HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.6270 & 6332 of 2016

COMMON ORDER:

These revision petitions came for hearing before admission and before notice to the respondents i.e., decree holder and J.Dr. respectively in the pending claim petition in E.A.No.31 of 2010 in E.P.No.25 of 2009 in O.S.No.1825 of 2005 on the file of XVIII Additional Senior Civil Judge (FAC), City Civil Court, Hyderabad, maintained by the petitioner as alienee from the so called original owner saying the property cannot be made subject matter of the execution proceedings. In the course of enquiry, the 3 receipts under which part payments made and 2 of which evidencing delivery of possession pursuant to the contract for sale when sought for exhibition before the trial Court, there was impugned order passed by the lower Court on 31.10.2016 which is subject matter of CRP.No.6270 of 2016 and in continuation of it earlier order dated 05.02.2016 subject matter of CRP.No.6332 of 2016. The 3 receipts form part of the contract for sale transaction. The Court has to construe the document whether reflects individual transaction or together reflects one transaction as part of the duty of interpretation of the documents. From which so far as 1st receipt concerned, there is a mention of sale of the property for Rs.3,30,000/- which is house bearing No.10-1-1120 situated at Risala Haboosh, A.C. Guards, Hyderabad in favour of Nazia Begum claimant executed by Mujeeb Sultana, the decree holder and there is a reference about payment of half of the sale consideration reflects of Rs.1,65,000/- as received and acknowledged on 26.06.2001. This receipt if construed independently is a contract for sale within the meaning of Section 54 of the Transfer of Property Act to enforce for specific performance if at all. There is no reference to delivery then liable for stamp duty of maximum Rs.100/- from the law as on the date of receipt in force if at all to impound under Section 33 Indian Stamp Act with 10 times penalty by the Court.

No doubt it is in relation to the stamp duty without payment and impounding, the question of exhibiting and considering the document even for any purpose for want of registration does not arise as laid down by the 2 expressions one of which already placed reliance is between **Jannuchander Babu Vs. Manchikatla Satyanarayana and Others**[1] referred by the lower Court and the other expression to read with as 2 pages before is between **Rachakonda Ramakoteswara Rao Vs. Manohar Fuel Centre and Another**[2]. No doubt from the AP State amendment by Act No.4 of 1999 incorporating Section 17(g) of the Indian Registration Act (for short 'the Act'), once it is a compulsory registerable document even as on the date of execution by virtue of that provision, the only thing to consider is within the scope of Section 49 of the Act for there is no similar amendment of Section 49 with reference to Section 17(g) of the Act by the A.P. amendment. Section 49 of the Act deals with effect of non-registration of documents required to be registered and the proviso speaks admissibility in 3 areas, to receive as evidence of a contract in a suit for specific performance under Specific Relief Act or as evidence of collateral transaction not required to be effected by registered instrument and the other is

[1] 2003 (2) ALD 640
[2] 2003 (2) ALD 638

under Section 53-A of Transfer of Property Act for part performance agreement though required to be registered even not registered can be admitted in evidence. There is central amendment by Act No.48 of 2001 with effect from 24.09.2001 amending Section 53-A of TP Act and also the portion covered by 2nd area of proviso of Section 49 of the Act to say after 24.09.2001 including in a suit for part performance of the contract for sale to enforce the equitable doctrine of part performance agreement must be required to be registered. Thus, if it is a suit for specific performance by virtue of 1st part of the proviso to Section 49 from the above amendments registration though otherwise compulsory can be admitted as evidence to enforce the contract for sale in a specific performance claim. It is in relation to the requirement of registration if any in relation to in the 1st receipt. Coming to the additional advance receipts, one of which were dated 05.07.2001 where there is mention of further part sale consideration paid of Rs.40,000/- in addition to what was already paid of Rs.1,65,000/- of total received of Rs.2,05,000/- out of entire sale consideration of Rs.3,30,000/- pursuant to the contract for sale saying for which the house property sold and further mentioned of already delivered possession to the vendee. This aspect of evidencing delivery of possession requires interpretation under Article 47-A of the Schedule IA of the Stamp Act. The wording of the provision is in fact very clear of it is in pursuance to the contract for sale. When the recitals in the receipts 1 & 2 supra refer to the contract for sale under which the initial payment and subsequent payment by acknowledging initial payment also by further mentioning of delivery of possession already effected, which is since evidencing delivery of possession, it is squarely within the meaning of the provision that makes to the 2nd receipt supra itself liable as conveyance for stamp duty with penalty as if in case of sale.

Coming to the 3rd receipt not only acknowledging the 2 payments covered by the two receipts supra, but also further speaks another payment of Rs.40,000/- making the total Rs.2,45,000/- and to pay balance out of total Rs.3,30,000/- and again reiterated the delivery of possession already effected. Thereby all the 3 receipts supra to be read together disclosing the contract for sale entered and acknowledging the same with part payments and also evidencing delivery of possession more than once and as such same is within the meaning of conveyance under Article 47-A of Schedule IA of the Stamp Act that is the right conclusion arrived by the lower Court in impounding the document. In this regard out of the 3 expressions placed reliance by the revision petitioner in the 2 revisions, so far as the judgment in Jannuchander Babu supra what is observed is in all cases where a document contains recital recording delivery of possession of property in pursuance of the agreement of sale whether by way of endorsement on the reverse of the agreement or under a separate receipt, it has to be stamped as sale deed as contemplated by Section 47-A of schedule I-A of the Stamp Act. The contention of the learned counsel for the revision petitioner is that once it must be in pursuance of agreement of sale the wording must be reflected in the receipts. When from reading of the 3 receipts as discussed supra disclose that it is in pursuance of the sale agreement for the specific immovable house property the payments made and property delivered once that is evidenced as rightly construed by the lower Court, above argument of counsel for revision petitioners has no substance and hence the same is rejected.

Even coming to the other expression in **Ponnapola Seetha Ramaiah Vs. Sangala Sreenivasulu**[3] where specific conclusion arrived by the lower Court was set aside by allowing the revision, finding that the lower Court admitted the document without proper stamp duty and penalty for a conveyance from it is evidencing delivery of possession under Article 47-A of the Schedule IA of the Stamp Act, error committed by the lower Court. Thereby said expression also no way helpful to the contention of the revision petitioners. Even the other judgment in **Veesarapu Padma Vs. Rangineni Anitha**[4] no way helps to the contention of revision petitioners in the case on hand.

Having regard to the above, the order of the lower Court is correct and thus the lower Court is right in directing to pay 10 times penalty with deficit stamp duty payable as an agreement of sale-cum-conveyance within the meaning of Article 47-A of the Schedule IA of Stamp Act. No doubt the original document alone to be construed as instrument within the meaning of Section 2(14) of the Stamp Act to impound only if the original is available. The law reiterated is clear from the expression in **Buddha Jagadeeswara Rao Vs. Sri Ravi Enterprises rep. by its Proprietor Kedarisetty Gurumurthy** in C.R.P.No.1850 of 2015 dated 23.08.2016. No doubt as held in the above expression, reiterating the law laid down by the Apex Court in **Chilukuti**

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[3] 2012 (6) ALD 766
[4] 2014 (1) ALD 162

Gangulappa vs. RDO. Madanapalli[5] despite the Court impounded the document with stamp duty and with 10 times penalty, parties still got liberty either to pay for impounding or even to make a request to refer to the District Registrar for impounding and for that the petitioners have to file a memo before the lower Court if at all so to refer.

Having regard to the above and in the result, both the revision petitions are disposed of by giving such a liberty to the petitioners to file memo before the trial Court if they want to refer the document (3 receipts) to the District Registrar for impounding so to do, if not prepared to pay the deficit stamp with ten times penalty ordered by the trial Court to impound by it.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 26.12.2016
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[5] AIR-2001-SC-1321