THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5120 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the docket orders dated 12.08.2015 of the learned Rent Controller-cum-IV Additional Junior Civil Judge, Vijayawada passed in OS.no.982 of 2009.

2. There is no representation for the revision petitioner on 25.03.2016 and also today. I have heard the submissions of the learned counsel for the respondents/defendants. I have perused the material record.

3. The plaintiff brought the suit for specific performance of a possessory agreement of sale dated 07.08.1995 and for perpetual injunction in respect of an immovable property. When the trial of the suit is at the stage of marking the document through PW1, despite an objection raised by the defendants that the suit document is not an agreement of sale but is a sale deed and that it is a compulsorily registerable document as possession of the property was delivered, as is evident from the recitals in the said document, the court below by the orders impugned inter alia held as follows: "… hence, this Court deems proper to mark the said document recording objection of defendant and matter to be proceeded with being 'identified' and that objection raised by the defendant is to be decided at the time of judgment." [Reproduced verbatim] Aggrieved of the said orders, the plaintiff had preferred this revision.

4. The case of the plaintiff is as follows:

The objection raised by the defendants as to the marking of the suit agreement of sale is not legally valid. The document being an agreement of sale is to be marked without any objection. The document does not require registration. It is not a compulsorily registerable document. Since the suit is filed for specific performance, no prejudice would be caused to the defendants, if the document is marked. If the plaintiffs fail to prove the agreement of sale, their suit would be dismissed and mere registration or non-registration of the agreement would not serve any purpose. Since the sale deed would be registered on the suit being decreed, there is no need to register the agreement of sale. Hence, the agreement of sale which does not require registration can be admitted in evidence without any objection. The order of the Court below that the objection raised by the defendants would be considered at the time of the judgment is not legal and valid.

5. The learned counsel for the defendants would submit that since the court below did not decide the objection of the defendants they should have assailed the said order and not the plaintiff as the defendants are the aggrieved parties. He would contend that the court below ought to have upheld the objection of the defendants in view of the provisions of the Indian Stamp Act as applicable to the documents in our States.

6. I have bestowed my attention to the facts and the submissions. The Court below has to make its own decision on the nature of the document viz., whether it is a sale agreement or a sale deed as per facts and the law applicable. Further, the Court also has to decide as to whether the transaction embodied in the document is liable for stamp duty as a sale transaction in view of the provisions of the Schedule IA of the Indian Stamp Act. There is also no dispute with the proposition that the nature/character and the description/nomenclature and also the stamp duty payable, if any, on the document have to be determined with reference to the recitals therein and the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument. For classification of instruments, that is, to determine whether an instrument comes within a particular description in an Article to the Schedule to the Indian Stamp Act, the instrument should be read and construed as a whole. The nomenclature of or the caption given to the document is not determinative and the nature or the substance of the transaction contained in the document is only the determinative factor.

7. From the order of the Court below it is evident that the suit document is marked subject to objection and the decision on the objection is postponed subject to the observation that the objection would be decided at the time of judgment. When an objection is raised in regard to admissibility of a document and that question is inter related to deficiency/sufficiency of stamp duty and collection of duty and penalty and also requirement of registration, it is the bounden duty of the trial Court, as per the settled legal position, to consider the said issue before proceeding further in the matter. However, in the present case, the document was marked by the Court below subject to objection, by following an incorrect practice. The said procedure adopted by the trial Court is contrary to the settled legal position.

In Ram Rattan (dead) by L.Rs. v. Bajrang Lal and others[1] the Supreme Court held as under:

> "...The court, and of necessity it would be trial Court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case ..."

In Bipin Shantilal Panchal v. State of Gujarat and Anr.[2], the Supreme Court has made it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further.

In **Shalimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and others**[3]**,** the Supreme Court held that the issue of admissibility of documents cannot be left open and hanging by the trial Court and should be decided as and when such objection is raised. It observed:

> **15. On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial Court should not have "marked" as exhibits the xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and**

hanging, by marking them as exhibits subject to objection of proof and admissibility. The appellant, therefore, had a legitimate grievance in appeal about the way the trial proceeded.

8. Having regard to the facts of the case on hand and the legal position obtaining, this Court holds that the docket order of the Court below, whereby the Court below marked the disputed document subject to the objection of the defendants and postponed the decision on the objection stating that the objection would be considered at the time of judgment, is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel to the said finding, it is in the interests of justice to give appropriate and necessary directions to the trial Court. Accordingly, the trial Court is directed to give an opportunity of hearing to both the sides and decide the objection raised by the defendants in regard to the suit document and also the nature or character of the document with reference to the recitals therein and the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument. It is need less to state that on such determination, if the document is found to be insufficiently/deficiently stamped and that stamp duty and penalty are collectable, the trial Court may give liberty to the plaintiff to either pay the required stamp duty and penalty or make a request to send the document to the Collector concerned for collecting the required/deficit duty and penalty as per procedure. The trial Court is further directed to decide as to whether the suit document is compulsorily registerable or not and whether the document can be permitted to be marked on payment of stamp duty and penalty, if any, payable on the said document as an unregistered document on compliance of the said requirement may be received as evidence of contract in a suit for specific performance in view of the proviso appended to Section 49 of the Indian Registration Act. It is made clear that this Court did not express any opinion on the issues involved as to the nature of the document and the transaction embodied in the document as it is for the court below to arrive at a just decision in the matter on the issues involved as directed in these orders.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

26th April, 2016
Vjl

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[1] (**1978) 3 SCC 236**

[2] **AIR 2001 SC 1158**

[3] **(2010) 8 SCC 423**