(2003) 07 AP CK 0080

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1065 of 2002

Thippareddy Obulamma and Others APPELLANT

Vs

Balu Narasimhulu and Others RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151
Registration Act, 1908 — Section 17, 49
Stamp Act, 1899 — Section 33, 35

Citation : AIR 2003 AP 525

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; M.S.R. Subramanyam, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—This Civil Revision Petition is directed against the order and decree, dated 20-02-2002, passed by the Senior Civil Judge, Darsi, dismissing the application in I.A.No.55 of 2002 in O.S.No.16 of 2001, filed under Section-151 of the CPC to permit the petitioners to mark the documents, dated 29-07-1983 and 21-05-1986 as exhibits for collateral purpose to prove the nature of their possession under the said documents after collecting necessary stamp duty and penalty, if any, on those documents.

2. The petitioners are the defendants and the respondents are the plaintiffs. The suit is filed for declaration of title and permanent injunction.

3. For the sake of convenience, the parties will be referred to as arrayed in the suit.

4. The whole dispute is between the wife of the illatom son-in-law and two brothers who are the grand children of one late Pitchi Reddy.

5. It appears that late Pitchi Reddy agreed to give the alleged illatom son-in-law

by name Venkataswamy a share in the joint family properties along with his sons. In that process, some partition was also effected, of course, there is a dispute as regards the shares, which has snow walled into the present shape of litigation.

6. The claim of the defendants is that two different extents of land were sold away by way of executing two agreements of sale, dated 29-07-1983 and 21-05-1986 for a consideration along with delivery of possession. Those documents were executed on stamped papers, which were sought to be marked by the defendants more particularly the 1st defendant in order to show that pursuant to the above said insufficiently stamped and unregistered documents, the possession has been delivered from the respective dates of the execution of the said documents and accordingly the defendants are in possession of the property.

7. Whereas the contention of the plaintiffs appears to be that partition of certain items of properties to all the parties was effected long back and as the defendants have been interfering with their peaceful possession of their respective properties, they filed the suit for declaration of title and permanent injunction. Hence, the defendants have filed the present application seeking permission of the court to mark those documents as exhibits for collateral purpose in order to demonstrate their possession.

8. The said request of the defendants was seriously objected to mainly on the ground that the said documents were allegedly in the nature of sale deeds, which are unregistered and insufficiently stamped and as such they are not admissible in evidence for any purpose.

9. Now, the question that falls for consideration is:

"Whether the unstamped or insufficiently stamped and unregistered documents are admissible in evidence?

In Hussain Begum and others Vs. Madu Ranga Rao and others, , a learned single Judge of this Court while dealing with a lease deed observed that

"In view of the fact that Ex.B-1 is an unregistered lease deed, it is not admissible according to Section-49 of the Registration Act. No doubt, in the explanation appended thereto document, which per se is not admissible, for want of registration can be considered by the Court for collateral purpose. The factum of lease being the contentious issue, Ex.B-1 cannot be pressed into service to prove the possession of the defendants otherwise independent of the document."

10. The learned counsel for both the parties places reliance on the said judgment of a learned single Judge of this Court.

11. But, from a careful reading of the said judgment and the facts thereof, it is to be noticed that one of the factual aspects, particularly regarding lease deed, before the learned single Judge, was that in what capacity the defendants are in

possession inasmuch as the possession of the defendants therein was an undisputed fact.

12. Even from the observations recorded above, it could be seen that the learned single Judge found that even though the document per se is not admissible, for want of registration, can be considered by the Court for collateral purpose. Obviously, this observation was made in the light of the proviso to Section-49 of the Registration Act, 1908.

13. In Sanjeeva Reddi Vs. Johanputra Reddi, while dealing with the scope of Section-35 of the Indian Stamp Act, a learned single Judge of this Court held:

"While considering the scope of Section-35 of the Indian Stamp Act, we cannot bring in the effect of non-registration of a document under Section-49 of the Indian Registration Act. Section-17 of the Indian Registration Act deals with documents, the registration of which is compulsory and Section-49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section-17 or by any provision of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition under Section-49 to receive such a document which requires registration to be used for a collateral purpose i.e., for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section-35. In other words, if an unstamped instrument is admitted for a collateral purposes, it would amount to receiving such a document in evidence for a purpose which Section-35 prohibits."

14. In T. Bhaskar Rao Vs. T. Gabriel and Others, , a learned single Judge of this Court observed:

"It is now well settled that there is no prohibition under Section-49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section-35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section-35 of the Stamp Act."

15. In Ummadi Subramanyam Vs. Ekka Dhanamma and another, another learned single Judge of this Court while dealing with the scope of Proviso to Section-49 of the Registration Act, 1908, observed:

"From this it is seen that even if an unregistered document is produced before the Court a discretion is given to the Court to impound the document and admit the same in evidence. Proviso to Section-49 of the Registration Act says that an unregistered document affecting immovable property and required either by the Registration Act or the Transfer of Property Act 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. As this being a suit for specific performance, as per the proviso to Section-49 of the Registration Act, even if it is a sale deed, the same can be admitted in evidence. But the question of admitting the same in evidence will arise only after the Court impounds the document as contemplated under Section-33 of the Indian Stamp Act, 1899. Under Section-33 of the Stamp Act, ...

16. The learned counsel for the plaintiffs also relied upon another judgment of the Calcutta High Court in Smt. Gita Devi Shah and others Vs. Smt. Chandra Moni and Karnani and others, but I could see not much relevance from the said judgment inasmuch as the issue involved therein was under the Tenancy Laws and incidentally the scope of Section-35 of the Indian Stamp Act, 1899, was dealt with. Hence, in my view, the above mentioned judgment is not of much assistance to resolve the controversy involved in the case on hand.

17. From a combined reading of the judgments referred to above, in conjunction with proviso to Section-49 of the Indian Registration Act, 1908, broadly the following would emerge:

(1). An unstamped or insufficiently stamped document is inadmissible in evidence.

(2). As per the proviso to Section-49 of the Indian Registration Act, an unregistered document affecting immovable property and required to be registered can be received as evidence either in cases referred to therein or to prove any collateral transaction.

(3). If an unstamped or insufficiently stamped document coupled with the infirmity of being unregistered can be received as evidence for a collateral purpose, provided, the first defect under the Indian Stamp Act, 1899, is corrected. In other words, an unstamped or insufficiently stamped document after duly impounded as prescribed under Section-33 of the Indian Stamp Act, 1899 can be relied in evidence for collateral purpose.

18. The incidental question that arises is what is a collateral transaction?

19. It is difficult to define ''collateral purpose'' with phonetic precession. The real purpose can only be gathered from the facts and circumstances of each case and may also vary from case to case. (See K. Panchapagesa Ayyar and Another Vs. K. Kalyanasundaram Ayyar and Others, .

20. Coming to the case on hand, it is to be noted that the suit is filed for declaration of title and permanent injunction. The specific case of the defendants, while seeking permission to mark the documents, dated 29-07-1983 and 21-05-1986, as exhibits, is that the said documents were insufficiently stamped and unregistered and certain portions of the property by way of sale deeds

allegedly have been purchased by their predecessors from the predecessors of the plaintiffs.

21. The main thrust was not only on the nature of the documents for sale of certain properties for a valid consideration but also delivery of possession. The principal relief in the suit is title. Therefore, in the present set of facts, the incidental question is possession. In such a case, it is required to be examined as to "whether possession is being claimed by both the parties, more particularly by the defendants, is under what capacity." In other words, if possession is to be established, whether such a possession was out of the alleged sale transactions by virtue of the documents, which are admittedly insufficiently stamped and unregistered.

22. Therefore, the possession attains some significance. The rest i.e., the question of title has to be examined and decided only in the suit. Nevertheless the possession plays a vital role. Though this is a contentious issue, it is necessary for the court and also relevant for the defendants to prove their possession, which was emphatically pleaded by them along with the two disputed sale transactions.

23. From a bare perusal of the impugned order of the Court below, it appears that the Court below relied on the judgment rendered by a learned single Judge of this Court in HUSSAIN BEGUM vs. M.RANGA RAO (1 supra), wherein it was observed that "the unregistered lease deed is inadmissible in evidence since the factum of lease being the contentious issue, the unregistered lease deed is not admissible even for a collateral purpose of proving possession".

24. It is to be seen from the above judgment that the learned single Judge of this Court made the above observations only in the context of an unregistered document particularly in the context of dispute as regards possession. The aspect and the scope of the infirmities suffered by the disputed documents, under the Indian Stamp Act, 1899, had not fallen for consideration. Even otherwise, the learned single Judge of this Court noticed the effect of the proviso to Section-49 of the Indian Registration Act, 1908. In the other decisions, cited supra, the documents sought to be marked were suffering from the disqualifications both under the Indian Stamp Act, 1899, and the Indian Registration Act, 1908. In such a case, the contentious issue in all those decisions is to the extent, and effect, that the document, which is either unstamped or insufficiently stamped has to be properly impounded after following the procedure prescribed under Section-37 of the Indian Stamp Act, 1899.

25. For the foregoing reasons, I am of the considered view that the Court below had construed the judgment of the learned single Judge of this Court in HUSSAIN BEGUM vs. M.RANGA RAO (1 supra) erroneously and hence the impugned order and decree passed by the Court below is liable to be set aside and accordingly the same are set aside.

26. In the result, the Civil Revision Petition is allowed and the application in

I.A.No.55 of 2002 in O.S.No.16 of 2001 is allowed as prayed for. However, there shall be no order as to costs.

