

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

C.R.P.No.2124 OF 2023

Between:

M.Panduranga Reddy

... Petitioner

And

Smt.N.Narsamma

... Respondent

JUDGMENT PRONOUNCED ON: 29.11.2023

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**C.R.P.No.2124 OF 2023****% 29.11.2023****Between:**

#M.Panduranga Reddy

... Petitioner**And**

\$ Smt.N.Narsamma

... Respondent**< Gist:****> Head Note:**

! Counsel for the Petitioner : Mr.P.Srihari Nath

^ Counsel for Respondent : Mr. B.Jithender

? Cases Referred:

- (1) AIR 2008 SCW 4829 SCC
- (2) AIR 1969, SC 1316
- (3) 2023 SCC Online SC 381
- (4) 2010 SCC

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**C.R.P.No. 2124 OF 2023****ORDER :**

This Civil Revision Petition is filed challenging the propriety and legality of the docket order dated 26.06.2023 in O.S.No.53 of 2017 passed by the Court of Junior Civil Judge, Zaheerabad whereby and whereunder it was held by the trial Court that the unregistered Agreement of Sale dated 25.01.2000 is inadmissible in evidence and accordingly the objection raised by the plaintiff was sustained.

2. For the sake of convenience, the parties are referred to as they are arrayed in the suit before the trial Court.

3. The plaintiff filed the suit against the defendant for declaration of her title for the suit property, for the eviction of the defendant and for a decree for correction in the house tax Revision Register of the Grampanchayat at Rajole for the year 1998-1999, by incorporating her name as owner of the suit property after deleting the name of the plaintiff in respect thereof.

4. As can be seen from the plaint, the case of the plaintiff in brief is that one Narayana Rao, was the owner and possessor of the house bearing No.3-106, admeasuring 507.65 sq. yards situated in Rajole Village. In the year 1987, the plaintiff purchased the western portion of the said house which includes constructed and open area admeasuring 226.65 sq. yards under registered sale deed bearing document No.1723 of 1987 dated 18.08.1987 from the said Narayana Rao for valid consideration and the vendor delivered possession of the property to her as shown in the schedule to the plaint (suit property). The defendant is younger brother of the plaintiff. M.Vittal Reddy, the father of the plaintiff and the defendant jointly purchased the eastern portion of the above said house under registered sale deed bearing document No.1722 of 1987 dated 18.08.1987. About seven or eight years ago, the plaintiff at the request of the defendant permitted him to reside in the suit house in January 2017, she asked him to vacate the suit house but he refused and that is why plaintiff is constrained to file the suit. The defendant filed written statement denying the case of the plaintiff and took the plea that the plaintiff sold the suit house to him under simple sale deed dated 25.01.2000 for sale consideration of Rs.31,000/- and that with her consent he got mutated his name in revenue

record and that ever since the date of purchase he has been in possession and enjoyment of the suit house.

5. The impugned docket order shows that the defendant intended to mark the unregistered agreement of sale dated 25.01.2000 and the plaintiff objected to the marking of the document on the ground that the document is compulsorily registerable under Section 17 of the Indian Registration Act, 1908 (for short the 'Act') and so it is inadmissible in evidence.

6. The trial Court upheld the objection of the plaintiff. Aggrieved thereby the defendant preferred the present Revision Petition.

7. Heard the arguments of both the learned counsel on record.

PERUSED THE RECORD.

DISCUSSION AND CONCLUSION:

8. The learned counsel for the revision petitioner mainly contended that the document is an agreement of sale and that the document was impounded and stamp duty and penalty was paid and so it can be admitted into evidence, and in support of the said contention he relied upon the following Judgments.

(1) The Apex Court Judgment dated 10.04.2023 reported in 2023 SCC Online SC 381 in "R.HEMALATHA v.KASHTHURI", in Civil Appeal No.2535/2023 (@SLP (C) No.14884/2022).

(2) The Apex Court Judgment dated 12.04.2010 reported in 2010 SCC in "S.KALADEVI v.V.R.SOMASUNDARAM & OTHERS", in Civil Appeal No.3192/2010 (Arising out of SLP (C) No.1451/2009).

(3) The order of this Court dated 25.04.2023 in "PATHI CHANDRASEKHAR v. SYED SALAR AND & 16 OTHERS", in Civil Revision Petition No.24 of 2003.

9. The learned counsel for the respondent refuting the above contention submitted that the document is compulsorily registrable under Section 17 of the Indian Registration Act, 1908 and so it cannot be admitted into evidence in the suit for declaration of title and delivery of possession and in support of his case, he relied upon the following decisions.

(1) The Madras High Court Judgment dated 02.06.2020 reported in 2020 in "AMERTHAM v. THANNACE; PALAIYA", in Civil Revision Petition: Miscellaneous Petition No.1493 of 2011, 1 of 2011.

(2) The Apex Court Judgment dated 12.05.2008 reported in AIR 2008 SCW 4829 Supreme Court in "M/s. K.B.SAHA

AND SONS PVT.LTD v. M/s. DEVELOPMENT CONSULTANT LTD", in Civil Appeal No.5659-5660 OF 2002.

(3) The Apex Court Judgment dated 03.02.1969 reported in AIR 1969 Supreme Court 1316 in "RAGHUNATH AND OTHERS v. KEDARNATH", in Civil Appeals Nos.457 and 458 of 1966.

(4) The Apex Court Judgment dated 23.09.2022 reported in 2022 SCC Online SC 1283 in "BALARAM SINGH v. KELO DEVI", in Civil Appeal No.6733 OF 2022.

10. A perusal of the agreement of sale dated 25.01.2000 would show that it is recited therein that the plaintiff sold the property for consideration of Rs.31,000/- and delivered possession of the property to the defendant and that she assured she would not claim any right over the property in future. The recitals in the document thus would clearly show that the document in fact is a sale deed though it is styled as agreement of sale. It is settled position of law that the nature of the document has to be decided by considering the recitals therein and not by the nomenclature of it.

In "M/s.K.B.SAHA AND SONS PVT.LTD v. M/s. DEVELOPMENT CONSULTANT LTD" reported in AIR 2008 SCW 4829 the Hon'ble Supreme Court in its Judgment dated

12.05.2008 after considering its earlier decisions and of various other high courts laid down legal principles regarding admissibility of unregistered document for collateral purpose/transaction and the proviso to Section 49 of the Act in para 21 as hereunder:

"21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evidence that:-

- 1. A document required to be registered 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 immoveable 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."**

In "RAGHUNATH AND OTHERS v. KEDARNATH", reported in AIR 1969, SC 1316 a three Judges bench of Supreme Court vide its judgment dated 03.02.1969 held that the documents of which registration is necessary under the transfer of property Act but not under the Registration Act fall within the scope of Section 49 of the Registration Act, 1908 and if not registered are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property.

In "R.HEMALATHA v. KASHTHURI" reported in 2023 SCC Online SC 381, it was held that an unregistered Agreement to sell is an admissible evidence in a suit for Specific Performance and the proviso is exception to the first part of Section 49 of the Registration Act, 1908.

In "S.KALADEVI v. V.R.SOMASUNDARAM & OTHERS", reported in 2010 SCC wherein the Apex Court held that in a suit for Specific Performance an unregistered sale deed is admissible in evidence.

11. In the present case the suit is filed for declaration of title and eviction of the defendant. There is no dispute about the fact that the defendant is not in possession of

the suit property. Regarding the nature of possession, the plea of the plaintiff is that the possession of the defendant is permissive possession whereas the defendant asserts that he is in possession as lawful owner by virtue of agreement of sale which disclosed complete sale. In as much as the document in question is a sale deed showing conveyance of title it is compulsorily registrable under Section 17 of the Registration Act, 1908. That stamp duty and penalty was paid is no ground to admit the document in evidence in view of the embargo under Section 49 of the Registration Act, 1908 regarding admission of a document which is compulsorily registrable. The document cannot be admitted into evidence on the ground of collateral purpose/transaction for the reason that the document is sought to be admitted in evidence for proof of the transaction affecting the immovable property comprised therein.

12. This Court opines that the decisions relied upon by the counsel for the revision petitioner, are not applicable to the facts of the present case because those decisions were rendered in a suit for specific performance whereas

in the present case the suit is filed for declaration of title and recovery of possession.

13. For the aforesaid reasons, this Court opines that there is no illegality or impropriety in the order dated 26.06.2023 in O.S.No.53 of 2017 passed by the Court of Junior Civil Judge, Zaheerabad, and accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

SUREPALLI NANDA, J

Date: 29.11.2023

Note : L.R. Copy to be marked.
(B/o) *Yvkr.*