

(2014) 06 AP CK 0110

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1632 of 2013

Ambari Mohini

APPELLANT

Vs

Peddireddy Bhagyamma

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 6 ALD 229 : (2015) 1 ALT 476

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : K.V. Bhanu Prasad, Advocate for the Appellant; P. Devender, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

R. Kantha Rao, J.—This Civil Revision Petition is filed under Article 227 of Constitution of India against the order passed by the V Additional Junior Civil Judge, Warangal in O.S.N. 41 of 2006.

2. The brief facts relevant for considering the present Civil Revision Petition are that the revision petitioners filed a suit for perpetual injunction and also for mandatory injunction in respect of the schedule mentioned property against the defendant. Apart from seeking permanent injunction against the defendant not to interfere with the suit property, the plaintiffs sought a relief of mandatory injunction, directing the respondent/defendant to remove the door and two windows erected towards the house of the revision petitioners.

3. The defendant filed a written statement, alleging that there is a common pathway of 4" x 34" between the houses of both parties in respect of which, both parties have equal rights of enjoyment and also stating that there was an agreement between both the parties in the year 1997, where under they agreed to use the said path way commonly. It is further contended that the plaintiffs unnecessarily filed the suit against the defendant only to harass her.

4. In the course of trial, when the matter was posted for defence evidence, the defendant's husband was examined as D.W. 1 and Exs. B1 to B11 were marked on behalf of the defendant. Subsequently, the defendant filed an agreement dated 29-4-1997 duly executed by both the parties on a non judicial stamp paper worth Rs. 30/-. The plaintiffs objected for marking the said document on the ground that it was not properly stamped and registered and therefore, it cannot be received in evidence.

5. The learned trial court however, repelled the contention of the plaintiffs stating that it is a mere agreement relating to the usage of common path way by both the parties and it does not involve transfer of any immovable property. Accordingly, over ruling the objection raised by the plaintiffs, the trial Court marked the said agreement dated 29-4-1997 as Ex. B12. The trial Court however pointed out that the validity of the said document can be questioned by cross-examining the defence witness and a specific finding as to the admissibility and probative value of the said document can be given at the time of pronouncement of Judgment. The aforesaid order passed by the learned trial Court is impugned in the present revision petition.

6. To examine the correctness and legality of the order passed by the learned trial Court, the recitals of the document have to be gone into. The agreement dated 29-4-1997 shows that there is a path way of 4" x 34" between the houses of the plaintiffs and defendant. There are frequent disputes between both parties in respect of the usage of said path way. On account of said disputes, both parties entered into an agreement, where under, the defendant asked the plaintiffs to sell an extent of 2" x 34" site in the path way for an amount of Rs. 30,000/-, for which, the plaintiffs agreed and the defendant paid the said amount on the date of agreement to the plaintiffs.

7. It is further recited in the agreement that both parties have equal rights in the path way/lane of an extent of 4" x 34" and both of them shall not raise any dispute in respect of the path way one against the other. It is also recited in the agreement that each party has right to sell away their respective houses along with half of the path way to the third parties. It is further made clear in the said agreement that even if they make further construction on the said houses, they would continue to exercise the same rights in the path way and they can open the door ways in their respective houses.

8. Now, it is to be seen whether the aforesaid recitals of the agreement can be construed as a deed of conveyance requiring the purchaser to obtain a registered sale deed on a proper stamp paper?

9. Though the agreement seems to have executed to resolve the dispute between the parties in respect of the path way between both the houses, it clearly shows that a site of 2" x 34" was purchased by the defendant from the plaintiffs by paying an amount of Rs. 30,000/-. Therefore, the document obviously involves an unregistered sale of aforesaid extent of site. The trial Court

in my view went wrong viewing the said document as mere agreement between the parties not involving any conveyance of immovable property.

10. In State of Bihar and Others Vs. Bihar Veterinary Association and Others, , the Hon"ble Supreme Court dealing with the identical situation held as follows:--

"The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The Court, therefore, was empowered to pass an order in terms of Section 35 of the Act.

The contention of the learned counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct.

Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever, the said document would not be admitted for collateral purpose."

11. In view of the settled legal position on this aspect, the learned trial Court is under an obligation to levy the document with proper stamp duty and penalty, before admitting the document in evidence, even if the defendant wants to rely on the said document for collateral purpose. Apart from other terms, the document contains a recital, which clearly shows that a site of 2" x 34" was conveyed by the plaintiffs to the defendant for an amount of Rs. 30,000/- at the later instance. Therefore, the document shall be levied with stamp duty and penalty as a deed of conveyance in relation to the property conveyed.

12. For the afore mentioned reasons, the order passed by the learned V Additional Junior Civil Judge, Warangal is set aside and the document dated 29-4-1997 shall not be read in evidence unless requisite stamp duty and penalty is paid by the defendant as per law.

13. Accordingly, the Civil Revision Petition is disposed of. No order as to costs. The Miscellaneous Petitions pending if any shall stand closed.