
(2003) 06 AP CK 0050
In the Andhra Pradesh High Court
Case No : CRP No. 635 of 2003

State Bank of India

APPELLANT

Vs

Nutakki Srihari Rao and Another

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Registration Act, 1908 — Section 17(1), 2(17)

Citation : (2003) 5 ALD 43 : (2003) 95 RD 567

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : E. Madan Mohan Rao, for the Appellant; P.V.R. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—The short point that fell for consideration in this Civil Revision Petition is whether the agreement dated 11-8-1989 entered between the parties is an agreement to grant lease or lease itself. The petitioner herein is the tenant and the respondents are the landholders of the demises premises.

2. The respondents herein filed O.S.634 of 1994 claiming Rs. 77,950/-towards arrears of rent. During the course of examination of P.W.1, an agreement dated 11.8.1989 is sought to be marked as an exhibit. The petitioner/defendant raised objection for marking the document on the ground that it is lease deed and it requires registration u/s 17 of the Registration Act. Whereas it is contended by the plaintiffs that it is only an agreement of lease and therefore it was not required to be registered. Both the parties requested the Trial Court to give a finding on the nature of the agreement-dated 11.8.1989. On hearing Counsel for both the parties the lower Court held that the agreement-dated 11.8.1989 is only an agreement of lease and therefore it is not required to be registered and thus it is admissible in evidence. Questioning the order, the defendant has filed this Civil Revision Petition.

3. Learned Counsel for the petitioner/ defendant contends that the agreement dated 11.8.1989 is a lease agreement within the meaning of Section 2(17) of the Indian Registration Act. It is also contended by him that all the terms and conditions of the lease are detailed in the agreement and therefore the agreement is a lease deed and it is a compulsorily registrable document. He placed reliance on the decision of Bombay High Court in Sultanali Mulla Rasoolji Vs. Tyeb Pir Mahomed, and a decision of our High Court in K. Sai Sridevi Vs. Alluri Narasimha Raju and others, . In the first cited decision the Bombay High Court held that it was immaterial whether possession is passed or not and the question is whether the present demise of land was vested with the party. In the cited decision the Bombay High Court was interpreting a letter written by one party to the other. In the said letter it was mentioned that a cheque for Rs. 151/- was paid to the owner of the building and it was kept as a deposit in the continuance of the lease. Coming to the facts of the case on hand, there seem to be no such term in the agreement; therefore the cited decision has no application to the facts of the case on hand. In the second cited decision our High Court while interpreting the terms of agreement held that mere postponement of possession by a week does not make the agreement as an agreement of lease and instead it is an agreement and so requires registration.

4. Learned Counsel for the respondents/plaintiffs contends that the agreement entered between the parties is an agreement of lease and there is no delivery of possession of the property to the lessee and that the petitioners were required to make some alterations in the building before the petitioner was put in the building. He referred the terms of the agreement in detail. He also placed reliance on the decisions of the Supreme Court in Tiruvenibai and Another Vs. Lilabai, , and a Full Bench decision of our High Court in Gadiraju Sanyasi Raju Vs. Kandula Kamappadu and Others, . In the third cited decision the Supreme Court held that lease contemplated u/s 2(7) and 17(1)(d) of the Registration Act covers only the present demise. In the fourth cited decision our High Court held as follows:

"To determine whether an agreement to lease amounts to a lease within the meaning of Section 2(7), the test is to see whether the agreement itself would confer a legal right or whether, the execution of another instrument which would give a legal right was in the contemplation of the parties. It should be construed to be a lease if the present demise is to be inferred from the language employed. The fact that it contains a stipulation for the execution of a formal document subsequently would not make any difference if the covenants mentioned therein are to become binding at once. If, on the other hand the terms are not fully ascertained and some at least of the essential conditions are to be settled at a later stage even if the words used indicate a present demise, it would not be a lease as defined in Section 2(7). It is the dominant intention of the parties, that should be gathered from the language in which the document is couched, that should be the criterion in deciding whether a particular instrument is an agreement to lease or merely an agreement to grant a lease in future creating a

right in a party to obtain a document under certain circumstances or on the happening of a certain contingency."

5. Copy of the agreement has been placed along with the material papers. On thorough reading of the terms of the agreement, I am in no doubt to conclude that there is no present demise in favour of the petitioner/lessee. I feel it apposite to refer to some of the clauses of the agreement for better understanding which are as follows:

"After the building is made available, I agree to enter into an agreement with you for the lease of the premises for a period of ten years with an option of renewal in your favour for two further periods of five years each with an enhancement of 20% in the rent for every five years commencing from completion of first five years. All other terms and conditions with a further option in your favour to terminate the lease at any time during the tenancy on giving me three months" notice. It will be permissible for you to sublet the whole or any portion of the premises at your absolute and unfettered discretion.

It is understood that the agreement to lease the premises to you will be voidable at your option, if owing to laches on my part the repairs, decorations and structural alterations agreed to by me are not carried out to your entire satisfaction or if there should be inordinate or unreasonable delay in making the premises available to you. I further declare that I shall not hold you responsible for the costs and expenses incurred by me in carrying out the repairs, decorations and structural alterations or otherwise."

6. It is explicit from the terms of the agreement that the respondents/ landlords were required to make certain alterations to suit the premises for the business of the petitioner. It is only after the respondents/landlords making premises suitable to the business of the petitioner/ defendant, lease agreement would come into force. Therefore, the document dated 11.8.1989 is only an agreement to grant lease and it is not lease deed. The Trial Court considered the terms of the agreement in right perspective and held that the document dated 11.8.1989 is an agreement to grant lease and so it does not require registration. I do not see any illegality or irregularity warranting interference of this Court in exercise of revisional jurisdiction u/s 115 of CPC.

7. In the result, this Civil Revision Petition fails and the same is dismissed confirming the order dated 3-12-2002 passed in O.S.No. 634 of 1994 on the file of III Additional Senior Civil Judge, Vijayawada. No costs.