THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1809 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the defendants is directed against the orders dated 18.03.2015 of the learned Junior Civil Judge, Guntakal passed in IA.no.15 of 2015 in OS.no.74 of 2011.

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

3. The facts, which are necessary for consideration, in brief, are as follows:

In a suit for specific performance, when the plaintiff tendered in evidence, the document dated 22.04.2002 for being exhibited, the defendants had raised objections *inter alia* contending that the said document not only as per the nomenclature but also as per the recitals in the said document is a sale deed as it contains an out and out sale transaction and that it is not an agreement of sale and that it is compulsorily registerable under Section 17(1)(b) of the Indian Registration Act and hence, it cannot be received in evidence. On the other hand, the learned counsel for the plaintiff had contended that neither the nomenclature nor one or two recitals in the document shall be considered and that the document shall be read as a whole to ascertain the nature of the document and the transaction comprised therein, and, therefore, the document is not compulsorily registerable and can be received in evidence. By the order impugned, the trial Court had over ruled the objections raised by the defendants *inter alia* holding that the document sought to be marked is an agreement of sale but not a sale deed and therefore, the document can be received in evidence. The defendants, who are aggrieved of the said orders, had filed this Civil Revision Petition.

4. The learned counsel for the defendants while reiterating their case, which is urged before the trial Court and which is stated supra, and having drawn the attention of this Court to the contents of the said document dated 22.04.2002 would submit that a plain reading of the said document would show that in the said document there are clear recitals that the property was sold and that the vendee can enjoy the property absolutely with absolute rights without any let or hindrance from the vendors or their legal heirs and that the schedule property was delivered under the said document and that therefore, the document is a sale deed and not an agreement to sell.

5. On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below would contend that in the said document there is a recital whereby there is a contemplation to execute a further document in favour of the plaintiff or his nominee and that in view of such contemplation to execute further document, the said document in question is only an agreement of sale but not an out and out sale deed and that in the Court below an objection only in regard to lack of registration was raised and that for the first time, the objection in regard to insufficiency of stamp duty is being raised before this Court and that in view of the fact that the said objection regarding stamp duty is not raised before the Court below, the plaintiff was not called upon to pay the stamp duty and, therefore, it is for the Court below to consider the said aspect and to give an opportunity to the plaintiff, if necessary, to make a request to send the document to the Stamp Duty Collector for collecting the necessary stamp duty and penalty, if any, payable on the said document.

6. I have bestowed my attention to the facts and the submissions. I have carefully gone through the said document that was sought to be marked. Undoubtedly the document contains a recital which makes it manifest that there was a contemplation to execute a regular registered document in respect of the schedule property. Be that as it may, albeit the document in question is to be considered as an agreement, still as per the provision under Section 17 of the Indian Registration Act read with the A.P. State Amendment as is applicable to the facts of the case, the agreement of sale of immovable property of the value of Rs.100/- and upwards is compulsorily registerable. The said A.P State amendment came into force from 01.04.1999. In that view of the matter also, the said document is compulsorily registerable. Be that as it may. Under the *proviso* to Section 49 of the Indian Registration Act, an unregistered document affecting immovable property and required by the Indian Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act. Therefore, the non registration of the said sale agreement/sale deed, by whatever name it may be called, is not an impediment for admitting the document in evidence in view of the *proviso* to Section 49 of the Indian Registration Act. However, as per the explanation I appended to Article 47 A of the Schedule 1 A of the Indian Stamp Act, an agreement to sell followed by or evidencing the delivery of possession of the property agreed to be sold shall be chargeable as a sale under this Article. The document in question contains a clause showing delivery of possession on the date of its execution and is, therefore, liable to stamp duty under Article 47-A of Schedule IA of the Stamp Act as if it is a sale for its admission into evidence.

7. Viewed thus, this Court finds that the document in question, which is engrossed on a stamp paper worth of Rs.100/-, is liable for stamp duty and penalty in view of the aforementioned provision of law. In view of the said clear legal position applicable to the facts of the case, this Court is of the considered view that the order impugned is unsustainable both under facts and in law.

8. In the result, the Civil Revision Petition is allowed and the order impugned is set aside holding that the document in question, that is, the document dated 22.04.2002 is not duly stamped and that it is liable to be stamped in accordance with the provision under Article 47A of the Schedule 1A of the Stamp Act as if it is a sale, for its admission into evidence. Therefore, the trial Court shall, accordingly, collect deficit stamp duty and penalty payable on the said document, if the plaintiff so desires and is willing to pay the same. However, it is made clear that if the plaintiff is not prepared to pay the stamp duty and penalty before the Court and makes a request by filing an appropriate and necessary application to refer the document to the Stamp Duty Collector for collection of the necessary stamp duty and penalty, the Court shall consider the request of the plaintiff accordingly and shall send the said document to the Collector in accordance with the procedure established by law. Insofar as the non registration of the document, the Court below shall keep in view the observations made in this order and shall admit the document in evidence on payment of the required stamp duty and penalty on the said document in view of the *proviso* to Section 49 of the Indian Registration Act.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

15.03.2016
Vjl