THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5546 OF 2016

O R D E R

On 18.12.2015, the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, admitted in evidence Ex.A1 agreement of sale dated 28.02.2005 in O.S.No.574 of 2007 pending on his file. Thereafter, by docket order dated 03.02.2016 in O.S.No.574 of 2007, the learned Judge marked in evidence Ex.A17, subject to objections.

The defendant in the suit filed I.A.No.468 of 2016 therein, under Section 151 C.P.C., contending that these two documents were inadmissible in evidence and praying that they should be eschewed from consideration. By order dated 15.09.2016, the trial Court dismissed this I.A. Aggrieved thereby, the defendant filed this revision under Article 227 of the Constitution.

Heard Sri J.Ashvini Kumar, learned counsel for the petitioner/defendant, and Sri M.P.Chandramouli, learned counsel for respondent 1/plaintiff 1. Respondents 2 to 5/plaintiffs 2 to 5 are shown as not necessary parties to this revision petition.

Parties shall be referred to hereinafter as arrayed in the suit.

This revision is restricted to admissibility of Ex.A17 alone as no grounds have been raised with regard to admissibility of Ex.A1 agreement of sale.

O.S.No.574 of 2007 was filed for specific performance of Ex.A1 agreement of sale dated 28.02.2005 said to have been executed by the defendant.

Ex.A17 is a receipt dated 31.03.2009 executed by plaintiff 2, since expired, wherein he stated as under:

> 'I, Syed Nazeeruddin S/o Syed Azeezuddin, Aged: 52 years, Occ: Business, R/o: 9-4-134/43, Aruna colony, Tolichowki, Hyderabad, received an amount of Rs.20,00,000/- (Rupees Twenty Laksh only) in cash on different dates from Syed Zainul Abedin S/o Late Syed Mahmmed sadiq, Aged 48 years, Occ: Business, R/o:23-1-278, Kotla Alijha, Hyderabad towards return of total invested amount by me in respect of agricultural land in Sy.No.184 admeasuring Ac.2-06 gts; Sy.No.185 admeasuring Ac.2-06 gts; Sy.No.186 admeasuring Ac.0-11 gts and Sy.No.195 admeasuring Ac.0-30 gts totally admeasuring Ac.5-13 gts situated at Prakash Nagar, Begumpet Village, Balanagar Revenue Mandal, R.R.District, which was purchased through an Agreement of sale dated 28-02-2005 from Smt. K.Jayamma as I along with Zainul Abedin filed a suit bearing O.S.NO.574/2007 on the fie of Ist Addl. District Judge, R.R.District, and in view of receipt of total invested amount I will not claim any rights in respect of above said property in future and today onwards Sri Zainul Abedin alone is having all rights in respect of above said property in view of my name in then agreement or in the suit my legal heirs shall not claim any rights, interest for the said property. I am executing this receipt in the presence of the following witness on this the 31st day of March, 2009.'

Sri J.Ashvini Kumar, learned counsel, would contend that this document is compulsorily registrable under Section 17(1)(b) and (c) of the Registration Act, 1908 (for brevity, 'the Act of 1908') and therefore ought not to have been marked in evidence. Learned counsel would contend that the conclusion of the trial Court that as the suit property was itself in dispute, plaintiff 1 would not get any absolute rights over the same by virtue of Ex.A17 receipt and that the said document was only an internal understanding between the parties, is factually and legally incorrect. He would assert that Ex.A17 receipt records the relinquishment of rights by plaintiff 2 in the suit property upon receipt of consideration of Rs.20,00,000/-. Learned counsel would point out that having received this amount, plaintiff 2 stated in clear terms that he would not claim any rights in respect of the suit property in future and that plaintiff 1 alone would have all rights in respect of the said property. He would therefore argue that the trial Court erred in ignoring this crucial aspect and in permitting the document to be marked in evidence overlooking the mandatory requirement of registration.

Per contra, Sri M.P.Chandramouli, learned counsel, would contend that the defendant was delaying the suit proceedings unnecessarily and that the present revision is another such step in this regard. Learned counsel would point out that the defendant earlier filed Civil Revision Petition No.1772 of 2013 in relation to Exs.A3 and A4 and Civil Revision Petition No.2512 of 2016 in relation to Exs.A10 and A11. He would further point out that the plaintiff 1 adverted to all the documents, sought to be relied upon by him, in his affidavit in lieu of chief-examination as long back as on 27.04.2012 and assert that the defendant was only procrastinating by raising one objection after another in relation to each such document and filing revisions thereafter. Learned counsel would contend that as the defendant failed to avail the earliest opportunity to challenge Ex.A17 receipt, she could not be permitted to do so at this belated stage. Learned counsel would further point out that the plaintiffs had filed Civil Revision Petition No.299 of 2014 before this Court seeking early disposal of the suit and by order dated 15.10.2014, this Court directed the trial Court to dispose of the suit peremptorily within four months from the date of receipt of the order. Learned counsel would contend that the defendant cannot be permitted to delay the suit in violation of the time stipulation fixed by this Court.

On merits, the learned counsel would contend that the defendant has no right to object to the internal arrangement between the plaintiffs and she could have no grievance with regard to the manner of execution of Ex.A17 receipt. He would further state that what was given up by plaintiff 2 under the said receipt was only an intangible right and would therefore not amount to relinquishment of a right to immovable property, whereby Section 17 of the Act of 1908 would stand attracted.

In reply, Sri J.Ashvini Kumar, learned counsel, would point out that though documents were adverted to in the list appended to the affidavit in lieu of chief-examination filed by P.W.1 (plaintiff 1), such documents were marked in evidence only thereafter, i.e., Exs.A1 and A2, on 18.12.2015, and Exs.A3 to A17, on 03.02.2016. The certified copy of the docket orders of the trial Court in this regard was also placed on record. He would therefore contend that the right of the defendant to object to the marking of a particular document would arise only when it is admitted in evidence and that no delay could be attributed to his client in laying a challenge to the marking of Ex.A17 receipt. Learned counsel would also point out that the time stipulation fixed by this Court in CRP No.299 of 2014 expired long ago and assert that the trial Court could not ignore legal principles merely because it had to dispose of the suit expeditiously. Learned counsel also pointed out that CRP Nos.1772 of 2013 and 2512 of 2016 were disposed of in favour of his client. He would rely upon ***YELLAPU UMA MAHESWARI V/s. BUDDHA JAGADHEESWARARAO***[1]

[1] 2016 (1) ALD 40 (SC)

in support of his contention that Ex.A17 receipt is compulsorily registrable.

This Court finds merit in the submission of Sri J.Ashvini Kumar, learned counsel, that the occasion to lay a challenge to the admissibility of a document would arise only when such document is being marked in evidence. Ex.A17 receipt was marked, subject to objections, only on 03.02.2016 and this revision petition was filed in November, 2016. The suit proceedings were however not stayed by this Court pending disposal of this revision. No delay in the suit proceedings was therefore occasioned by this revision. Further, merely because a timeframe has been postulated for disposal of the suit, it cannot be construed that orders passed by the trial Court at the interlocutory stage cannot be tested on grounds, factual and legal, as to their validity.

Perusal of Ex.A17 receipt, as set out *supra*, demonstrates that plaintiff 2 received a sum of Rs.20,00,000/- from plaintiff 1 and acknowledged that, in view of such amount having been paid to him, he had no claim or right in the suit property and that his legal heirs also would not claim any rights or interest in the said property.

Section 17(1)(b) and (c) of the Act of 1908 read 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 on or 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) ………;
>
> (b) other non-testamentary instruments 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
> ....'

The aforestated statutory provisions put it beyond doubt that any extinguishment of a right, title or interest in immovable property of the value of over Rs.100/-, whether in present or in future, and whether vested or contingent, by way of a non-testamentary instrument compulsorily requires registration. That being so, a 'Receipt' which acknowledges payment of consideration for extinguishment of any such right, title or interest is compulsorily registrable. Given the fact that the provision is couched in very wide terms so as to cover not only existing rights but also future rights and not only vested rights but also contingent rights, there can be no doubt that plaintiff 2 relinquished and sought to extinguish his claimed rights in the suit property, pursuant to the agreement of sale, specific performance of which was sought by way of the subject suit. Further, though she was not a party to this document as it was sought to be marked in evidence in the suit, the defendant had every right to object to its admissibility on legal grounds.

In ***YELLAPU UMA MAHESWARI***[1], the Supreme Court observed that the nature and substance of the transaction in the document has to be determined and the admissibility of such document would be dependent upon the recitals contained therein. Applying the said rule to Ex.A17 receipt, this Court finds that the recitals therein patently demonstrated relinquishment and extinguishment of the rights of plaintiff 2 in the suit property upon receipt of consideration of Rs.20,00,000/-. In consequence, Section 17(1)(b) and (c) squarely applied to this document and it was compulsorily registrable. The trial Court erred in not taking note of these factual and legal aspects and in dismissing the I.A.

The Civil Revision Petition is accordingly allowed holding that Ex.A17 receipt is inadmissible in evidence for want of registration in terms of Section 17(1)(b) and (c) of the Act of 1908.

Pending miscellaneous petitions, if any, shall also stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

2nd DECEMBER, 2016

PGS