THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3755 of 2015

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the plaintiff is directed against the intermediary orders dated 22.07.2015 of the learned Principal Senior Civil Judge, Ranga Reddy District passed in OS.no.10 of 2012.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit against the defendants for a perpetual injunction restraining them from interfering with the possession of the plaint schedule property and from alienating the said property to third parties. The defendants are resisting the suit by filing written statements. While so, when the trial is in progress, the plaintiff had tendered in evidence two documents viz., (1) unregistered development agreement-cum-GPA dated 01.02.2008 ('development agreement', for brevity) executed in favour of the plaintiff concern by the land owners through their GPA holder; and (2) memorandum of understanding dated 01.02.2008 between the said parties ('MOU', for brevity). The learned counsel for the defendants had raised an objection for exhibiting the said documents on the grounds that the documents are inadmissible in evidence for want/requirement of stamp duty and registration. The trial Court had held that the two documents, which are executed on a stamp paper worth of Rs.100/- each and which are not registered, are inadmissible in evidence. Therefore, the aggrieved plaintiff is before this Court.

4. The learned counsel for the plaintiff while submitting that the suit is filed for perpetual injunction and while further stating that the order impugned is unsustainable both under facts and in law had contended as follows:

The documents, viz., the development agreement and the MOU, are crucial and material documents to substantiate the case of the plaintiff and also for adjudicating the *lis.* They being essential documents duly signed by the concerned persons, the trial Court should have permitted the plaintiff to mark the said documents. The trial Court erred in holding that under the documents a right is created in regard to immovable properties and shares in 60% and 40% ratio are created. The documents filed are original documents. The documents are admissible in evidence. The order impugned was passed in a casual manner without referring to the facts of the case and the provisions of law, if any applicable. The order is a cryptic order devoid of all material details and reasons, much less valid reasons. Therefore, the order impugned is unsustainable and is liable to be set aside.

5. Per contra, the learned counsel for the defendants would submit that admittedly both the documents are engrossed on stamp paper worth Rs.100/- each and that they deal with transaction in regard to immovable properties worth more than Rs.100/- and that, therefore, the trial Court is justified in upholding the objection of the defendants.

6. I have bestowed my attention to the facts and the submission. I have carefully perused the copies of the documents. The first document is a development agreement-cum-GPA dated 01.02.2008 executed in favour of the plaintiff concern by the land owners though their GPA wherein the plaintiff is described as a second party and developer. The terms 3, 7, 8, 9 and 10 of the said document read as under:

> **'3. In view of the first party owner parting with the schedule property to enable the second party developer to make the constructions the first party owners and second party have mutually agreed to share the built up areas including usable areas i.e., IV floors area and also other areas like balcony, staircase, Parking area, terrace, corridor other common space and un built vacant areas in 60% to the developer/second party and 40% owners/first party, except construction for 3 (Three) beds pent house belongs to developer only.**

7. The second party developer entitled to deal with 60% of built up area failing to it's share by advertising the same for sale, lease and shall also be entitled to receive amounts pertaining to the said area and entitled to enter into agreements for sale or lease deed with the intending purchaser or purchasers or tenants lease or sale of the built up area along with undivided share of land and the first party owners will simultaneously execute general power of attorney in the name of the second party developer to deal with the 60% of the undivided share of land in favour of the purchaser.

8. The allotment of built up areas shall be by mutual agreed of the first party owners and second party developers as per proportionate ratio.

9. That any capital gains or profits occurring in respect of 60% of developed property of the second party developer shall be to the credit of the second party developer and the capital gains arising in respect of 40% of the first party owners shall be in the credit of the first party owners themselves.

10. The party of first party owners assures the second party developer that the schedule property is free from all encumbrances, charges, liens attachments, liabilities and will be responsible for any claims from third parties and will deal with the said claims from out of the 40% built up area allotted to the first party owners. The second party developer is not responsible and also not responsible for the delay caused due to the said claims.'

[Reproduced verbatim]

7. The schedule of the property of the said document would show that the property is plot nos.1289 and 1290 admeasuring 600 Sq.yards at Khanamet village, Serilingampally Mandal and Municipality of Ranga Reddy District. The second document, an MOU of an even date, also refers to the agreement between the parties and deals with refund of a deposit in connection with the development agreement. One of the introductory paragraphs in the said document reads as under:

'Whereas the party of the First parties are the absolute owners and peaceful possessor of Plot Nos.1289 and 1290, admeansuring 600 Sq.yards or 501.6 Sq.meters, in Sy.No.11/27, situated at Khanamet Village, Serilingampally Mandal and Municipality, Ranga Reddy District, having purchased the same from Smt. M. Indira Devi, W/o. Sri M. Kulashekar Rao through un registered Deed of Sale executed on dated: 05/03/2002 same was validated at District Registrar Office, Ranga Reddy District, vide proceeding No.... Dated.... u/s42 of Indian Stamp Act.'

[Reproduced verbatim]

8. Now that this Court had referred to the factual aspects and the material contents in the two documents, it is profitable to refer to the relevant provisions, to which the attention of this Court was drawn at the time of hearing.

Section 17 of the Indian Registration Act reads as under:

17. Documents of which registration is compulsory—

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been executed or on after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely:

(a) instruments of gift of immovable property;

(b) other non-testamentary instructions which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments 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; and

(d) leases of immovable property

(e) non-testamentary instruments transferring or assigning any decree or order of a Court of any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in the present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property.

A.P. State Amendment

(f) any decree or order or award or a copy thereof passed by a Civil Court, on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under Section 35 of the Indian Stamp Act, 1899, such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; and

(g) agreement of sale of immovable property of the value of one hundred rupees and upwards];

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A.

(2) Nothing in Clauses (b) and (c) of sub-section (1) applies to:

(i) any composition deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting, or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby, the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document other than the documents specified in sub-section (1A) except an agreement of sale as mentioned in clause (g) of sub-section (1) not in itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court, not being a decree or order of award falling under clause (f) of sub-section (1) except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871) or the Land Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loan Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890 (VI of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xiii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

(3) Authorities to adopt a son, executed after the first day of January, 1872 and not conferred by a will, shall also be registered.

Article 6 (A) & (B) of Schedule I-A of the Indian Stamp Act reads as under:

Description of Instrument	Proper Stamp duty

6. Agreement or Memorandum of an agreement not otherwise provided for:	
(A) Where the value:	
(i) does not exceed Rs.5,000/-	Ten Rupees
(ii) exceeds Rs.5,000/-	Twenty Rupees
(iii) exceeds Rs.20,000/- but does not exceed Rs.50,000/-	Fifty Rupees
(iv) exceeds Rs.50,000/-	One Hundred Rupees
(B) If relating to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property	Five Rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities whichever is higher.

Article 42 (e) & (g) of Schedule I-A of the Stamp Act reads as under:

Description of Instrument	Proper Stamp duty
42. Power of Attorney as defined by Section 2(21) not being a proxy:	
(a) ….	
(b) ….	
(c) …	
(d) ..	
(e) when given for consideration and authorising the attorney to sell any immovable property:	The same duty as a conveyance (No.2) for a consideration or market value equal to the amount of the consideration.
(f) …	
(g) when given for construction on, development or, or sale or transfer (in any manner whatsoever) or, any immovable property;	Five rupees for every one hundred rupees or part thereof on the market value of the property.

9. When, on facts and law, detailed submissions are made, the Court below ought to have passed a speaking order after having adverted to the relevant contents of the two documents and the legal position that is applicable. However, the cryptic order of the Court below reads as under:

> "**As seen from the document the development agreement as well of memorandum of understanding created right of the parties with regarding to 60% & 40% shares. Hence as the document create right over the property. Hence the documents requires registration since the memorandum of understanding is also executed in Rs.100/- stamp paper it cannot received as evidence under schedule 1 (A) of the Indian stamp act. Hence documents cannot be admissible in evidence for want of stamp duty and registration**."
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> [Reproduced verbatim]

Since, the order impugned is not a reasoned order and the said order was passed without referring to the material contents of and the transactions embodied in the two documents and also the legal provisions applicable to the said transactions, the said order brooks interference and is liable to be set aside.

10. Viewed thus, this Court finds that the matter requires to be remitted to the Court below for fresh consideration and passing an order on merits and in strict accordance with the procedure established by law.

11. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. The matter is accordingly remitted to the trial Court for fresh consideration and passing an appropriate order on merits and in strict accordance with the procedure established by law. It is needless to say that this Court did not express any opinion on the merits of the matter. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

01st June 2016
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