**(2015) 06 AP CK 0070**

**In the Andhra Pradesh High Court**

**Case No :** Civil Revision Petition No. 1350 of 2012

Madala Jyothi and Others APPELLANT

Vs

Karanam Tirupalaiah and Others RESPONDENT

**Date of Decision :** 23-06-2015

**Acts Referred:**

Contract Act, 1872 — Section 25, 25(1)
Registration Act, 1908 — Section 17, 17(1), 17(1)(b), 49, 49(c)
Specific Relief Act, 1963 — Section 15(c)
Stamp Act, 1899 — Section 35
Transfer of Property Act, 1882 — Section 122

**Citation :** (2015) 5 ALD 587 : (2015) 5 ALT 472

**Hon'ble Judges :** A. Rajasekhar Reddy, J

**Bench :** Single Bench

**Advocate :** K.S. Gopala Krishnan, for the Appellant; C. Krishna Reddy, Advocates for the Respondent

**Final Decision :** Dismissed

# Judgement

A. Rajasekhar Reddy, J—This Civil Revision Petition is filed aggrieved by the orders passed by the Senior Civil Judge, Gudur in O.S. No. 230 of 2010 dated 09.02.2012 wherein the Court below declared the suit settlement agreement dated 10.06.1997 as inadmissible in evidence for want of Stamp Duty and Registration.

2. The case of revision petitioners is that the first respondent, who is the owner of the suit property and father of first petitioner executed an agreement for settlement dated 10.06.1997 in favour of the first petitioner and delivered possession of the suit property and further agreed to execute registered settlement deed as and when requested by the first petitioner. The first respondent executed a settlement deed dated 04.06.2010 in favour of the 2nd respondent without having any manner of right. Aggrieved by the same, revision petitioners filed O.S. No. 230 of 2010 for specific performance of agreement dated 10.06.1997.

 

3. The respondents filed written statement denying the execution of the settlement deed dated 10.06.1997 in favour of the 1st petitioner and further averred that the first respondent executed settlement deed dated 04.06.2010 in favour of the 2nd respondent. During the course of arguments in I.A. No. 517 of 2010 which was filed for temporary injunction in the above suit, learned counsel for the respondents raised objections from marking the suit document for want of registration and stamp duty.

4. The Court below upheld the objection raised by the learned counsel for the respondents and held that the settlement document dated 10.06.1997 is inadmissible in evidence for want of registration and stamp duty. Aggrieved by the same, the present revision petition is filed.

5. Sri K.S. Gopala Krishnan, learned counsel for the petitioners submit that in a suit for specific performance unregistered document is admissible in evidence by virtue of proviso to Section 49(c) of the Registration Act, 1908. In support of his contention, he relied on the judgment reported in S. Kaladevi Vs. V.R. Somasundaram and Others, AIR 2010 SC 1654 : (2010) 3 JT 610 : (2010) 5 SCC 401 : (2010) 4 SCR 515 . He further submits that the suit for specific performance can be maintained under Section 15(c) of the Specific Relief Act, 1963, but the Court below erroneously declared the settlement agreement dated 10.06.1997 as inadmissible in evidence for want of registration and stamp duty.

6. On the other hand, Sri Ch. C. Krishna Reddy, learned counsel appearing for the respondents submits that the document dated 10.06.1997 is a gift settlement deed, hence the same requires stamp duty and it should be registered as per Section 17(1) of the Registration Act, 1908. He also submits that as per Section 25(1) of the Indian Contract Act, 1872 any agreement without consideration is void unless it is in writing and registered. He contends that the subject document is neither properly stamped nor is registered. In support of his contention, he relied on the judgment reported in Gandevalla Jayaram Reddy Vs. Mokkala Padmavathamma and others, AIR 2002 AP 75 : (2001) 5 ALD 402 : (2001) 5 ALT 130 : (2001) 3 APLJ 1 . He further contends that the Court below by relying on the judgments of the Apex Court as well as this Court, came to the conclusion that the said judgments are not applicable to the facts of the present case.

7. The Court below while dealing with the suit settlement document dated 10.06.1997 came to the conclusion that the recitals of the said document show that first defendant has executed the settlement deed in favour of the 1st petitioner out of love and affection in respect of the suit property and he has also delivered possession of the same to the first petitioner and further recited that the 1st plaintiff shall enjoy the property with absolute rights and further recited to execute registered document as and when requested by the 1st petitioner. These recitals of the document dated 10.06.1997 clearly show that the suit property was settled and possession was delivered to the 1st petitioner with absolute rights. Since absolute rights are conferred by virtue of the said

document, the same is required to be properly stamped and registered under Section 17(1) of the Registration Act, 1908. Section 17(1) of the Registration Act 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 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely:

(a). instruments of gift of immovable property, (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

Even if the document is construed as agreement for execution of registered settlement deed/gift deed, then also it requires registration under Section 25(1) of the Indian Contract Act. Section 25(1) of the Indian Contract Act, reads as follows:

"25. Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt, barred by limitation law.- An agreement made without consideration is void, unless-

(1) It is expressed in writing and registered under the law for the time being in force for the registration of [documents] and is made on account of natural love and affection between parties standing in a near relation to each other; or unless;"

Even otherwise, the documents which creates and transfers absolute rights in immovable property requires registration as per Section 49(c) of the Registration Act, 1908.

Section 49 of the Registration Act, 1908 reads as follows:

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

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt; or

(c) 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."

No doubt, in view of proviso to Section 49 of the Registration Act, 1908, unregistered document is admissible in evidence in a suit for specific performance, but in the present case, the trial court held that the document is a settlement deed and it is not properly stamped and moreover, it is hit by Section 25 of the Indian Contract Act.

According to Section 35 of the Indian Stamp Act, 1899, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person unless it is properly stamped.

Section 35 of the Indian Stamp Act, 1899 reads as follows:

35. Instruments not duly stamped inadmissible in evidence, etc.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

As such the instrument which is chargeable with stamp duty, shall not be admitted into evidence unless it is properly stamped. Admittedly, the suit settlement document is not properly stamped.

In Gandevalla Jayaram Reddy v. Mokkala Padmavathamma and others (supra), it is held as follows:

"7. The learned Judges committed a manifest error in holding that the daughters have a share in the property. The daughters save and except under a customary or statutory right cannot have any share in a joint family property. Even assuming that she has such right, she can only claim partition, but it is beyond any cavil of doubt that if a transaction is effected in writing, the same would require registration. The Division Bench, in our opinion, further committed a manifest error in holding that the ''pasupu kumkuma'' being both involuntary as well as for consideration, the same would not be a gift within the meaning of Section 122 of the Transfer of property Act. Evidently such a transaction would create right in immovable property in one and the right of the owner thereof shall be extinguished and thus the same would attract the provisions of Section 17(1)(b) of the Registration Act. No authority has been cited by the learned Division Bench in support of their opinion that pasupu kumkuma could very well be done orally."

The decision relied on by the learned counsel for the petitioners in S. Kaladevi v. V.R. Somasundaram and others (supra) is not applicable to the facts of the present case on hand.

 

In view of above facts and circumstances, I do not see any illegality or infirmity in the order passed by the Court below.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the revision petition, shall stand closed.

 