

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

C.RP.No.725 of 2023

Between:

Asma Mahmood Quadri,  
W/o Syed Mehamood Quadri

... Petitioner

And

Zakia Rafath Sultana,  
W/o Syed Misbha Uddin and 12 others.

... Respondents

JUDGMENT PRONOUNCED ON 08.04.2024

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

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

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

Tr.C.M.P.No.504 of 2023

% 08.04.2024

Between:

# Asma Mahmood Quadri,  
W/o Syed Mehamood Quadri

..... Petitioner

And:

\$ Zakia Rafath Sultana,  
W/o Syed Misbha Uddin and 12 others.

...Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner: Sri Madiraju Prabhakar Rao

^ Counsel for Respondent: Sri T.Bala Mohan Reddy

? Cases Referred:

1. 2019 SCC Online TS 2059
2. (2003) 4 SCC 161
3. 2008(8) SCC 564
4. 2010 SCC Online AP 939
5. 2009 SCC Online AP 436
6. 2010 SCC Online AP 350
7. (1969) I UJ 86 (SC)
8. (2015) 16 SCC 787

**HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY****CIVIL REVISION PETITION No.725 of 2023****ORDER:**

Heard Sri S.Ganesh, learned counsel for the petitioner and Sri Ali Faraz Farooqui, learned counsel for the respondent. Perused the material available on record.

2. This Civil Revision Petition is filed aggrieved by the docket order, dated 14.02.2023, passed by the II Additional Senior Civil Court, Ranga Reddy District in O.S.No.337 of 2007.

3. By the impugned order, the trial Court declined to mark the agreement, dated 22.11.1986, executed by the Postal Employees Co-Operative a Construction Society which was validated by the District Registrar, Ranga Reddy District, as exhibit on behalf of defendant No.5, on the ground that sale deed must be compulsorily registered under Section 17 of the Registration Act.

4. The subject suit was filed seeking to declare the plaintiff as the sole and absolute lawful owner of the suit schedule property and consequently, to direct the defendants, their men, etc., to vacate and hand over the vacant physical possession of the suit schedule property to the plaintiff; for the relief of perpetual

injunction restraining the defendants, their employees, men, etc., from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and for mesne profits.

5. As per the proviso to Section 49 of Registration Act, collateral purpose implies that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction.

6. Learned counsel for the petitioner contended that the District Registrar validated the document by collecting the deficit stamp duty and once document is validated, the same is admissible under Section 42(2) of the Stamps Act; and that the said document was obtained under the Right to Information Act and therefore, the same should have been admitted under Section 65 of the Indian Evidence Act. He further contended that the said document can be looked for collateral purpose of proving the possession of the plaintiff in respect of the suit schedule property.

7. To buttress his contentions, learned counsel for the petitioner relied upon the decisions of this Court in *Smt Kamala Devi &*

***Others Vs. Y. Anita Reddy & Others***<sup>1</sup> and ***M. Narayana Reddy (died) & Ors. v. M. Janga Reddy*** (C.R.P.No.566 of 2018, dated 21.12.2018).

8. In ***Kamala Devi***'s case (1<sup>st</sup> cited supra), this Court at Para 15 placed reliance on ***Bondar Singh v. Nihal Singh***<sup>2</sup>, wherein it was held that 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 the 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.

8.1. It was further held in Para 17 as under:-

*“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.”*

8.2. Further, in Para 19 reliance was placed on ***K.B. Saha & Sons Pvt. Ltd. v. Development Consultant Ltd.*** {2008 (8) SCC 564}, wherein it was held that a document required to be registered

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<sup>1</sup> 2019 SCC Online TS 2059

<sup>2</sup> (2003) 4 SCC 161

will not be admissible in evidence if the same is not registered and however, the proviso to Section 49 of the Registration Act provides that such unregistered document can however be used as evidence of collateral purpose and the said collateral transaction must be independent of, or divisible from the transaction to the effect which the law required registration.

8.3. Ultimately, at para 22, the Hon'ble Supreme Court permitted the petitioners to mark the documents in evidence not for the purpose of proving their acquisition of title of the suit schedule property under the sale deeds, but only to the limited extent of showing their possession/nature/character of possession which are collateral to the sale transaction.

9. In the case of *M.Narayana Reddy (died) & Others*, this Court held as under:-

*“When the Tahsildar collected stamp duty and registration fee and validated the simple sale deed under Section 5A of the ROR Act, the admissibility of the copy of it on the ground that it was insufficiently stamped is impermissible since the petitioner established payment of stamp duty and registration fee under Section 5A of ROR Act, by producing satisfactory evidence.”*

9.1. It was further held in Para 25 as under:-

*“When the document is validated by collecting stamp duty and registration fee, it is deemed to be a registered document in view of Section 5A of the Act. Therefore, the original is admissible in evidence and when the original is admissible in evidence, the true Copy is also admissible in evidence.”*

10. Learned counsel for the respondent relied upon the decisions of the Hon’ble Apex Court in ***K.B.Saha & Sons Pvt. Ltd. Vs. M/s Development Consultant Ltd<sup>3</sup>***, ***G.Uday Kiran Reddy Vs. G. Ramakrishna Reddy<sup>4</sup>***, ***Sankuratri Veera Venkata Naga Mohan Raghavadevi Vs. Vedula Anjaneyulu and others<sup>5</sup>***, ***Bhaskar Rao Vs. K.A. Rama Rao<sup>6</sup>***.

11. In ***K.B.Saha’s case*** (3<sup>rd</sup> cited supra), the Hon’ble Apex Court at Para 33 placed reliance on the judgment rendered in ***Rana Vidya Bhushan Singh v. Ratiram<sup>7</sup>*** wherein it was held that a document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of

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<sup>3</sup> 2008 (8) SCC 564

<sup>4</sup> 2010 SCC Online AP 939

<sup>5</sup> 2009 SCC OnLine AP 436

<sup>6</sup> 2010 SCC Online AP 350

<sup>7</sup> (1969) 1 UJ 86 (SC)

creating, declaring, assigning, limiting or extinguishing a right to immovable property.

12. Further, various High Courts and Supreme Court have held that a document which requires registration under Section 17 of the Registration Act and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it.

13. In *G.Uday Kiran Reddy*'s case (4<sup>th</sup> cited supra), the High Court of Andhra Pradesh in Para 4 observed that the law is fairly well-settled that if a document, by itself, brings about severance of status, it is liable to be registered, under Section 17 of the Indian Registration Act (for short 'the Act'). On the other hand, if it simply contains recitals about what has already taken place, it partakes the character of notes of partition, or list of partition, and thereby, not required to be registered."

13.1. It was further held at Para 6 as under:-

*"The second aspect is, as to the admissibility. Proviso to Section 49 of the Act carves out an exception, as to the admissibility of the unregistered documents, which are otherwise required to be registered. One such*



*exception is, when a document is sought to be relied upon, for collateral purposes. A purpose would be collateral, if it is other than the one, which the document itself serves. For instance, if the document is a sale deed, any purpose, which is other than the sale itself, can be treated as collateral.”*

14. In ***Bhaskar Rao’s case (6<sup>th</sup> cited supra)***, the High Court of Andhra Pradesh in Para 21 held that Xerox copies of the documents are certified as true copies under the Right to Information Act and True copies cannot, therefore, be equated to certified copies under the Evidence Act. Hence, it is not applicable to the present case.

15. From the aforesaid decisions of the Hon’ble Supreme Court and various High Courts, it can be discerned that the law is well settled that an unregistered sale deed can be admissible in evidence only for collateral purpose to the extent of showing possession in respect to subject property or any other purpose which must be other than acquisition of title of property.

16. In the instant case, the trial Court observed that since the agreement dated 22.11.1986 is unregistered, it is not admissible in evidence and accordingly, declined to mark the said document.

17. The subject suit was filed by the plaintiff seeking to declare the plaintiff as the sole and absolute lawful owner of the suit schedule property and consequently, to direct the defendants, their men, etc., to vacate and hand over the vacant physical possession of the suit schedule property to the plaintiff. During the course of trial in the said suit, the plaintiff sought to mark the unregistered agreement dated 22.11.1986, which was duly validated by the District Registrar, Ranga Reddy District, by collecting deficit stamp duty.

18. A purpose would be collateral, if it is other than the one, which the document itself serves. For instance, if the document is a sale deed, any purpose, which is other than the sale, can be treated as collateral.

19. Also, in *Yellapu Uma Maheswari & Anr. v. Buddha Jagadheeswara Rao & Ors*<sup>8</sup>, the Hon'ble Supreme Court at para 15 held as under:-

*“It is well settled that the nomenclature given to the document is not decisive factor, but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the*

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<sup>8</sup> (2015) 16 SCC 787

*admissibility of a document is entirely dependent upon the recitals contained in that document, but not on the basis of the pleadings set up by the party who seeks to introduce the document in question.*

*A thorough reading of both Exs.B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exs.B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence, are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exs.B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.”*

20. Such being the legal position, the unregistered agreement dated 22.11.1986, can be used for collateral purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to the suit schedule property. In other words, the said unregistered document can be used for the collateral purpose to the limited

extent of showing possession/nature/character of possession of the plaintiff over the suit schedule property.

21. In the instant case, the plaintiff sought for eviction of the defendant and to hand over vacant possession of the suit schedule property. Thus, it is evident that as on the date of filing of the suit, the plaintiff was not in possession of the suit schedule property. The document sought to be marked by the plaintiff is an unregistered agreement under which the plaintiff is claiming title, therefore, the said document is registerable under Section 17 of the Registration Act.

22. Section 49 of the Registration Act reads as under:-

*“Effect of non-registration of documents required to be registered.*

*No document required by Section-17 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.”*

23. In view of above discussion and analysis, and also in the light of bar under Section 49 of the Registration Act, non-

registration of a document, which is required to be registered under Section 17 of the Registration Act, does not confer any power and cannot be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Therefore, the unregistered agreement dated 22.11.1986 cannot be used even for the collateral purpose of proving the possession of the plaintiff in respect of the suit schedule property.

25. For the foregoing reasons, discussion and the legal position, this Court is of the considered view that the trial Court has not committed any illegality, irregularity or infirmity in declining to admit the unregistered agreement dated 22.11.1986 in evidence.

26. Accordingly, this Civil Revision Petition is dismissed. No costs.

27. Pending miscellaneous applications, if any, shall stand closed.

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*JUSTICE LAXMI NARAYANA ALISHETTY*

Date:04.04.2024

Note:LR copy to be marked.

B/o

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