THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P.NO.1523 OF 2015

O R D E R

Heard Sri M.P.Chandra Mouli, learned Counsel for the petitioner and Sri V.L.N.G.K.Murthy, learned Counsel for the respondent.

2. Petitioner is the defendant and the respondent is the plaintiff in the suit. The plaintiff and the defendant are the brothers and sons of one late Valluru Kesava Rao. The plaintiff filed the suit for declaration, for recovery of possession and for damages. The evidence of the plaintiff is completed and the matter is coming up for the evidence of the defendant. At that stage, defendant filed two documents, alleging as family settlements dated 24.9.1985 and 15.4.1984 along with a petition for receiving them. The plaintiff raised objection for marking of the said two documents. The trial court i.e., the court of XII Additional District Judge, Krishna at Vijayawada in O.S.No.29/2005, held that the first document dated 24.9.1985 is a sale deed and that this document is not admissible in evidence for want of stamp duty and registration, and with regard to second document dated 15.4.1984, held that this document is a family settlement and also an acknowledgement to a past transaction and does not require stamp duty and registration and hence admissible in evidence. Aggrieved by the order of the trial court in rejecting to admit document dated 24.9.1985 for want of stamp duty and registration, the present revision is filed by the defendant in the suit.

3. The learned counsel for the petitioner contended that in the entire document dated 24.9.1985 there are no recitals to the effect that consideration was paid. He submitted that the father of the plaintiff, late Valluru Kesava Rao, had given landed property of Acs.2-00 to his sister Madasani Chandravathi at the time of her marriage in the year 1954 as Pasupukumkuma; that the said Chandravathi is the maternal grand mother of Kesav, who is the son of the defendant; that when the landed property was given to Chandravathi, she entrusted the maintenance of the said land to his brother to manage and develop the property with the yield derived therefrom and to deliver the property to her children or grand children that subsequently, she fell sick due to cancer and therefore, entrusted the amounts received by her at the time of her marriage and other amounts and requested the brother Valluru Kesava Rao, to purchase a house to her grandson, Kesav i.e., the son of the defendant, and handover the possession; for that, Valluru Kesava Rao

told that there is no need to purchase another property and that with that intention he developed the property out of the money belonging to his sister Chandravathi and eventually, the brother consented to retain life interest in him and give the vested remainder to Kesav, who is the son of the defendant; hence, it is a family settlement and the ingredients of 'sale' as defined under Section 54 of the Transfer of the Property Act, 1882 and the requirements of Section 17 (c) of the Registration Act, 1908 are not made out, to treat the document in question as 'sale'. Relying on the judgment of the Apex Court reported in ***VIDHYADHAR v. MANKIKRAO***[1], the learned counsel submitted that in order to constitute a sale, there must be a transfer of ownership in present and from one person to another with regard to all rights and interests in the properties, which are possessed by that person and the transferor cannot retain any part of his interest or right in that property, or else it would not be a sale; but the trial court has not considered these aspects in right perspective and came to wrong conclusion. With these submissions, the learned counsel for the petitioner sought to set aside the impugned order and to allow the revision.

4. On the other hand, the learned Counsel appearing for the respondent, relying on the judgment of the Apex Court in ***P.K.MOHAN RAM v. B.N. ANANTHACHARY***[2] contended that form or nomenclature of the instrument is not conclusive and the court is required to look into the substance thereof. The learned Senior Counsel taking this court through the entire document in question, submitted that under the said document, late Chandravati asked her brother to buy a house for her grand son from out of her amount lying with him and the brother i.e., Valluri Kesava Rao, instead of purchasing some other property, consented to give his property by keeping the monies of his sister with him; that though this transaction is styled as 'settlement deed', it is a camouflage of sale deed and the trial court rightly considering the contents of the document, rejected the said document for admission in evidence for want of stamp duty and registration. Supporting the impugned order, he sought this court to dismiss the revision.

5. In the light of the above contentions, now I would like to examine the relevant provisions of law and the contents of the document in question, to see whether it is a 'family settlement' or a 'sale' requiring stamp duty and registration.

6. The relevant provisions that require to be considered are Section 17 (c) of the Registration Act, 1908 and Section 54 of the Transfer of Property Act, 1882, which defines 'sale'. They are extracted hereunder for better appreciation:

Section 17 (c) Non-testamentary instructions 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, shall be registered.

Section 54 of the Transfer of Property Act: 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

7. A reading of the above provision of the Registration Act, 1908, it is one such document, where such instrument acknowledges the receipt of consideration on account of the creation, declaration, assignment, limitation or extinction of such right, title or interest, shall be registered. Section 54 of the Transfer of Property Act, 1882 defines the 'sale' as transfer of ownership in exchange for a price. A combined reading of both the provisions would show that the where there is transfer of ownership or right or title or interest for a consideration, such instruments are liable for stamp duty and registration.

8. Now it is necessary to examine the document in question dated 24.9.1985, which the petitioner claims to be a family settlement. As contended by the learned Counsel appearing for the respondent, there is no dispute that the form or nomenclature of the instrument is not conclusive and the court is required to look into the substance thereof. The trial court has noted the recitals of the said document at paragraph No.7 of the impugned order and for better appreciation, the same is extracted as under:

"7. The document dated 24.9.1985 now under 1st consideration was entered in between Valluri Kesava Rao and his grand son Kesav, represented by his maternal grand father Madasani Satyanarayana Chowday. As can be seen from the recital of this document, at the time of marriage of Chandravathi in the year 1954, an extent of Acs.2-00 of land was given to her as Pasupukumkuma by Valluri Kesava Rao. Said Chandravathi entrusted the said Acs.2-00 of property to Valuri Kesavarao with a request to manage the same and develop the property with the yield derived from that property and deliver the property to her children or grand children as per the instructions and Kesava Rao agreed for same and developed the property. Subsequently said Chandravathi fell sick due to cancer and therefore, she entrusted the amount received by her at the time of her marriage and other amounts to her brother Kesava Rao and requested him to purchase one house in the name of her grand son Kesav i.e., son of defendant and handover the same to her grand son and that Valluri Kesava Rao told that he would take entire above referred amount of Chandravathi and handover the house in Patamatalanka bearing D.No.13/87 and chavillu situated in Patamatalanka bearing D.No.13/89 and there is no need to purchase another house and also further told her that with that intention only he spent the amount of Chandravathi and developed the said house. The contents of this document further show that Valluri Kesavarao agreed to deliver the property before elders and family members and some time later Chandravathi died and said Kesava Rao not fulfilled the promise made by him to his sister and defendant waited some time and felt delicacy to ask his father Kesavarao and therefore, husband of Chandravathi i.e, maternal grand father of Kesava questioned said Kesava Rao, asked Kesavarao to fulfill the promise made by him to his sister and Kesava Rao utilized the entire money of Kesav and therefore, a legal notice was issued to Kesava Rao by Satyanarayana Chowdary and therefore, some disputes started in the family and therefore, the well wishers of the family, friends and relatives advised to settle the matter amicably and advised Kesava Rao to retain the properties during his life time with limited rights and vested remainder to Kesav with absolute rights and therefore, Kesava Rao and Satyanarayana Chowdary agreed for same and therefore, schedule properties settled in favour of Kesav with absolute rights by reserving the vested remainder in favour of Kesava Rao and as an acknowledgement of that past transaction, they have entered into this document."

9. A reading of the document in question dated 24.9.1985 entered in between Valluru Kesava Rao and Kesav, represented by his maternal grand father Madasani Venkata Satyanarayana Chowdary, would show that the nomenclature of the document is 'family settlement memorandum'. Among the recitals, the main recital is that the sister Smt. Chandravathi asked her brother Valluru Kesava Rao to purchase a house at Vijayawada and that Kesava Rao consented for the same and that he would handover house No.13/87 and House No.13/89 to Valluru Kesav and that there is no need to purchase another property and that, with that intention he developed the property out of the money belonging to his sister Chandravathi.

10. On a careful reading of the document, it is very clear that Valuru Kesava Rao developed the property out of the money of Smt. Chandravathi, but not received such amount either as part of sale consideration or absolute sale consideration. In the entire document, there is no recital that Valluru Kesava Rao received amounts as sale consideration for the plaint schedule property. However, the amount received from his sister Chandravathi were utilized for the purpose of development of the plaint schedule property. The document eventually shows that Valluru Kesava Rao agreed settlement of the suit schedule property on Valluru Kesav, but reserved his life interest over the same and that confirming the same, he executed the document dated 24.9.1985. It is settled law that whenever there is a right of life interest created in favour of the executant, such document cannot be termed as sale deed. Sale deed means transfer of ownership for consideration coupled with delivery of possession with immediate effect from seller to buyer. In the document in question, there is no receipt of sale consideration, delivery of possession, much less transfer of ownership on the date of execution of the document. Hence, it can only be taken as a document settling the suit schedule property in favour of Valluru Kesav, represented by his maternal grand father Medasani Satyanarayana Choudary. The intention of the executant Valluru Kesava Rao is very much clear that he settled the suit schedule property in favour of his grand son Valluru Kesav. Furthermore, there is no specific recital in the document in question that he received the amounts as sale consideration for plaint schedule property. That apart, as already noted above, late Valluru Kesava Rao, under the document in question, reserved life interest and thereafter settled the properety in favour of his grand son Kesav. The Apex Court in VIDHYADHAR v. MANKIKRAO (1 supra) while considering the definition of sale under Section 54 of

the Transfer of Property Act, held that the transferor cannot retain any part of his interest or right in the property, or else it would not be a sale. The relevant portion is as under:

> "35. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another. i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale.. . ."

11. In the light of the provisions of the Registration Act, 1908 and the Transfer of Property Act, 1882 and the law laid down by the Apex Court and in the facts of the circumstances of the case, I am of the considered view, that the subject matter in the document in question attracts provisions of neither the provisions of Stamp Act nor the Registration Act for purpose of stamp duty and registration and the finding of the trial court rejecting the admission of the document for want of stamp duty and registration cannot be sustained and the same is liable to be set aside and accordingly set aside and the trial court shall allow the document in question to be marked and received in evidence.

12. The revision petition is accordingly allowed. No costs.

13. Miscellaneous petitions pending if any, shall stand closed.

AVS

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[1] AIR 1999 SC 1441 (1)

[2] (2010)4 SCC 161