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Abdul Rasheed Vs. Srinivas

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Court : Karnataka Gulbarga

Decided On : Apr-16-2014

Judge : H.G. Ramesh

Appeal No. : Writ Petition No. 202769 of 2014 (GM-CPC)

Appellant : Abdul Rasheed

Respondent : Srinivas

Judgement :

(Prayer: This Writ Petition Is Filed Under Articles 226 and 227 of the Constitution of India Praying To Issue A Writ In The Nature Of Certiorari To Set Aside The Impugned Order Passed By The Civil Judge (Jr.Dn.) At Sedam On Memo Dated 11.02.2014 The Certified Copy Of Which Is Produced At Annexure-H And Thereby Rejecting The Memo Filed By Respondent.)

Oral Order:

H.G. Ramesh, J.

1. Whether a lease deed, where the term of lease stated therein does not exceed one year, requires to be registered under the provisions of the Registration Act, 1908 is the question that needs an answer in this writ petition.

The question is answered in the affirmative. In law, the lease deeds of the aforesaid kind also require to be registered and therefore, such unregistered lease deeds cannot be received as evidence of any transaction affecting the property.

2. This writ petition by the defendant is directed against an interlocutory order dated 26.03.2014 passed by the trial Court in the suit in O.S.No. 10/2009 wherein the trial Court has held that the four unregistered lease deeds produced by the petitioner are inadmissible .in evidence.

3. The contention urged in support of the writ petition is that, in three of the aforesaid four lease deeds, the term of lease does not exceed on e year and therefore their registration is not compulsory in view of S.17(l)(d) of the Registration Act, 1908 and hence, refusal of the trial Court to receive them in evidence is erroneous in law. To examine the contention urged, it is necessary to refer to the following provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908.

3.1 Sections 4 and 107 of the Transfer of Property Act, 1882 read as follows:

S.4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act.” The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872)

And section 54, paragraphs 2 and 3, and sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (16 of 1908).

S.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 oral 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 executed 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.

(underlining supplied)

3.2 Sections 17(1) 8and 49 of the Registration Act, 1908 read as follows:

S.17. Documents of which registration is compulsory."(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 the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

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

(e) non-testamentary instruments transferring or assigning any decree or order of a. court or any award when such decree or order or award purports or operates 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 properly:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or port of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

S.49. Effect of non-registration of documents required to be registered." No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 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 (4 of 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 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.

(underlining supplied)

4. As could be seen from the above quoted provisions, all leases not covered by first para of S.107 of the T.P. Act may be made either by a oral agreement accompanied by delivery of possession, or by a registered instrument. A lease, the registration whereof is not compulsory under S. 17(3)(d) of the Registration Act, becomes compulsorily registrable, if reduced into writing in view of second para of S.107 of the T. P. Act read with para 2 of S 4 thereof, A written unregistered lease of immovable property, even though the term of lease stated therein does not exceed one year, is inadmissible in evidence in view of S.49 of the Registration Act, 1908 read with second para of S. 107 of the Transfer of Property Act, 1882 and second para of S.4 thereof. A lease for a period of one year falls within the expression 'All other leases' stated in para 2 of S.107 of the T.P. Act and may be

made by a oral agreement accompanied by delivery of possession.

5. In view of the above, the trial Court is right in rejecting the lease deeds as inadmissible in evidence by the order impugned in this writ petition. I find no legal infirmity in the impugned order to warrant interference. The writ petition is devoid of merit and is accordingly dismissed but with no order as to costs.

6. At this stage, learned counsel for the petitioner by relying on the proviso to S.49 of the Registration Act, submits that the proviso permits the petitioner to produce the lease deeds as evidence of any collateral transaction not required to be effected by a registered instrument. The counsel is right in his submission. Accordingly, the petitioner is at liberty to apply to the trial Court by specifically stating the collateral purpose for which he wants to produce the lease deeds. If such an application is made, the trial Court shall consider the same in accordance with law. Petition dismissed.

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