that it can be relied upon for the limited purpose of showing that *possession of lessee is lawful.*

15. In **Bondar Singh** (3 supra), in a suit for declaration of title on the basis of the plea that plaintiffs have become the owners of suit schedule property by adverse possession, an unregistered sale deed dt.09-05-1931, was sought to be marked in evidence. The said document was admitted into evidence and the suit was decreed. This judgment of the trial Court and the subsequent judgment of the High Court were confirmed by the Supreme Court. The Supreme Court held that a document like a sale deed in the present case, even though not admissible in evidence, can be looked into as collateral purpose and in the said case, *collateral purpose is nature of possession of the plaintiffs over the suit land and it shows the initial possession of the plaintiffs over the suit land was not illegal and not unauthorized.*

16. These decisions were followed in **K.Ramamoorthi** (4 supra), by a learned Single Judge of this Court, who observed :

“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.

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 Alumal* (AIR (29) 1942 Sind 27) 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* ('92) 15 Mad. 253, *P.V. M.Kunhu Moidu v T. Madhava Menon*('09) 32 Mad. 410 and *Vani v Bani* ('96) 20 Bom. 553).

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*('19) 6 AIR 1919 Bom. 38 = 21 Bom. L.R.716).

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 (43 Madras 244 (PC)].*

*(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alimal AIR (29) 1942 Sind 27), Bondar Singh (3 supra) and A. Kishore (2004 (3) ALD 817 (DB)).*

*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.” (emphasis supplied)*

17. This Court then categorically held that *an unregistered sale deed is admissible for collateral purpose to the limited extent of showing possession of plaintiff and that in a document of sale, possession is treated as collateral to the main transaction affecting the immovable property.*

18. Having regard to the above decision and the decision of the Supreme Court in **Bondar Singh** (3 supra), the view expressed by **Dangu @ Kadamenda Yellaiah** (7 supra) that an unregistered sale deed cannot be received in evidence in a suit for declaration of title even for collateral purpose under proviso to Section 49 of the Registration Act, 1908 is not good law.

19. In **K.B.Saha and Sons Pvt. Ltd.** (5 supra) also, the Supreme Court held that though a document purporting to be a lease and required to be registered under Section 107 of the Transfer of Property Act, will not be admissible in evidence if the same is not registered, the proviso to Section 49 provides that an unregistered lease deed may be looked into as evidence of collateral purpose, but *term in lease deed cannot be proved as a collateral fact*. It was observed in para-21 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.”*

20. This judgment was relied upon in **Golla Dharamanna** (6 supra) by this Court to hold that even if stamp duty and penalty was

paid on an unregistered sale deed, the document would not be admissible in evidence to establish title to the property.

21. The contention of the learned counsel for respondents that the recital in the unregistered sale deed about delivery of possession is a term of the unregistered sale deed, and so it is not a collateral fact, cannot be accepted because as held in **K.Ramamoorthi** (4 supra), the Courts have been consistently holding that *in a document of sale, possession is treated as collateral purpose affecting the immovable property and unregistered sale deed is inadmissible in evidence for the collateral purpose.*

22. Therefore, the Civil Revision Petition is allowed; the order dt.16-04-2019 in O.S.No.539 of 2012 of the VIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar is set aside; and petitioners are permitted to mark Exs.B-18 to B-20 in evidence not for the purpose of proving their acquisition of title of the suit schedule property under the said sale deeds, but only to the limited extent of showing their possession/nature of possession/character of possession, which are collateral to the sale transaction. No costs.

23. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 06-08-2019

Note :- LR Copy to be marked

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