
(2000) 08 AP CK 0048
In the Andhra Pradesh High Court
Case No : CRP No. 423 of 1995

Relangi Nageswara Rao and another APPELLANT
Vs
Tatha Chiranjeeva Rao (died) by LRs. RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 22
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, 151
Registration Act, 1908 — Section 10(2), 17, 49
Transfer of Property Act, 1882 — Section 106, 107, 111, 4, 53A

Citation : (2000) 5 ALD 577 : (2000) 5 ALT 561 : (2000) 3 APLJ 64

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. M.V.S. Suresh Kumar, for the Appellant; Mr. P.R. Prasad, for the Respondent

Judgement

1. The CRP is filed against the orders of the learned Rent Control Appellate Authority (Subordinate Judge) Eluru in CMA No.3 of 1994, dated 16-1-1995 confirming the order of the learned Rent Controller (Principal District Munsif, Eluru) in RCC No.8 of 1984, dated 16-8-1994.
2. The petitioners herein are the respondents before the Rent Controller in RCC No.8 of 1984 and the appellants in CMA No.3 of 1995. For the sake of convenience, the parties as arrayed before the Rent Controller are referred to herein.
3. The petitioner laid a claim before the learned Rent Controller in RCC No.8 of 1984 seeking eviction of the respondents from the "B" schedule property and for delivery of vacant possession. The grounds in support of the claim were that the respondents-tenants committed default in payment of rent, that the denial of the title of the petitioner to the property was not bona fide, that they sublet the premises and they made material alterations to the suit schedule property. It was the case of the petitioner that he purchased the entire "A" schedule property of

which "B" schedule property formed part of a portion. That the 1st respondent is the brother-in-law of the petitioner (married the sister of the petitioner) and the 2nd respondent is the wife of the 1st respondent. Since 1st respondent and 2nd respondents are husband and wife, they are being referred to only as respondent. It is his case that he purchased the property from one Mr. Subba Raju under a registered sale deed Ex.A1 dated 31-1-1968. After purchase, "B" schedule portion was leased out to respondent on a monthly rent of Rs.200/- per month and subsequently, it was reduced to Rs.150/- per month as some portion of the "B" schedule property was given to one Dr. Y. V. Raghava Rao. It is the case of the petitioner that a written lease agreement was concluded between the petitioner and the respondent Ex.A4 on 9-12-1981 fixing the lease amount at Rs.200/- per month, but however, the respondent failed to pay the rent from July, 1993 and thus he committed default in payment of rent. It was also the case of the petitioner that he sublet the schedule premises to some other person a portion thereof. In the written statement filed by the respondent, it is stated that the entire "A" schedule property was owned by him. In fact he has purchased the same by selling his own properties. But, however, since there was some deficiency in making full payment to the owner, the 1st respondent requested the petitioner, who was the money lender to advance the amount to enable him to purchase the land. However, he has advanced the same on a condition that the property should be registered in his name. Thus, the property came to be registered in favour of the petitioner, even though he is not the owner. Therefore, he submits that there was no relationship of land lord andtenant at all. It is also denied that he paid any rent so far and the so called lease agreement was a forged document.

4. Before the learned Rent Controller, the following issues were framed :

- (1) Whether the respondent denied the title of the petitioner thereby liable for eviction u/s 10(2)(1b) of the Act?
- (2) Whether the respondents have sublet the portion unauthorisedly and thereby liable for eviction u/s 10(2)(a) of the Act?
- (3) Whether the respondent was the tenant of the petitioner and committed wilful default in payment of rent and thereby liable for eviction u/s 10(2)(2)(a)?
- (4) Whether the respondent by sub-letting the portion of the house to the third respondent for the commercial use having taken the building for residential purpose and thereby converted the characteristic of the tenancy and made himself liable for eviction ?
- (5) To what relief?

Four witnesses were examined for the petitioner and one witness was examined for the respondent. Ex.A1 to A8 were marked for the petitioner and Exs.B1 to B6 were marked for the respondents. After considering the evidence on record, the learned Rent Controller held that (1) denial of title by the respondent of the

petitioner was not bona fide, (2) there was a default in payment of rent, (3) he has sublet the portion leased out to respondent. However, the ground of conversion was not believed. Therefore, he passed an order on 16-8-1994 directing the eviction of the respondent. Aggrieved by the said order, the respondents filed an appeal in CMA No.3 of 1994 before the Rent Controller Appellate Authority. The appellate authority dismissed the appeal by an order dated 16-1-1994. Assailing the said order of the appellate authority confirming the order of the lower authority, the present revision has been filed.

5. The learned Counsel for the respondent Mr. V. Venkataramana submits that the very approach of the Courts below was wholly erroneous. The appellate authority has mainly based his findings on Ex.A4 which is alleged to be a lease deed. He submits that Ex.A4 cannot be received in evidence as it is a compulsorily registerable document u/s 17 of the Registration Act and it is impermissible to be received in evidence u/s 49 of the Act. He further submits that the entire edifice of the case stood on the admissibility of Ex.A4. Hence he submits that the order of the appellate authority including the order of the lower authority is liable to be set aside. On the other hand, the learned senior Counsel for the respondent (petitioner) Mr. Veerabhadrayya submits that the admissibility of the document was not urged before the trial Court and therefore, it is not open for him to agitate the same before the appellate authority. Even otherwise, the appellate Court has considered the matter with reference to the statutory provisions and held that it need not be compulsorily registerable. Further even assuming that it is compulsorily registerable, yet the document can be looked into for collateral purpose for establishing the relationship of landlord and tenant. He also submits that the appellate Court found that Ex.A4 can be received in evidence. The learned Counsel for the parties relied on various judgments on this aspect

6. Before going to the merits of the case, it has to be noted that this revision u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "Rent Control Act") and the powers of the revisional Court are somewhat wider than the revisional Court u/s 151 CPC. Inasmuch as, the propriety of the orders of the authorities can also be gone into by the authorities u/s 22 of the Rent Control Act apart from the jurisdictional aspect. It is the case of the petitioner before the trial Court that he purchased the entire "A" schedule property under a registered sale deed from one Subba Raju under Ex.A1. We are only concerned with "B" schedule property which is alleged to have been leased out to the respondents from 1968 onwards and that there was a written lease deed dated 9-12-1981. An objection was taken by the respondent that the document cannot be received in evidence as it is not registered and that it is required to be registered compulsorily u/s 17(1) of the Registration Act, 1908. The lower Court held that Ex.A1 was properly proved, but the question was whether it is compulsorily registered or not, the learned Counsel for the petitioner in the lower Court submitted that it need not be registered and even otherwise, it can be looked into for collateral purpose. But, however, the lower

Court referring to Section 107 of Transfer of Property Act, 1882 and relying on the judgment reported in Arshad Ali Khan Vs. State of Uttar Pradesh, proceeded on the assumption that the unregistered lease deed can be looked into for collateral purpose and by resorting to that process, the lower Court held that the relationship of landlord and tenant was established between the petitioner and the respondent. It is necessary to refer to certain extracts from the judgment of the trial Court which are as under :

"The Counsel for the respondent submitted that the lease deed Ex.A4 required stamp duty and penalty and " also requires registration as per the Section 107 of Transfer of Property Act and since Ex.A4 was not registered, the same cannot be looked into by the Court. The Counsel for the petitioner submitted that the lease deed Ex.A4 need not be registered and even otherwise, it can be looked into for collateral purpose to establish the case of the possession.

Coming to the appreciation of these arguments Ex.A4 was written for one year. Section 107 of the Transfer of Property Act clearly envisages that a lease of immovable property for a period of one year and upwards needs to be compulsorily registered. As contended by the Counsel for the respondent that the unregistered document cannot convey any right to the party. The Counsel for the respondent relied on the judgment reported in Arshad Ali Khan Vs. State of Uttar Pradesh, , in support of his contention that unregistered deed will not confer any title. In the said judgment while considering the unregistered lease deed, it was observed that lease deed could not be referred to for finding what was the area leased out to the defendants. But it was further observed that the lease deed could be looked into for determining the nature of the possession of the defendants in order to find out whether it was adverse or permissive.

As contended by the Counsel for the respondent that Ex.A4 needs registration. But, however, u/s 49 of the Registration Act, a lease deed can be looked into for collateral purpose and characteristic of the possession is one of the collateral purpose for which Ex.A4 can be looked into. Since Ex.A4 is looked into for the purpose of ascertaining the relationship between the petitioner and the respondent, the same can be looked into. Therefore, the petitioner clearly established that there is relationship of landlord and tenant between the petitioner and the respondent."

The lower Court found that subletting was established and with regard to the default in payment of rent he held against the respondent on the ground that he claimed the property as his own. Therefore, he was in wilful default. The appellate Court has framed only the following issues for consideration :

- (1) Whether there is relationship of landlord and tenant between the parties ?
- (2) Whether the eviction order passed by the learned Rent Controller was sustainable ?

Entire thing thus was tried to be based on interpretation of Ex.A4 lease deed.

Once the lease deed is held to be legal and valid, further details need not be gone into. As already stated, the lower Court did not go into the compulsorily registration aspect of lease deed and that it found the relationship of landlord and tenant receiving the document for collateral purpose.

7. The moot question that arose before the appellate Court was whether the Ex.A4 lease deed can be received as an evidence or whether it can be looked into for the purpose of establishing collateral issues ?

8. The appellate Court basing on the principle laid down by this Court in Puvvada Sivaji and Another Vs. Alamuri Mallikharjuna Rao and Another, , held that the appellate Court cannot go into the admissibility of the document, once it is admitted and marked in evidence. In view of this, the appellate Court failed to go into this aspect.

9. The learned Counsel Mr. Venkataramana submits that when a party has waived proof of service justifying the giving of secondary evidence and the secondary evidence is allowed, he cannot raise the objection to the admissibility in appeal. Thus he submits that the question of proof of a document is a question of procedure and can be waived. But a question of relevancy of document is a question of law and can be raised at the appellate stage as well. Where the objection to be taken is not that the document is in itself inadmissible, but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before it is marked as exhibit and marked. Thus he submits that in the instant case it is a question of relevancy of document and this being a question of law can be raised at any time even at the appellate stage. He relied on the decision of this Court reported in Ajjarapu Subbarao Vs. Pulla Venkata Rama Rao and Others, .

10. The learned Counsel Mr. Venkataramana relies on the Madhya Pradesh High Court judgment reported in Dilip Construction Company Vs. Hindustan Steel Ltd., . He refers to Para 19, which is extracted below :

"It is now well settled that an inherent lack of jurisdiction or want of jurisdiction renders the ultimate decision a nullity so that it can be challenged at any subsequent stage and even in collateral proceedings. Such a defect cannot be cured even by waiver or acquiescence of the party entitled to raise the objection. (See : Kiran Singh and Others Vs. Chaman Paswan and Others, . By now the expression "jurisdiction" has acquired a much wider meaning. However, the expression "jurisdiction" even in its original sense when it was limited, included within its ambit the stage of commencement of a proceeding. We are concerned in this case, with jurisdiction at the commencement of the proceeding and, therefore, even in the original sense of the term, when it was so limited, such a defect of jurisdiction was a nullity. This theory has now been modified by enlarging the scope of the expression "jurisdiction" so as to include in its ambit even those defects which may crop up later during the course of the proceeding. This modified meaning enlarging the scope of the expression "jurisdiction" is

dealt with in *Anisminic v. Foreign Compensation Commission* (1969) 1 All ER 208, by the House of Lords, and the same has been followed with approval by their Lordships of the SC in *Union of India (UOI) Vs. Tarachand Gupta and Bros, .*"

But, however, the learned Counsel for the petitioner Mr. Veerabhadraiah fairly concedes that he is not relying on the judgment in *Puvvada Shivaji 's case* (supra) and that he can sustain the point on the statutory provisions. In view of this, I need not refer to the decision of learned single Judge of this Court.

11. The learned Counsel for the petitioner Mr. Veerabhadraiah submits that Ex.A4 need not be compulsorily registered u/s 17 as the lease deed was only for a period of one year namely that it did not exceed one year and therefore, it need not be compulsorily registerable. He further submits that even otherwise, assuming that it is compulsorily registerable document, yet, it can be received in evidence for collateral purpose namely to establish the relationship of land lord and tenant. It cannot be received in evidence for the purpose of proving the terms of lease, but for the purpose of relationship, it can be received in evidence. On the other hand, the learned Counsel for the respondent submits that the contentions of the learned Counsel are not correct and he relied on the decisions of the various High Courts.

12. Before going to the principles laid down by this Court, it is necessary to extract certain provisions. Sections 17 and 49 of Registration Act and Section 107 of Transfer of Property Act are relevant provisions in this regard and they are extracted below:

"Section 17: Documents of which registration is compulsorily :--(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 :

(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;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

xxxxx

"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 part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

107. Leases how made :--A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be exercised by both the lessor and the lessee :

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

13. The learned senior Counsel by referring; to Ex.A4 submits that since the lease is only for one year, the lease deed need not be registered. This plea was not raised before the lower Court. Before the lower Court the petitioner contended that Ex.A4 need not be registered, even otherwise the document can be looked into for collateral purpose. The lower Court only proceeded under second contention. Even in the appeal the arguments were advanced on the admissibility of document. It was the case of the petitioner that this document could be received as evidence of collateral transaction under proviso to Section 49. It was never contended that the document did not require registration on the ground that the period under lease was not over one year. The petitioner having not raised this issue even before the appellate stage, it would not be open for him to raise the issue in the revisional proceedings. More over, whether the lease is for a period of one or above one year is a pure question of fact and he ought

to have pleaded before the trial Court. In such an event necessity for relying on proviso would not have arisen and the document could have been received as a substantial piece of evidence. Under these circumstances, I have to necessarily hold that the petitioner is not entitled to contend at this stage that since the period under lease is less than one year, Ex.A4 need not be registered.

14. The next issue that calls for consideration is whether the unregistered lease deed can be received as evidence to prove any collateral transaction?

15. The learned senior Counsel submits that to prove the nature of possession of the respondent as a tenant, it is always permissible to receive the unregistered lease deed.

16. The learned senior Counsel Mr. Veerabhadraiah relied on the decision of the learned single Judge of this Court reported in *B. Narayanamma v. Ramaiah* 1975 (2) APLJ 298 (HC), wherein it was held that an unregistered document of transfer which is required to be registered and not registered is admissible in evidence to prove the date of entering into and the fact of possession of the transferee and to show the character of his possession. Though an unregistered document required to be registered under law is not admissible in evidence to claim any right under it, it would be admissible in evidence for a collateral purpose i.e., for a purpose other than that for which the document was created. He further held that if a lessee comes into possession of immovable property under an unregistered lease deed which requires to be registered under law, certainly it would be admissible in evidence to show the character of his possession, namely that his possession is that of a lessee and therefore, permissive in nature, since a lessor, who parts with physical possession to a lessee, under law is always considered to be in constructive possession through the lessee.

17. The learned senior Counsel Mr. Veerabhadraiah further relied on the decision reported in *Rama Sahu v. Gowro Ratho* ILR 1921 (44) Mad. 55, wherein it was held that it is an unregistered lease for a period of less than one year, which is required to be registered u/s 107 of the Transfer of Property Act, but not u/s 17 of the Registration Act, is admissible in evidence to prove the nature of the possession under the instrument. The matter on a reference to the Full Bench, the Full Bench answered the reference to the effect that the documents which are not compulsorily registerable u/s 17 and so governed by Section 49 of Registration Act may nevertheless be admissible in evidence to prove the character of the possession. Thus, the learned Counsel submits that it is always open for the lower Court to deice the relationship and he also further submits that the character of the possession also includes the relationship of landlord and tenant, not the permissive possession or adverse possession.

18. He also relied on the decision of the Supreme Court reported in *Raghunath and Others Vs. Kedar Nath*, , wherein it referred to Allahabad Full Bench and Madras Full Bench decisions. The Supreme Court observed as follows:

"The inclusion of the words "by any provision of the Transfer of Property Act, 1882" by the Amending Act, 1929 settled the doubt entertained as to whether the documents of which the registration was compulsorily under the Transfer of Property Act, but not u/s 17 of the Registration Act were affected by Section 49 of the Registration Act. Section 4 of the Transfer of Property Act enacts that "Sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908." It was previously supposed that the effect of this section was merely to add to the list of documents of which the registration was compulsorily and not to include them on Section 17 so as to bring them within the scope of Section 49. This was the view taken by the Full Bench of the Allahabad High Court in *Sohan Lal and Others Vs. Mohan Lal and Others*, . The same view was expressed in a *Rama Sahu (dead) and Others Vs. Gouro Ratho*, and by Mac Lead, CJ in a Bombay case *Dawal Piranshah Vs. Dharma Rajaram Manggarudi*, . We are however absolved in the present case from examining the correctness of these decisions. For these decisions have been superseded by subsequent Legislation i.e., by the enactment of Act 21 of 1929 which by inserting in Section 49 of the Registration Act the words "or by any provision of the Transfer of Property Act, 1882" has, made it clear that the documents in the supplemental list i.e., the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act fall within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. We are accordingly of the opinion that Ex.A26 being unregistered is not admissible in evidence. In our opinion, Mr. Sinha is unable to make good his argument on this aspect of the case,"

19. On the other hand, the learned Counsel Mr. Venkataramana relied on the decision reported in *Sardar Amar Singh and Another Vs. Smt. Surinder Kaur*, , wherein it is stated that all other leases whose registration is not compulsorily u/s 17(1)(b) of the Registration Act, become compulsorily registerable, if reduced into writing by virtue of second paragraph of Section 107 of the Transfer of Property Act read with paragraph (2) of Section 4 thereof. Therefore, the effect is to exclude from evidence all unregistered leases which are reduced into writing. We are not concerned with this finding. We are only concerned with the admissibility of unregistered lease deed in evidence for collateral transaction. The question before the Full Bench was (1) Whether an unregistered lease deed can be used to show the nature and character of possession of the defendant that is whether he is a tenant in the premises or not, (2) Whether assuming the demise of the premises to be under unregistered lease deed, then whether a monthly tenancy can be presumed on the facts and circumstances of the case. The Full Bench after considering various judgments held that the unregistered lease deed can be admitted in evidence to prove collateral transaction not required to be effected by registered instrument. It further held that the unregistered lease deed cannot be used to prove the terms of the lease. Thus, it cannot be used to

show the period of lease and the rent on which the premises was demised.

20. The learned Counsel Mr. Venkataramana, strongly relied on the decision of the Supreme Court reported in *Bajaj Auto Limited Vs. Behari Lal Kohli*, which is directly touches the facts of this case. An application was made for eviction on the ground that the premises was sublet without the consent and the lessee became liable for eviction u/s 14(1) proviso (b) of Delhi Rent Control Act. 1958. It was contended by the lessee that M/s. United Automobiles are the authorised dealer and distributor of Bajaj was the respondent in the eviction petition and therefore, M/s. United Automobiles was in occupation of the premises and it cannot be described as subtenant. It was also urged that the terms of the lease cannot be looked into as the document was not registered. The Rent Controller as well as the appellate authority held that the terms of the lease was not inadmissible and the appellant was entitled to rely upon the same, but ordered eviction that M/s. United Automobiles inducted into the premises as sub-lessee. The High Court dismissed the Second Appeal on a matter having been carried in the civil appeal. On a further appeal to the Supreme Court, the Supreme Court held as follows;

"There is no dispute that the appellant has put M/s. United Automobiles in possession of the premises and has thus part with the possession within the meaning of Section 14(1) proviso (b) of the Act. The appellant-company has a separate legal entity and has nothing to do with M/s. United Automobiles except that the latter is the dealer-distributor of some of its manufactured articles. M/s. United Automobiles is not a licensee and is not in possession of the premises on behalf of the appellant. The monetary benefit available to the dealer is confined to the commission it receives on the sale of every vehicle; and does not include the right of enjoyment of the premises. The dealer pays a fixed sum as rent to the appellant and the rent is not related or dependent on the sale of any vehicle. The fact that this amount is same as what is paid by the appellant to the respondent does not appear to be material. The irresistible conclusion is that the appellant has created a sub-lease in favour of its dealer. The question now is whether the clause in the lease mentioned above amounts to the respondent's consent in writing.

The contention of the learned Counsel for the respondent that the aforesaid clause cannot be looked into for want of registration of the lease deed appears to be correct. Reliance has been placed on the observations of Fazl Ali, J., in *Sachindra Mohan Ghose Vs. Ramjash Agarwalla*, that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

The learned Counsel for the appellant attempted to meet the point by saying that so far the consent of the landlord permitting subletting is concerned, it does not require registration and the clause, therefore, must be excepted from the

requirement of registration and consequent exclusion from evidence. We do not see any force in this argument. The question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. If a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sublet. It follows that the appellant cannot, in the present circumstances, be allowed to rely upon the clause in his unregistered lease deed."

From this judgment, the learned Counsel submits that a deed purporting to create a lease is inadmissible in evidence in case it is not registered and consequently it cannot also be received as evidence for proving the terms of lease.

21. In *Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others*, , it was held thus:

"Where a suit for ejectment and mesne profits was filed without a notice to quit u/s 106 of the Transfer of Property Act against a tenant in occupation of the rented property after expiry of lease, the suit would not be maintainable. Such person is a tenant holding over and notice to quit u/s 106 of the Transfer of Property Act was necessary. It cannot be said that on expiry of the specified term under the unregistered lease deed executed before the filing of the suit, he became tenant at sufferance u/s 111(a) of the Transfer of Property Act and the suit was maintainable without notice u/s 106 of that Act. The unregistered lease deed cannot also be taken into consideration on the ground that such deed can be admitted in evidence for collateral purpose, invoking proviso to Section 49 of Registration Act, as terms of the lease are not a collateral purpose within its meaning. There being no change in the circumstances by virtue of such unregistered lease deed Order 7, Rule 7 of CPC is also not attracted."

22. The question that calls for consideration is as to what is meant by collateral transaction?

23. The expression collateral purpose is very vague and the Court must decide in each case whether the purpose for which the unregistered document was sought to be used for really a collateral purpose or to establish the existence of lease and its terms and conditions.

24. The crux of the problem in the case is revolving around Ex.A4. If Ex.A4 was registered then it automatically establishes that there was a relationship of landlord and tenant, if it is not established, even then can it be still said, that the relationship can be established by receiving the document for collateral purpose. Right from the inception, it is the case of the respondents that they did not execute any lease deed and that it is a forged document. Though it is held by the trial Court that the Ex.A4 was executed by the respondents, but the question is whether such a document can be received in evidence for proving the collateral

transaction.

25. It is no doubt true that the unregistered document can be received for collateral purpose. But, the question is whether rendering a finding as to the relationship between the parties as landlord and tenant can be said to be a collateral purpose in the instant case. Admittedly, petitioner is trying to establishing relationship of landlord and tenant under Ex.A4 and as that finding alone decides the entire fate of the case.

26. The learned senior Counsel Mr. Veerabhadraiah submits that it can be used for collateral purpose to establish the nature of the possession and consequential status of the person in possession of the property can be determined. In this case, the respondent asserted that the property belonged to him and that he was in possession of the property as owner. On the other hand, the petitioner contended that the property was leased out to respondent. In such a situation, the status of the parties, existence of lease apart from terms and conditions of lease from basic and integral transactions. Under those circumstances, can it be said that the relationship could be decided as collateral issue?

27. Admittedly, in the instant case the ground on which the eviction was sought, were that the tenant denied the title of the landlord, which was not bona fide that the tenant committed default in payment of rent that the tenant sublet the premises. If the relationship is established, nothing survives in the petition and the same has to be allowed. The case of the petitioner would stand or fall on establishing the relationship and that issue cannot be decided in the guise of collateral transaction. Whether there is a tenancy or whether the respondent was a tenant cannot be treated as a collateral issue in the instant case. What cannot be achieved by the petitioner directly cannot be allowed to be achieved indirectly.

28. For the foregoing reasons, it has to be necessarily held that the unregistered lease deed Ex.A4 cannot be received in evidence for establishing the relationship between the petitioner and respondent as landlord and tenant as collateral issue.

29. Under these circumstances, I am of the considered view that the Order of the learned appellate authority as well as the learned Rent Controller are not sustainable in law. Accordingly, they are set aside.

30. Accordingly, the CRP is allowed.

31. No costs.