

(2012) 09 AP CK 0108

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 122 of 2012

Dangu @ Kadamenda Yellaiah and Others

APPELLANT

Vs

Ch. Sridhar Reddy and Another

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Evidence Act, 1872 — Section 63
Registration Act, 1908 — Section 49

Citation : (2013) 1 ALT 461

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Hari Haran, for the Appellant;

Judgement

L. Narasimha Reddy

1. The petitioners filed O.S. No. 152 of 2004 in the Court of Senior Civil Judge, Karimnagar, against the respondents, for the relief of declaration of title and perpetual injunction, in respect of the suit schedule property. They placed reliance upon an unregistered sale deed, dated 08.06.1959, said to have been executed by one Mr. Gulam Rasool. The trial of the suit commenced. The petitioners intended to file a Photostat copy of the unregistered deed, dated 08.06.1959. According to them, the original of that document was presented for impounding before the Revenue Divisional Officer, Kadapa, (RDO), and after the document was impounded, it was lost in the year 2000. It was pleaded that the Office of the RDO, kept a Photostat copy of the original and on an application filed by them, he issued a certified copy of the document available with him. The same was sought to be filed as secondary evidence by filing I.A. No. 255 of 2009, u/s 63 of the Indian Evidence Act, 1872 (for short "the Act"). The application was opposed by the respondents. They have pleaded that there is nothing on record to disclose that the RDO impounded the original document, and at any rate, even the original cannot be received in evidence, since it was not registered. The trial Court dismissed the I.A., through order, dated

18.07.2011. Hence, this revision petition. Sri V. Hari Haran, learned counsel for the petitioners, submits that the certified copy of the unregistered document, dated 08.06.1959, fits into the definition "secondary evidence", under sub-section (2) of Section 63 of the Act. He contends that when the original document was presented before the RDO for impounding, he kept a Xerox copy thereof, for the purpose of record and since the original was lost by the petitioners, a certified copy of the copy, available with the RDO was furnished. He further submits that the view taken by the trial Court that even the original of the unregistered document cannot be received, cannot be countenanced, since even the unregistered document can be taken on record for collateral purposes.

2. The petitioners intended to adduce secondary evidence, of an unregistered sale deed, dated 08.06.1959. It is a certified copy of a copy of an unregistered sale deed. Two aspects assume significance, in this regard. The first is whether the said document, even if filed in original would have been admissible in evidence? (had it been available). The second is whether the document presented by the petitioners can be treated as secondary evidence?

3. The suit is filed for the relief of declaration of title and perpetual injunction. The document sought to be filed is an unregistered sale deed. It is not in dispute that a sale deed in respect of immovable property is required to be registered, under the Transfer of Property Act, 1882. Section 49 of the Registration Act deals with the effect of non-registration of documents, which are required to be registered. It mandates that such unregistered document cannot be received in evidence. Its proviso carved out an exception to the effect that such documents can be received in evidence, for collateral purposes.

4. The purpose can be said to be collateral, when it is other than the one, which the document purports to deal with. If the document is an unregistered sale deed, any purpose other than the one which relates to establishment of title to the property can be treated as collateral. In a suit for declaration of title, to an item of immovable property, an unregistered sale deed, in relation thereto, cannot be received in evidence, even for collateral purposes. The party, who intends to rely upon it, cannot plead that he would use it only for other purposes.

5. The second aspect is as to whether the document sought to be relied upon by the petitioners would fit into sub-section (2) of Section 63 of the Act. The provision reads:

Secondary evidence - Secondary evidence means and includes-

- (1) certified copies given under the provisions hereinafter contained;
- (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

6. From a perusal of this, it is evident that a copy of a copy, which is mechanically reproduced from the original, can also be received as secondary evidence. However, there must be an authenticity or certification of the first copy from the original. It is only when there is no dispute about the copy generated from the original document, that a further copy generated from such undisputed copy, can be treated as secondary evidence. In the instant case, the petitioners state that the original of the document was presented before the RDO for impounding, and that the same was returned to them. There was no occasion much less necessity for the RDO to certify any copy on comparison with the original. If the copy said to have been retained by him, does not fit into the secondary evidence, another copy generated from it cannot be treated as secondary evidence. The trial Court has taken the correct view.

7. Hence, the C.R.P. is dismissed.

8. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.