

S. Ravinder Vs. G. Dasarath

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Court : Andhra Pradesh

Decided On : Jul-13-2004

Reported in : 2004(4)ALD851; 2004(5)ALT217

Judge : L. Narasimha Reddy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Orders 13 - Rule 3 and Order 39, Rules 1 and 2; Civil Practice Rules - Rule 60; [Evidence Act, 1872](#);

Appeal No. : CRP No. 2667 of 2004

Appellant : S. Ravinder

Respondent : G. Dasarath

Advocate for Pet/Ap. : Unnam Muralidhar Rao, Adv.

Judgement :

ORDER

L. Narasimha Reddy, J.

1. This civil revision petition is filed against the order dated 4.3.2004 in I.A. No. 99 of 2004, which in turn was filed in I.A. No. 1794 of 2003 in O.S. No. 1000 of 2003 on the file of the II Additional Senior Civil Judge, Ranga Reddy District.

2. The respondent filed the suit against the petitioner, for the relief of specific performance of an agreement of sale dated 17.7.2003. The respondent also filed I.A. No. 1794 of 2003 under Order XXXIX Rule 1 C.P.C. for a temporary injunction restraining the petitioner from alienating the suit schedule property. When the enquiry into I.A. No. 1794 of 2003 is in progress, the petitioner filed I.A. No. 99 of 2004 under Rule 3 of Order XIII read with 115 C.P.C. for rejection of the agreement of sale dated 17.7.2003 on the ground that it is neither registered nor properly stamped. The Trial Court rejected the I.A. through the order under revision, by taking the view that the admissibility or relevance of the document can be considered only at the stage of recording the evidence and it is too early to pronounce upon the validity or otherwise of the agreement of sale.

3. Learned Counsel for the petitioner submits that the agreement of sale was not registered and not even properly stamped and in that view of the matter, it ought not to have been accepted by the Court at any stage. Placing reliance upon Rule 60 of the Civil Rules of Practice and Section 17 of the Registration Act, learned Counsel submits that unless the document was registered, the same cannot be looked into by the Trial Court, at any stage, even before the trial commences.

4. The petitioner raised an objection as to the admissibility of the agreement of sale on the ground that it was not registered or stamped. The matter is at the stage of consideration of application filed under Order XXXIX Rule 1 C.P.C. At this stage, the facts that are necessary for adjudication of the applications are to be proved by affidavits, as provided for under Rule 60 of the Civil Rules of Practice. It is true that depending on the circumstances of the case, the Court may record oral and documentary evidence at that stage also. It is only when the Court decides to record oral evidence instead of deciding the matter on affidavits, that the procedure for marking documents, as in the case of recording of the evidence in the suit, needs to be followed. In the absence of recording of oral evidence, at the stage of interlocutory applications, marking of documents cannot be on the same plane as is done at the stage of recording evidence in the suit. Such a course of action may, in fact, result in a contradiction in terms. If a document is subjected to rules of evidence, even at the stage of consideration of interlocutory applications, without there being any oral evidence, by the same logic, they should be permitted

to be on record of the suit without any further subsection to oral evidence or scrutiny as to relevancy and proof. This is not at all in the contemplation of the Civil Procedure Code or the Indian [Evidence Act, 1872](#).

5. At the stage of consideration of interlocutory applications, particularly, those under Order XXXIX Rule 1 CPC, the Courts are required to take the totality of the circumstances into account and consider the material before it. Merely because a document is cited before it and it is taken into account, it cannot be said that the Court has pronounced upon its admissibility or relevancy muchless proof. Such a stage is to be relegated, to the one of recording evidence, for the disposal of the suit.

6. Learned Counsel for the petitioner submits that the agreement of sale is so inadmissible in law, that it cannot be considered at any stage. If the document suffers from any basic legal infirmity or illegality, nothing prevents the petitioner from raising such an objection even at the stage of consideration of the I.A. filed under Order XXXIX Rule 1 C.P.C. However, it is not open for the petitioner to insist upon the Court to undertake an independent enquiry into the admissibility of the document, at this stage, and pronounce upon it once for all. Hence, no exception can be taken to the order passed by the Trial Court.

7. Learned Counsel for the petitioner submits that the effort of the respondent is to obtain an order of temporary injunction and drag the proceedings indefinitely. He submits that the petitioner is in acute financial need and unless the matter is resolved at the earliest, he would be subjected to undue hardship. Learned Counsel also submits that the petitioner undertakes not to alienate the property provided that the suit itself is disposed of at the earliest. He states that the written statement is already filed.

8. Having regard to the facts and circumstances of the case, the civil revision petition is disposed of confirming the order under revision and recording the statement of the learned Counsel for the petitioner that the petitioner undertakes not to alienate or otherwise encumber the suit schedule property. Since the written statement is filed and the petitioner is said to be reeling under financial hardship, the Trial Court is directed to dispose of the suit within six months from today duly

commencing the trial immediately. Inasmuch as the object of filing of I.A. No. 1794 of 2003 is achieved, on account of recording the undertaking given by the petitioner, it shall not be necessary for the Trial Court to proceed with the same and it shall formally close the IA. It shall be open to the petitioner to raise all objections as to the admissibility or relevancy of any document including the agreement of sale that the respondent may rely upon.

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