

**B. Bal Reddy Vs. B. Ram Reddy and Others**

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**Court :** Andhra Pradesh

**Decided On :** Dec-17-2015

**Judge :** R. Kantha Rao

**Appeal No. :** Civil Revision Petition No. 3629 of 2010

**Appellant :** B. Bal Reddy

**Respondent :** B. Ram Reddy and Others

**Judgement :**

1. Heard Sri P. Chandrasekhara Reddy, learned counsel appearing for the revision petitioner and Sri M.Praveenkumar, learned counsel appearing for the respondents.

2. This revision petition arose out of the order dated 06.07.2010 made in IA No.355 of 2010 in OS No.1633 of 2006 on the file of the II Additional Senior Civil Judge, Ranga Reddy at L.B.Nagar. The revision petitioner is the plaintiff and the respondents herein are the defendants before the trial court.

3. The revision petitioner filed a suit before the trial court for perpetual injunction against the respondents in respect of the suit scheduled property, which is an extent of 80 square yards. In the course of trial of the suit, the respondents sought to mark a document titled as Consent Declaration dated 03.04.1989 executed by the father of the 1<sup>st</sup> respondent in favour of the 1<sup>st</sup> respondent. The revision petitioner plaintiff raised an objection to mark the document contending that the

document is a gift deed or sale deed and therefore, it cannot be received in evidence, as it was not registered. On the other hand, it was contended by the respondents that the document can be sent to the District Registrar for collection of stamp duty and penalty, so that it can be marked after impounding. After hearing both sides, the learned trial court over-ruled the objection raised by the plaintiff, passed an order sending the document to the District Registrar for impounding the same, holding that the admissibility and probative value of the document are two different aspects and that even if the document is admitted in evidence, the court has to still examine its probative value. In the opinion of the trial court, if the document is sent for impounding for the purpose of collecting stamp duty and penalty, no prejudice will be caused to the plaintiff. The learned trial court further held that the contents of the document, admissibility and its probative value can be decided at a later stage having regard to the circumstances of the case in the light of the rival contentions at the time of trial and saying so, allowed the petition. The said order is challenged in the present revision by the plaintiff.

4. To arrive at a proper decision as to the issue involved in the present revision, the contents of the document are required to be looked into. In the document, it is mentioned that the land of an extent of 120 square yards belongs to the father of the 1<sup>st</sup> defendant and that the father of the 1<sup>st</sup> defendant started construction in a portion of the said land, but was unable to continue the construction due to the insufficient funds. At that time, the 1<sup>st</sup> defendant rendered financial assistance of Rs.30,000/- to his father and that with the said amount, his father constructed six rooms in a portion of 120 square yards. It is also mentioned in the document that the father of the 1<sup>st</sup> defendant decided to give 80 square yards to the 1<sup>st</sup> defendant for his use and enjoyment forever and the 1<sup>st</sup> defendant accepted the said property and the father of the 1<sup>st</sup> defendant delivered possession of 80 square yards in favour of the 1<sup>st</sup> defendant. It is also mentioned that the 1<sup>st</sup> defendant will be the exclusive owner, possessor and enjoyer of the said 80 square yards, without any interruption from the persons claiming through his father. It is further mentioned that the father of the 1<sup>st</sup> defendant's consent decision of giving 80 square yards to the 1<sup>st</sup> defendant, out of 120 square yards in the schedule land, was made unconditionally, voluntarily and freely in a sound

state of mind, without any coercion, intimidation, influence or pressure from any quarter. The father of the 1<sup>st</sup> defendant stated that the property settled in favour of the 1<sup>st</sup> defendant is free from all encumbrances and the 1<sup>st</sup> defendant is having every right, absolute authority and power by virtue of the consent declaration to sell, grant, mortgage or settle the property as per his discretion and wishes and the 1<sup>st</sup> defendant can use it forever and he is having every right to sell or alienate the said property forever without objection from any quarter. The 1<sup>st</sup> defendant is entitled to get mutation in his name from the concerned departments.

5. Though the document is titled as consent declaration dated 03.04.1989', the contents of the document indicate that the property was conveyed by the father of the 1<sup>st</sup> defendant in favour of the 1<sup>st</sup> defendant after receiving consideration of Rs.30,000/- for the purpose of construction of the rooms. Therefore, in the considered opinion of this court, the document is an out right sale deed, though titled as consent declaration. Since the immovable property was conveyed by receiving consideration of Rs.30,000/-, as per Section 17 of the Registration Act, 1908, the document shall be registered and the document cannot be received in evidence, except as evidence of any collateral purpose not required to be effected by registered instrument.

6. In the instant case, the suit is filed for permanent injunction. The issue requires to be considered by the trial court in a suit for permanent injunction is as to who is in possession of the property on the date of filing of the suit. Incidentally, the trial court has to look into the title of the parties in-relation to the suit property. Therefore the respondents in the present case, sought to let in evidence by marking the said document for the principal purpose and not for collateral purpose, and the same cannot be received in evidence for want of registration. The trial court therefore committed manifest error in sending the document to the District Registrar for impounding. Moreover, when the admissibility of the document is challenged, the trial court is not supposed to postpone the decision on the issue of admissibility. It has to examine the document and pronounce its opinion upon the admissibility of the document before marking the same. Therefore, the view taken by the trial court that the admissibility and probative value of the document can be decided at the time of trial is totally erroneous. This court is therefore of the

considered view that the document cannot be let in evidence as it is an unregistered sale deed relied upon by the respondents for the main purpose of proving their possession and title.

7. For the foregoing reasons, the order passed by the trial court is set aside. Consequently, the civil revision petition is allowed. No order as to costs. Miscellaneous petitions, pending if any in this civil revision petition, shall stand closed.

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