HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5003 of 2014

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India, by the petitioner/plaintiff, aggrieved by the order dated 26.07.2014 passed in O.S.No.129 of 2010 wherein an objection raised by the defendants for marking unregistered agreement of sale was sustained.

The plaintiffs/petitioners filed O.S.No.129 of 2010 for declaration of title, recovery of possession and for mandatory injunction. The chief affidavit of PW1 was filed on 26.06.2014 in which agreement of sale dated 09.04.2000 and part payments thereon were shown as exhibits to be marked. As the document dated 09.04.2000 is an unregistered agreement of sale, the office was directed to verify whether the stamp duty was sufficient or not. The Chief-Ministerial Officer verified the Stamp Duty and endorsed that there was deficit of Rs.50/-. Ten times penalty on Rs.50/- plus deficit stamp duty of Rs.50/- which has come to Rs.550/- was directed to be paid. The matter was adjourned for payment of Stamp Duty and Penalty of Rs.550/- on the unregistered sale agreement dated 09.04.2000. Then the learned counsel for the petitioners contended that there was no necessity to pay the stamp duty and the penalty as assessed by this Court. The issue as to whether stamp duty is required to be paid when the agreement of sale culminated into a sale deed came up for consideration in ***V.Dharma Reddy and others Vs. S.Hari Ram*** wherein this Court held as under:

> "…If it were to be a case where the respondent intended to rely upon the copy of the agreement of sale for the purpose of enforcing it, the objection raised on behalf of the petitioners can certainly be sustained. Section 35 of the Stamp Act prohibits admission of any "instrument" in evidence, unless, it is duly stamped. Hardly, there exists any doubt that an agreement of sale is an instrument within the meaning of sub-section (14) of Section 2 of the Stamp Act, in the normal parlance. However, it needs to be seen that for a document, to be treated as an instrument within the meaning of sub-section (14) of Section 2, a right or liability has to be created, transferred, limited, extended, extinguished, or, recorded by it. It is only then the document needs to be treated as an instrument. Where, however, the document does not have any purpose to serve on account

> of subsequent events, it cannot be still treated as an instrument within the meaning of Section 2(14).
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> Agreement of sale, undoubtedly, creates rights and liabilities between the parties concerned. However, where it results in a sale-deed, the purpose underlying the agreement cannot be said to be still subsisting even thereafter. Therefore, once a sale-deed is executed, the agreement of sale preceding it cannot be treated as an instrument for the purpose of the Stamp Act".

In view of the judgment of this Court, I am of the opinion that no stamp duty need be paid while marking an agreement of sale which culminated into a sale deed, since the said instrument cannot be treated as an instrument within the meaning of Section 14 sub-section 2 of Stamp Act. Thus the order under challenge is set aside and objection raised by the lower Court is over-ruled. The document may be marked subject to proof and relevancy. Consequently, the Civil Revision Petition is allowed.

There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

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C. PRAVEEN KUMAR, J

24.03.2015

vhb