THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4011 of 2015

ORDER:

This revision petition under Article 227 of the Constitution of India by the unsuccessful plaintiff is directed against the docket orders dated 25.08.2015 of the learned III Additional Junior Civil Judge, City Civil Court, Hyderabad passed in the suit O.S.No.1701 of 2014.

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 defendant ('the defendant', for brevity). I have perused the material record.

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

The plaintiff brought the suit against the defendant for eviction from the plaint schedule property. The said suit is said to have been instituted after issuance of a quit notice to the defendant. The defendant is resisting the suit. During the course of trial, the plaintiff having filed her affidavit in lieu of examination-in-chief, had tendered the document dated 14.08.2013 in original namely, 'rental agreement' and also a 'declaration given by her sister' dated 04.06.2015 for being exhibited. The defendant had raised an objection stating that the 'rental agreement' and 'declaration' are compulsorily registerable documents and that they are also not sufficiently stamped and hence, they cannot be admitted in evidence. The trial Court had upheld the said objection raised by the defendant and had held that the said documents, which are not sufficiently stamped and registered, cannot be admitted in evidence. The plaintiff had also tendered in evidence for being marked the counter foils of rent receipts said to have been passed between the parties. An objection was raised, on behalf of the defendant, for marking of the counter foils of the rent receipts on the contention that the entire book containing the counter foils is not filed and hence, the same cannot be admitted. However, the trial Court overruled the objection in regard to the counter foils of the rent receipts and permitted the plaintiff to exhibit the same. Therefore, the aggrieved plaintiff is before this Court.

4. The learned counsel for the plaintiff would contend as follows:

The suit is filed for eviction after terminating the tenancy by issuing a quit notice. The defendant is not denying his status as a tenant in the schedule mulgi. Therefore, the trial Court ought to have permitted the rental agreement and the declaration to be exhibited. Under the rental agreement, the agreed lease period is eleven months. Therefore, it is admissible in evidence. It does not require registration. Each document is engrossed on a stamp paper of the value of Rs.20/-. The trial Court had erroneously held against the plaintiff and had wrongly directed that the rental agreement and the declaration be sent to the authorities concerned for collection of the required stamp duty and penalty and for registration. The trial Court ought to have seen that if a document is required under law to be registered, but, is not registered; no direction can be given to register the document as non registration of a compulsorily registerable document is an incurable defect. Such a finding is erroneous and is against the settled principles of law. The Court below ought to have seen that the documents viz., 'rental agreement' and 'declaration' are sufficiently stamped and that the two documents do not require registration in view of the terms and the transactions embodied therein.

5. *Per contra*, the learned counsel for the defendant while supporting the orders of the Court below had contended that a perusal of the rental agreement would show that under the very same document the terms and conditions of lease are settled between the parties and that the agreed period of tenancy is eleven months and that there is also a clause for extension of lease for a further period of eleven months on the terms to be mutually agreed upon between the parties, subject to enhancement of rent by 10% every two years, and that under the said document it is stated that an advance of Rs.30,000/- was paid and that the advance is refundable without interest at the time of termination of tenancy and after adjustment of the dues, if any, and that all the contents of the said rental agreement make it manifest that it is inadmissible in evidence as it is not sufficiently stamped and not registered, though it is required to be stamped and is compulsorily registerable. He would also submit that the declaration given by one sister in favour of the other sister declaring rights in immovable property of a value of more than Rs.100/- is also inadmissible as the document, which is required to be stamped and registered is neither stamped nor registered.

6. I have given earnest consideration to the facts and submissions. I have gone through the record. I have carefully perused the copies of the documents filed.

7. Be it noted that the counter foils/copies of rent receipts are already admitted in evidence. Therefore, the scope of this revision is confined to the correctness or otherwise of the order of the Court below whereby it refused to admit in evidence 'the rental agreement' and 'the declaration' on the grounds that they are compulsorily registerable documents and that they are required to be properly stamped and that they are inadmissible in evidence for they are not duly stamped and not registered. Therefore, it is necessary to examine as to 'whether the documents were sufficiently stamped or not' and 'whether the said documents are compulsorily registerable or not'. 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.

8. Dealing first with the document styled as 'rental agreement' be it noted that it is not in dispute that the transaction embodied therein is a lease of immovable property. A plain perusal of the said document makes it manifest that under the said document immovable property (a mulgi/shop) was leased out for a period of eleven months. It was also recited therein that the lease may be renewed for a further period of eleven months with mutually agreed terms and conditions subject to enhancement of rent by 10% every two years or till termination by either party by a two months advance notice in writing. Coming to the legal position, it is fairly conceded that the State Legislature had amended the Indian Registration Act, 1908 by AP Act No. 4 of 1999 with effect from 01-04-1999 making all leases of immovable property irrespective of their duration compulsorily registerable. The rental agreement in question is therefore compulsorily registerable as rightly held by the Court below. Section 49 of the Indian Registration Act, 1908 prohibits receiving in evidence documents required by law to be registered and which are not registered. Further, a lease deed is required to be properly stamped under Article 31 of the Indian Stamp Act, 1899 and for the security deposit 5% stamp duty in addition has to be paid as stamp duty. The rental agreement in question is only engrossed on a stamp paper of the value of Rs.20/-. So it is an inadequately stamped document.

9. Dealing now with the document styled as 'declaration', it is to be noted that the said document on a perusal makes it clear that by way of the said declaration, the sister of the plaintiff by name Sandhya Rani had declared under the said document that after the death of the father, in an oral partition that took place in June 2013 amongst the Mother, the declarant and her sister, P. Sobha Rani-the plaintiff, the two shops bearing Municipal nos. 4-3-178/1 and 4-3-178/2 at Kandaswamy lane, which are in the occupation of tenants, were allotted to P. Sobha Rani (the plaintiff) for her exclusive ownership and enjoyment as per the desire of late father and that ever since Sobha Rani, the sister of the declarant, became the absolute owner of the said two shops and that she (the declarant) has no claim of whatsoever nature over the said two shops belonging to her sister, Sobha Rabni (the plaintiff). In view of the transaction that is embodied in the declaration, which is a non-testamentary instrument and which purports or operates to create or declare the absolute and exclusive right, title and interest of the plaintiff over the two mulgies of the value of Rs.100/- and upwards is also compulsorily registerable; Further, the State Legislature had amended the Indian Stamp Act, 1899 by AP Act No. 17 of 1986 with effect from 16.08.1986 whereby under section 2 (15) of the Act, the 'Instrument of Partition' means and includes a memorandum regarding past partition. Even assuming for a moment that the deed of declaration in the instant case is a mere a record of anterior acts creating exclusive title in favour of the plaintiff, a member of joint family, by extinguishing title of others in the same, the said document cannot be held to be admissible in view of the amendment to Section 2 (15) of the India Stamp Act which came into effect with effect from 16.08.1986. The nomenclature or the name given to the document is not a decisive factor. As per the amended provision of the section a memorandum as regards the past partition is also an Instrument of partition and requires to be properly stamped as per the present law. Therefore, the contention that the declaration is only a record of past partition and hence, it is admissible in evidence cannot be countenanced. Article 40 of the Indian Stamp Act deals with the stamp duty payable on such instrument of partition. An Instrument of partition of immovable property of the value of one hundred rupees and upwards is compulsorily registerable. As already noted Section 49 of the Indian Registration Act, 1908 prohibits receiving in evidence documents required by law to be registered and which are not registered.

10. In the well considered view of this Court, the document which purported or operated or created, declared, assigned, limited or extinguished whether in present or in future, rights, title or interest of the value of over 100 rupees and upwards to or in immovable properties within the meaning of the provisions of the stamp law and Section 17 of the Registration Act is required to be properly stamped and registered; and unless the said twin requirements are complied with the said document cannot be looked into for the main purpose. In the decision in the case of **Avinash Kumar Chauhan vs. Vijay Krishna Mishra [2009 (1) L S 35 (SC)** the Supreme Court referred to the following ratio in the decision in the case of **T. Bhaskar Rao vs. T. Gabriel and other**

[AIR 1981 AP 175]:: "It is now well settled that there is no prohibition under section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under section 35 of the Stamp Act." Since this Court found that both the documents are required to be stamped and are not duly stamped, the said documents cannot be received in evidence even for collateral purpose unless duty and penalty are paid.

11. Having regard to the legal position and the facts of the present case, this Court does not find any error or infirmity in the order impugned.

12. In the result, the Civil Revision Petition, which is without merit, is dismissed. No costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M.SEETHARAMA MURTI, J

1st June, 2016
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