
(2003) 12 AP CK 0017
In the Andhra Pradesh High Court
Case No : CRP No. 1513 of 1997

Gedela Lalitha Kumari

APPELLANT

Vs

Bonumahanthi Neelakantham and Others

RESPONDENT

Date of Decision : 29-12-2003

Acts Referred:

Registration Act, 1908 — Section 49

Citation : (2004) 2 ALD 315 : (2004) 4 BC 447

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Gudapati Venkateswara Rao, for the Appellant; Ch. Murali Krishna, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This revision petition is filed by the plaintiff in O.S. S.R. No. 1092 of 1997 against the Order of the District Munsif, Saluru dated 12.3.1997.

2. The plaintiff filed the suit for recovery of Rs. 10,000/- with interest due from the respondents under a document described as "simple mortgage deed" dated 10.2.1994. When the plaintiff filed the suit before the lower Court, an objection was raised regarding the plaintiff relying on the document for recovery of the money and the lower Court "returned the plaint on the ground that the suit was filed on the basis of a document not admissible under law which is insufficiently stamped and unregistered.

3. It was further observed that the plaintiff has to pay the stamp duty and penalty on the document. Unless the stamp duty and penalty on the document is paid, it is not proper"and correct to number the suit. The plaint was returned for payment of stamp duty and penalty within seven days.

4. The plaintiff being aggrieved by the return of the plaint for payment of stamp duty and penalty, preferred this revision petition contending that since the plaintiff is not praying to enforce the terms of the document regarding the

mortgage of a house property and as he is simply praying the Court to order recovery of money due under the document, that portion of the document can be taken into consideration and in such an event, there is no need for any stamp duty and registration of the document and requested to allow the revision petition by setting aside the Order of the lower Court.

5. The learned Counsel for the revision petitioner relied on a Judgment of the Hon"ble Supreme Court in Mattapalli Chelamayya and Another Vs. Mattapalli Venkataratnam and Another, , wherein the Supreme Court held:

"If the recital of the document is severable from the part not requiring registration, such portion of the document is admissible in evidence."

It was further observed:

"Where one transaction creates an independent personal obligation to pay a certain sum of money and the other transaction merely strengthens the first transaction by adding a right to proceed against the charged property, the second transaction with regard to the charge being a severable transaction can be validly ignored and the award to the extent it declares the personal obligation to pay is admissible in evidence, the transaction not being required to be compulsorily registered.

Since the charge is not registered it will be correct to say that the document will not affect the immovable properties sought to be charged. It will not also be received as evidence of any transaction affecting such property that is to say, in this case, as evidence of the charge. But Section 49 does not say that the document cannot be received in evidence at all. All that it says is that the document cannot be received as evidence of any transaction affecting such property. If under the Evidence Act the document is receivable in evidence for a collateral purpose, Section 49 is no bar. The proviso to Section 49 clearly empowers the Courts to admit any unregistered document as evidence of a collateral transaction not required to be registered."

6. He also cited another Judgment of Kerala High Court in Mohana Chandra Pillai v. Ramachandran, 2000 (2) CCC 51 ,wherein the Kerala High Court while considering the scope of Section 49(c) of the Registration Act held:-

"Normally, an agreement has to be considered as a whole. If severance can be effected without affecting or damaging the core of the transaction the document can be admitted in part. Severability which takes in the rule of separability, is a principle which can be applied if it does not affect the main aim and intention of the transaction and only if the objectionable part can be severed without affecting the validity of the remaining part."

The Court further observed:

"After laying the aforesaid principles to the document in hand, what emerges are two different and severable obligations, the first evidencing a transaction of

borrowal and creation of personal liability for repayment of the borrowed amount and the 2nd with regard to the creation of a charge. Therefore, in view of the bar u/s 49 of the Registration Act, what follows is that the former part of the agreement which creates personal liability of the defendant can be enforced through Court whereas the latter portion becomes unenforceable."

7. The learned Counsel for the revision petitioner by taking the aid of the above two decisions, represented that as the suit document contains two portions viz., one regarding the mortgage of the property and the other regarding the debt transaction, he is entitled to use the later portion for recovery of the debt on account of personal liability of the Respondents, though the suit document is described as a simple mortgage deed in respect of tiled house for a period of three years for Rs. 10,000/-. The learned Counsel for the revision petitioner submitted That he is not intending to enforce the document in toto and he is confining his claim only to the extent of recovery of money on personal liability of the respondents without any charge over the property. The relevant portion of the document reads as follows: "The executants undertake to repay the amount within three years with interest and obtain a receipt to that effect".

8. In the light of the contents of the document and the legal position, the lower Court can receive the document for a limited purpose of enabling the plaintiff to recover the amount on personal liability of the respondents.

9. In the light of the above discussion, the revision petition is allowed. The revision petitioner is directed to re-present the plaint with a copy of this Order and on presentation of the said plaint, the lower Court shall receive the plaint along with the suit document and number the suit only for the limited purpose of recovery of money of Rs. 10,000/- with interest by treating it as a transaction of personal liability. No order as to costs.