

(1996) 10 AP CK 0078
In the Andhra Pradesh High Court
Case No : CRP No. 2955 of 1995

K. Sai Sridevi

APPELLANT

Vs

Alluri Narasimha Raju and others

RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Registration Act, 1908 — Section 2(7)

Citation : (1998) 5 ALD 330 : (1998) 6 ALT 224

Hon'ble Judges : B.V. Ranga Raju, J

Bench : Single Bench

Advocate : M/s. A. Satya Prasad, K.K. Rao and G.V. Shivaji, for the Appellant;
Mr. C. Subha Rao, for the Respondent

Judgement

1. This Civil Revision Petition is preferred against the order dated 15-7-1995 passed in Interlocutory Application No.255 of 1995 in Original Suit No.473 of 1993 by the trial Court holding that the document dated 7-5-1993 filed by the second and third respondents before it is not a lease agreement and is only an agreement to execute a lease agreement.
2. The trial Court was hearing an application filed under Order-40 Rule-1 of the CPC for the appointment of Receiver to take possession of the plaint schedule property . When the said document was tendered as evidence, it was contended by the respondents that the same is a lease agreement and as such it is compulsorily registerable.
3. The learned Counsel for the Revision Petitioner has filed a true copy of the document that was sought to be filed in the trial Court and the translation thereof was also furnished to the opposite side.
4. For the purpose of appreciation of rival contentions by both sides, the relevant recitals therein have to be referred to. The executants have agreed to execute a lease agreement for a period of ten years with stipulations about the payments

of rents and they have also agreed to hand-over the possession of the land and provide with full particulars. It was also stipulated that the rent for a period of one year is to be paid in advance and that, in case of any dispute, it was agreed that the other side would be re-imbursed with double the costs of investment made therein and that within one week from the date of execution of the said document all the details would be furnished; that the boundary stones will be put: that delivery of possession will be given and that a sum of Rs.5,000/- was received as an advance.

5. It is contended by the learned Counsel for the Revision Petitioner that inasmuch as the suit is filed on the basis of this document and in view of the application for the appointment of Receiver in which this document is sought to be marked, it would be very much clear that the said document is sought to be acted upon by the plaintiff by seeking the reliefs in the suit as well as in the application referred to above. It is also contended by the learned Counsel for the Revision Petitioner that there cannot be an agreement to enter into an agreement by circumventing the provisions of the Stamp Act and the Registration Act by providing a recital that an agreement would be entered into between the parties in future. The trial Court has gone through the recitals of the document in question and observed that since neither possession of the property was delivered nor was there any agreement to pay the rent payable from the date of execution of the said document, it cannot be taken that it is an agreement of lease.

6. It was held in *K. Santhakumari Vs. K. Suseela Devi*, , that in interpreting a document, the cumulative effect of all the recitals have to be construed. In the said case an offer to execute and register a sale deed at a later date was construed as the one not taking away the effect of clear recital transferring the title and interest of the vendor to the vendee. In *Gadiraju Sanyasi Raju Vs. Kandula Kamappadu and Others*, , it was held that in order to determine whether an agreement to lease amounts to a lease within the meaning of Section 2(7) of the Registration Act, the test would be whether the execution of another instrument, which would give a legal right, was in the contemplation of the parties. In the instant case all the recitals that would be necessary for an agreement of lease are in-fact mentioned in the document sought to be adduced as evidence. The extent of the property, the rent payable and the period of lease were clearly mentioned. In my opinion, nothing more would be necessary for the parties to enter into another lease agreement to bind both of them.

7. The recitals of the document also reveal that an advance of Rs.5,000/- was also received. However, the recital that possession would be given after one week by putting up the boundary stones will not itself alter the nature of the document. It is also seen that there is a recital that the land would be surveyed and that boundary stones would be put up before executing the registered document. Thus, the parties contemplated registration of the sale deed after fulfilling the formalities and nothing more need be done by either party before

registration of the sale deed. No purpose would be served by executing another agreement of lease. It is not the case of either side that the parties contemplated another document with different types of recitals. Thus, both sides visualised that a registered sale deed would have to be executed after completing the formalities. Thus, virtually all the recitals that would be necessary in an agreement for lease were incorporated in the disputed document. I have already pointed out that the suit as well as the application for appointment of Receiver are virtually based on the document in question. The trial Court has failed to appreciate the recitals in the document in dispute and was, therefore, in error in coming to the conclusion that the document in question is a mere agreement but not a deed (lease deed?) which comes under the definition of lease or lease agreement. I am, therefore, of the opinion that the document sought to be marked in the evidence has circumvented the provisions of the Registration Act and as such the same ought not to have been admitted in evidence.

8. The Civil Revision Petition is, therefore, allowed but in the circumstances without costs.