THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.249 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.12.2014 in O.S.No.109 of 2009 on the file of Principal Junior Civil Judge, Nandigama.

2. The petitioner herein is 1st defendant in the above suit.

3. The 1st respondent/plaintiff filed the said suit for specific performance of an agreement of sale dt.28.03.2002 under which the petitioner and 2nd respondent agreed to sell the suit schedule property to him for a sum of Rs.96,250/-.

4. Written statement was filed admitting the execution of agreement of sale, but contending that 1st respondent is not entitled to the relief of specific performance.

5. After issues were framed, PW.1 in his evidence sought to mark the agreement of sale dt.28.03.2002 in his evidence. This was objected to by petitioner's counsel on the ground that it is insufficiently stamped, and unless penalty and stamp duty are paid, it cannot be marked. A further contention that the document requires registration was also raised.

6. By order dt.08.12.2014, the Court below over-ruled the said objections and allowed PW.1 to mark the agreement of sale in his evidence.

7. Challenging the same, the present Revision is filed.

8. Heard Sri Ch. Ramesh Babu, counsel for petitioner; and Sri N. Rajeshwar Rao, counsel for 1st respondent.

9. The counsel for petitioner contended that the document in question requires registration, and since in the plaint the 1st respondent/plaintiff himself had stated that possession was delivered on the date of the said agreement, it has to be presumed that such delivery of possession was linked to the execution of sale agreement; therefore, Explanation – I to Article 47-A of the Indian Stamp Act, 1899 is attracted and the said document has to be treated as a sale deed and stamp duty and penalty ought to be paid in accordance with the said Article. He also contended that, as per Section 17 (1) (g) of the Indian Registration Act, 1908, agreements of sale relating to immoveable property are required to be registered.

10. On the other hand, the counsel for 1st respondent refuted the said contentions. He contended that there is no recital in the document dt.28.03.2002 about delivery of possession, and therefore the Court below was correct in stating that the document is adequately stamped; and that as per proviso to Section 49 of the Registration Act, 1908, an agreement of sale, even if it is unregistered, can be taken in evidence in a suit for specific performance.

11. I have noted the submissions of both sides.

12. Explanation – I to Article 47-A of Schedule I-A of the Indian Stamp Act, 1899 states :

"Explanation – I An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "Sale" under this Article : Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in Clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed."

13. A reading of the above clause indicates that it deals with two situations : (a) where an agreement to sell is followed by delivery of possession agreed to be sold; and (b) an agreement to sell evidencing delivery of possession of the property agreed to be sold. Where a document itself contains a recital about the delivery of possession and is in the nature of an agreement to sell, the latter part of Explanation – I would be attracted. But where an agreement to sell is silent about delivery of possession, but the party seeking to rely on it and intending to mark it in his evidence himself admits in a pleading like a plaint, that possession of the property was delivered pursuant thereto, the earlier part of Explanation – I is attracted.

14. In the present case, although there is no recital in the agreement of sale dt.28.03.2002 about delivery of possession to 1st respondent, in para nos.4 and 6 of the plaint, the 1st respondent himself admitted that on the date of agreement, possession of the land was delivered to him by petitioner and 2nd respondent. Therefore, it is a clear case where an agreement to sell is "followed" by delivery of possession, even according to the pleading of 1st respondent. The mere fact that petitioner and 2nd respondent had denied the factum of delivery of possession is not relevant at this stage when adequacy of payment of stamp duty is being gone into. Therefore, in my considered opinion, the agreement dt.28.03.2002 is to be charged as a sale applying

Explanation – I to Article 47 of Schedule 1-A of the Indian Stamp Act, 1899, and unless the 1st respondent is willing to pay stamp duty and penalty thereon as prescribed by law, he cannot be allowed to mark the said document in his evidence.

15. Coming to the contention about non-registration of the said document, I am of the view that the said contention is without any merit inasmuch as proviso to Section 49 of the Registration Act, 1908 permits an unregistered agreement of sale to be received in evidence in a suit for specific performance.

16. In this view of the matter, the order dt.08.12.2014 in O.S.No.109 of 2009 on the file of Principal Junior Civil Judge, Nandigama, cannot be sustained; and it is accordingly set aside. The Civil Revision Petition is allowed. No order as to costs.

17. However, it is made clear that if the 1st respondent is willing to pay the stamp duty and penalty by treating the said document as a sale, the Court may receive it in evidence, after collecting the stamp duty and penalty therein.

18. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09.09.2015

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