

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

REVIEW I.A.No.2 of 2024

in

CIVIL REVISION PETITION No.1728 OF 2022

ORDER :

This is an application filed under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking to review the Order dated 05.01.2024 passed by this Court in C.R.P.No.1728 of 2022.

2. Heard Sri K.V.Vijaya Kumar, learned counsel for the petitioners herein and Sri Yadavalli Ramesh, learned counsel for 1st respondent. Perused the record.

3. 1st respondent herein filed Original Suit No.56 of 2009 on the file of the Senior Civil Judge, Kandukur against the petitioners herein and other respondents herein, seeking to declare his right in respect of plaint 'A' schedule property and for consequential relief of permanent injunction restraining the defendants therein from interfering with peaceful possession and enjoyment of the said property. After completion of pleadings, trial began in the suit. At the time of examination of the plaintiff in the suit as P.W.1, Exchange Deed dated 28.01.1989 was sought to be marked as Ex.A1. Learned counsel for defendants in

the suit objected for the same on the ground that it is an unregistered Exchange Deed and cannot be marked to prove acquisition/transfer of rights. The trial Judge, vide the Docket Order dated 14.07.2022, sustained the objection raised by the defendants in the suit, and rejected request of plaintiff in the suit, to mark the said Exchange Deed. Challenging the said order, C.R.P.No.1728 of 2022 was preferred by 1st respondent/plaintiff, and this Court, vide Order dated 05.01.2024, allowed the C.R.P., directing to mark the unregistered Exchange Deed dated 28.01.1989 as exhibit for the purpose of proving the collateral transaction of delivery of possession of the respective properties to the respective parties exchanged under the said document. The relevant portion of the Order dated 05.01.2024 passed by this Court in the C.R.P., reads thus:

“10. In the case on hand, a perusal of the recitals in the document in question viz. unregistered Exchange Deed dated 28.01.1989, shows that the parties therein mutually exchanged their respective properties orally and taken over possession of the respective properties after the exchange, on 10.6.1985. Thereafter in order to avoid legal complications, they reduced the oral exchange effected on 10.6.1985 into writing by way of the document in question i.e. unregistered Exchange Deed, on 28.01.1989. Admittedly, stamp duty and

penalty have been paid on the said unregistered Exchange Deed. The said document is evidencing a past transaction of exchange of properties between the parties thereto, which took place on 10.06.1985, including handing over the possession of the respective properties after the exchange under the aforesaid document. It is clear that the parties had already exchanged their properties on 10.06.1985 and possession of respective properties were handed over on the said date itself i.e. on 10.06.1985, and only in order to avoid future disputes, the said document came to be executed between the parties on 28.01.1989. Therefore, for the purpose of the proving collateral transaction of delivery of possession of the respective properties to respective parties exchanged under the said document, the document in question can be marked. However, the trial Court has not considered these aspects and rejected the request of the petitioner to mark the said document.

11. Accordingly, the Civil Revision Petition is allowed setting aside the Docket Order dated 14.07.2022 passed in O.S.No.56 of 2009 on the file of the Senior Civil Judge, Kandukur. The document in question i.e. unregistered Exchange Deed dated 28.1.1989, shall be marked as Exhibit for the purpose of proving the collateral transaction of delivery of possession of the respective properties to the respective parties exchanged under the said document.”

4. The present Review Petition is filed by petitioners, who are some of the defendants in the suit, seeking to review the said Order dated 05.01.2024 passed by this Court, on the ground that the judgment of the Hon'ble Supreme Court reported in 2018 (5) ALD 90 SC in *Syam Narayana Prasad v. Krishna Prasad & others*, categorically held that *the unregistered exchange deed cannot be marked even for collateral purpose.*

5. Section 17 of the Registration Act, 1908 specifies the documents, whose registration is compulsory. Under Section 17 (1) (b) of the Act, 1908, 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 Rs.100/- or upwards, to or in immovable property, are included. An Exchange Deed, which conveys right and title in a property, falls in this category of the said document. Therefore, an Exchange Deed is a compulsorily registerable document. In the case on hand, the subject Exchange Deed dated 28.01.1989 is not registered one. Therefore, it is not admissible in evidence as mandated under Section 49 of the Registration Act, 1908 and it will

also not be received as evidence of any transaction affecting such property. However, the restriction imposed under Section 49 of the Act, 1908 is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

6. Proviso to Section 49 of the Registration Act, 1908 carves out an exception to the Rule contained in the main provision as regards the effect of an unregistered document requiring registration and receiving of such document as evidence of any transaction. It permits such document to be received as evidence for two limited purposes viz. evidence of a contract in a suit for specific performance and as evidence of any collateral transaction which by itself is not required to be affected by a registered instrument. A collateral transaction is a transaction other than the transaction affecting the immovable property, but which is incidentally connected with that transaction.

7. Where a lease deed was executed leasing the property for a term of thirty years and it is unregistered, the terms of such a deed cannot be relied upon to claim or enforce any right under or in respect of such lease, but it can

be relied upon for the limited purposes of showing that the possession of the lessee is lawful possession or as evidence of some collateral transaction. (in *SMS Tea Estates Pvt. Ltd. V. M/s. Chandmari Tea Co. Pvt. Ltd.* 2011 AIR SCW 4484).

8. Under law, a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case, the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land... (in *Bondar Singh & others v. Nihal Singh & others* AIR 2003 SC 1905).

9. Therefore, the restriction imposed under Section 49 of the Registration Act, 1908 is confined to use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property. An Exchange Deed, which has the effect of creating and taking away rights in respect of an immovable property, is a compulsorily registerable document under Section 17 of the Registration Act, 1908. In the present case, the Exchange Deed dated 28.01.1989 is an unregistered one. Therefore, it cannot be admissible in

evidence to prove the main transaction of transfer of rights between the parties. A perusal of the recitals of the document in question shows that the parties therein mutually exchanged their respective properties orally and taken over possession of the respective properties after the exchange, on 10.6.1985, and thereafter, in order to avoid legal complications, they reduced the oral exchange effected on 10.6.1985 into writing by way of the document in question i.e. unregistered Exchange Deed, on 28.01.1989. It is evidencing a past transaction of exchange of properties between the parties thereto, which took place on 10.06.1985, including handing over the possession of the respective properties after the exchange under the aforesaid document. Admittedly, stamp duty and penalty have been paid on the said document. Therefore, the document is admissible for collateral purpose to the limited extent of showing the nature and character of possession.

10. It is the contention of the learned counsel for the review petitioners that in the judgment reported in 2018 (5) ALD 90 SC in *Syam Narayana Prasad v. Krishna Prasad & others*, it was categorically observed by the Hon'ble Supreme Court that *the unregistered exchange deed cannot be marked*

even for collateral purpose. In the decision in *Syam Narayana Prasad v. Krishna Prasad & others*, 2018 (5) ALD 90 SC, the Hon'ble Supreme Court held in paragraph No.20 as under:

“20. Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Registration Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Registration Act. *Since the deed of exchange has the effect of creating and taking away the rights in respect of an immovable property, namely, RCC building, it requires registration under Section 17. Since the deed of exchange has not been registered, it cannot be taken into account to the extent of the transfer of an immovable property.*”

11. A perusal of the aforesaid judgment goes to show that the Hon'ble Supreme Court reiterated the position of law that since the deed of exchange has the effect of creating and taking away rights in respect of an immovable property, it requires registration under Section 17, and since the deed of exchange in the said case has not been registered, it cannot be taken into account to the extent of transfer of an

immovable property i.e. for main purpose of transfer of rights in immovable property. There is no observation to the extent that the unregistered exchange deed cannot be marked even for collateral purpose. As discussed *supra*, under proviso to Section 49 of the Registration Act, 1908, the document in question is admissible for collateral purpose to the limited extent of showing the nature and character of possession. In view of the aforesaid discussion, this Court is of the opinion that there is no error apparent on the face of record, justifying the court to exercise its power of review. The review petition is devoid of merits and is liable to be dismissed.

12. Accordingly, I.A.No.2 of 2024 is dismissed. No costs.

JUSTICE K. SREENIVASA REDDY

18 .06.2025
DRK

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

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