
(2003) 11 AP CK 0005
In the Andhra Pradesh High Court
Case No : CRP No. 1147 of 2003

Javvadi Koteswara Rao

APPELLANT

Vs

Sonti Sambasiva Rao

RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Registration Act, 1908 — Section 49

Citation : (2004) 1 ALD 629 : (2004) 4 ALT 614 : (2004) 1 APLJ 186 : (2004) 3 CivCC 452 : (2005) 1 RCR(Civil) 156

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Venkata Rangadas Kanur, for the Appellant; P.B. Vijaya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This revision petition arises from an order passed by the Junior Civil Judge, Kaikalur dated 25-2-2003 in O.S. No. 16 of 2000, which reads as follows;

Heard. Objections regarding the admissibility of agreement of sale. As this being a suit for specific performance, Section 49 of Registration Act expressly exempted this class of cases. I hold that the suit document namely this agreement of sale dated 18-8-1999 is admissible in evidence.

2. The Lower Court while recording the evidence of P.W.1 gave a ruling to an objection raised by the defendant that an unregistered agreement of sale cannot be marked as it is a compulsorily registrable document u/s 17 of the Registration Act, 1908 (for short "the Act"). The Lower Court overruled the said objection and passed the impugned order admitting the document. Being aggrieved by the said order, the defendant preferred this revision petition questioning its validity and legality.

3. It is contended on behalf of the revision petitioner that an unregistered

agreement of sale can be marked only for collateral purpose and it cannot be marked in a suit for specific performance. The learned Counsel for the respondent-plaintiff submitted that the agreement of sale is not effecting the transfer of property in favour of the plaintiff and it is only a contract under which the plaintiff is laying a claim that the defendant is liable to execute a sale deed, therefore, the said document can be marked in a suit for specific performance of the agreement of sale.

4. The only point for consideration is whether the unregistered agreement of sale can be received and marked in a suit for specific performance of the agreement of sale?

Point:

5. Section 17 of the Registration Act, 1908 reads as follows:

17. Documents of which registration is compulsory :--(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

.....

(2) Nothing in Clauses (b) and (c) of Sub-section (1) applies to,--

.....

(v) any document other than the documents specified in Sub-section (1-A) except an agreement of sale as mentioned in Clause (g) of Sub-section (1) not in itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

6. This is a general provision making the agreements of sales compulsorily registrable, but certain exceptions have been provided under the Act itself. Clause (2) of Section 17 indicated the nature of documents that are exempted from registration. Section 17(2) makes the position clear that any document other than the documents specified in Sub-section 1A except an agreement of sale as mentioned in Clause (g) of Sub-section (1) not in itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of value of Rs. 100/- and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. The learned Counsel for the respondent submits that the document by itself did not create any right of title over the property covered by the agreement of sale, therefore, it comes

under the exception provided under Sub-clause (v) and also under the proviso to Section 49 of the Act.

7. Section 49 of the Act reads as follows:

49. Effect of non-registration of documents required to be registered :--No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall,--

i. affect any immovable property comprised therein, or

ii. confer any power to adopt, or

iii. be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

8. The proviso to Section 49 makes the wording of the section very clear that an unregistered document may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877.

9. The learned Counsel for the revision petitioner relied on a judgment of this Court reported in *E. Lakshmisaraswathi v. State Bank of India*, 1984 (2) An.WR 149, wherein a learned Single Judge of this Court while considering the scope of the proviso to Section 49 of the Act considered the position on the basis of an unregistered lease deed and held that if the value of the consideration covered by the lease is exceeding Rs. 100/-, it is not admissible in evidence and is admissible in evidence only in collateral purpose.

10. Since the document in question is an agreement of sale of immovable property, on the basis of which the suit for specific performance is filed, the principle laid down in the above judgment has no direct bearing in this case.

11. The learned Counsel for the respondent drew the attention of this Court to a judgment of this Court in *Dadi Reddy Sivanarayana Reddy Vs. Kasi Reddy Chinnamma*, wherein a learned Single Judge of this Court while considering the scope of Sections 17 and 49 of the Act categorically laid down that when there is a description in an agreement of sale that the vendor shall execute another document at the office of the Sub-Registrar as and when required, it is an indication that the document by itself did not conclusively extinguish rights in vendor, therefore, by virtue of proviso to Section 49 the said document does not require registration.

12. In the light of the provisions of the Act and the judgments referred supra, I am of the view that the agreement of sale dated 18-8-1999 does not require

registration and it can be marked on behalf of the plaintiff in the suit which was filed for specific performance of the said agreement of sale. The Lower Court was therefore right in admitting the document for the purpose of marking on behalf of the plaintiff. I do not find any infirmity or illegality in the impugned order and it needs no interference.

13. In the result, the revision petition is dismissed by confirming the order of the Lower Court. No costs.