
(1952) 08 AP CK 0004
In the Andhra Pradesh High Court
Case No : Writ Case No. 223 of 1951

Vishwanath

APPELLANT

Vs

Custodian Evacuee Property

RESPONDENT

Date of Decision : 12-08-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17(2)

Citation : (1952) 08 AP CK 0004

Hon'ble Judges : Palnitkar, C.J; Siadat Ali Khan, J

Bench : Division Bench

Advocate : Govindrao Ardhapurkar, for the Appellant; Narhari Shastry, for the Respondent

Judgement

1. This is a petition for a writ of certiorari against the order of the Custodian of Evacuee Property directing that the sale can be confirmed only on payment of Rs. 1300 by the Petitioner. The brief facts of the case are that the Petitioner purchased the property in question from one Mohsin Bin Saleh and a sale-deed dated 24th Forward 1358 F. was registered by the vendor In favour of the vendee, the Petitioner. It is stated in the sale-deed that in lieu of H. Section Rs. 4000/- the property was sold to the Petitioner. Further there is a statement that out of the said amount Rs. 1300 (H. S.) have already been paid as earnest money to the vendor and that Rs. 600 were paid before the Registrar and that Rs. 2100 will be paid within eight clays. The Petitioner filed a suit on the basis of the sale-deed in the court of the Munsif Court, Basmat, and the Defendants put in a written statement admitting the claim. The amount of Rs. 2100 mentioned in the sale-deed was paid in the court to the Defendants and the decree was passed embodying the said admission and the payment of the said Rs. 2100.

2. The Evacuee Property Regulation came into force on 22nd Meher 1308 F. (corresponding to 22-8-1949 A.D.). The Petitioner filed the petitioner under the provisions of the said Regulation for confirmation of the sale. At one time the

petition was held to be time-barred, out, later on, the Custodian came to the conclusion that the question of limitation did not arise as the sale was made prior to the coming into force of the Regulation. It is, therefore, not necessary to decide the question of limitation. The Custodian held further that the payment, of Rs. 1300 as mentioned in the sale-deed was not proved and, therefore directed the Petitioner to pay that amount so that the sale could be confirmed. Shri Govindrao Ardhapurkar, the learned advocate for the Petitioner,; argues that the amount of Rs. 1300 was paid as earnest money and he has referred to the case decided by this Court in Sarojini Bai v. Custodian Evacuee Property ILR (1952) Hyd. 554. In our opinion, the receipt in question is covered by the explanation to Section 17 Clause (2), Registration Act, and does not require registration. Hence the payment of earnest money can be proved.

Three witnesses have been produced in support of the fact of payment. One is Vishwanath, the Petitioner himself. He states that he has paid Rs. 1300 as mentioned in the sale-deed. (Another witness is Nana" who has stated that the vendor, Mohsin,, admitted in his presence that Rs. 1300 were paid to him by the vendee. There is a receipt for this amount dated, 22nd Forwardly 1358 F. which is signed by the said Mohsin and also by witness Maruti who deposed before the Custodian that Rs. 1300 were paid as earnest money to Mohsin and payment was admitted by. Mohsin before the Registrar. He identified the receipt and his own signature on it. There is also the averment in the sale-deed before the Registrar that Rs. 1300 were paid by the Plaintiff to the vendor, In view of this evidence we fail to understand how the Custodian can hold that the payment of Rs. 1300 was not proved. The learned advocate for the Custodian argued that the non-payment of Rs. 1300 is a finding of fact and the High Court cannot set aside the said finding and substitute its own judgment as it does not sit as a court of appeal.

He has cited Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, In our opinion, however, this is not merely a matter of appreciation of evidence, for the learned Custodian has not at all taken into consideration the evidence and has not weighed the same and thus It is a question of law. The Supreme Court case, cited by him is not relevant inasmuch as it deals with certain subsidiary matters connected with appeal and not with the question of law. We, therefore, allow this writ petition, hold that Rs. 1300 had been paid to the vendor by the Petitioner, direct the Custodian to confirm the sale without the payment of Rs. 1300 and issue a writ of certiorari accordingly. We make no order as to costs.