IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

***

CIVIL REVISION PETITION No.2657 of 2014

Between:

P.L.V. Prasad

………Petitioner

and

J. Koteshwar Rao

…….Respondent

Date of Judgment pronounced on : 01-08-2016

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioner : Sri M.V. Pratap Kumar

^ Counsel for the respondent : Sri P. Krishna Reddy

? Cases referred

[1] 1999 (6) ALD 160 (DB)

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2657 of 2014

ORDER:

The revision petitioner is the plaintiff in O.S.No.1584 of 2013, which is a suit for specific performance of the oral contract for sale later evidenced by receipt for consideration passed and acknowledged, maintained against the defendants. It is pending the suit, there was an I.A.No.1147 of 2013 filed by the plaintiff for temporary injunction under Order 39 Rules 1 & 2 read with Section 94 and 151 CPC to restrain the defendants from interfering with the possession of the plaintiff, which he claims orally delivered or permitted to reside as the case may be in both the temporary injunction and suit referred supra. The plaintiff filed memo in S.R.No.5099 of 2013 to consider the receipt passed by the defendant for the consideration received pursuant to the earlier oral contract for sale, which he acknowledged what is paid and to be paid. The lower Court after hearing both sides on the memo passed the impugned order, which is while hearing the temporary injunction application holding the receipt evidences delivery of possession of the property under oral contract for sale and thereby it is liable for stamp duty as conveyance out of the agreement of sale. It is the order on the memo supra dated 26.03.2014, impugned by the plaintiff in the present revision.

The lower Court referred the Division Bench Expression of this Court in **B.Ratnamala Vs. G.Rudramma**[1] on the scope of Article 47-

A of Schedule 1A of Stamp Act.

Heard the respective contentions of the learned counsel for the revision petitioner in impugning the order and the respective contentions of the learned counsel for the revision respondent in supporting the order of the lower Court and perused the material on record and provisions and proposition supra.

A contract for sale after the amendment to the Registration Act in A.P. by Act No.4 of 1999 with effect from 01.04.1999 requires registration since Section 17-g is incorporated. However, Section 49 of the Registration Act is not amended where the proviso clearly says in a suit for specific performance of contract for sale even the agreement is unregistered or even under Section 53-A of the Transfer of Property Act, which says from the explanation of agreement though required to be registered is not registered or for any other collateral purpose in relation thereto. No doubt, section 49 of the Registration Act is amended by the Central amendment by Act No.48 of 2001 with effect from 24.08.2001 incorporating in Section 49 by amending consequently Section 53-A of T.P. Act of requires registration for enforcement of Doctrine of Part performance. It is to say after that date any possessory sale agreement executed and claim based thereon for part performance under Section 53-A T.P. Act if not registered, it cannot be looked into, but for collateral purpose if any, without registration. It is on the scope of requirement of registration. In this case since it is a suit for specific performance and the agreement is oral though the receipt was dated 03.02.2006 not within the scope of Doctrine of part performance under Section 53-A of amended T.P. Act with similar provision in Section 49 of the Registration Act, it no way requires registration for its admissibility if it is a mere receipt.

The next aspect requires for consideration is whether it is a mere receipt or a mere acknowledgment of the money received or it refers to the contract for sale and delivery of possession and if so requires to be construed as liable for stamp duty as sale agreement and not as mere receipt of Rs.1/- for value of Rs.500/- and above; apart from no stamp required for acknowledgment, leave about the penalty otherwise 10 times for a document, other than receipt from reading of Section 35 (e) Stamp Act which says with reference to the schedule I of the Stamp Act of maximum stamp of Rs.3/- for a receipt is enough though otherwise it is 10 times penalty totally Rs.11/-. It is to say an acknowledgment does not requires stamp duty, a receipt requires a stamp duty of Rs.1/- and if at all not duly stamped, maximum penalty including stamp on receipt of Rs.500/- and above value is Rs.3/- and if it is otherwise an agreement of sale it is liable for stamp duty as a contract for sale depends upon the nature of the contract for sale. It is to say further that it is an agreement without possession or evidencing delivery of possession in writing even referred as receipt when it relates to the transaction of contract for sale, it is within the purview of a conveyance to stamp for the subsequent stamp of Rs.5/- is enough to engross as a registered sale deed with registration. Here it is important for that purpose to go through the contents of the receipt which is part of the record. The receipt is dated 03.02.2006. It is styled as a receipt. Though the nomenclature is not decisive but for contents more particularly in considering the fiscal legislation like Stamp Act to collect revenue in favour of the State. The receipt refers to the house property which is subject matter of the contract for oral sale. It says, the purchaser is residing in the said flat since 1999 with permission of the vendor, who is the defendant. The receipt is passed by the defendants. In the last 2 lines of Para 1 of the receipt, above fact refers. It further says out of the total sale consideration of Rs.5,00,000/-, the vendor received Rs.4,50,000/- and balance Rs.50,000/- is payable at the time of registration of sale deed and he undertakes to register the sale deed. It is to say therefrom that it is not a mere receipt for evidencing payment of money or acknowledging what is paid and even stating what is payable further, but also reference to a transaction for sale and undertaking to register as and when balance paid to obtain a regular sale deed. Thus it is a contract for sale to say an agreement for sale of immovable property. The receipt dated 03.02.2006 refers to the residential flat, which is the subject matter of the sale agreement as to the vendee is residing in the flat since 1999 with permission of the vendor. It is to say there is nothing about delivery of possession thereunder and also about any acknowledgment of delivery of possession, much less pursuant to the oral contract for sale or any reference pursuant to the recitals of contract for sale.

What it refers simply is the vendee is in permissive possession of the premises since 1999. It is to say possession under the oral agreement is required to be delivered and there is nothing in this regard in the receipt/agreement refers to the oral contract for sale. Whether that entitles to the relief of injunction from what is referred of permissive possession since 1999 is a different matter in construing prima facie case with reference to other 2 pre-requisites of balance of convenience and irreparable injury. Apart from maintaining existing status quo pending lis mainly in the suit for specific performance of the oral contract of sale evidenced by the receipt, it is premature to this Court to say anything more for deciding the temporary injunction application.

Now coming to the impugned order of the lower Court, it refers the pleadings particularly Para 2 of the plaint page 2 and some allegations in verbatim of Para 3 of Page 2 of the supporting affidavit of the plaintiff to the temporary injunction application in I.A.No.1147 of 2013, saying there is an oral agreement of the residential flat for Rs.5,00,000/- and the vendor defendant received Rs.4,50,000/- paid by him as part payment of the sale consideration and passed receipt dated 03.02.2006 promising to register a sale deed as and when demanded either in the name of the vendee or in the name of his family members and even plaintiff has been continuously residing in the flat as residence and filed documents in proof of the residence to say he is in possession and enjoyment and defendant is postponing to register. It is in this case to say as entitled to injunction from the affidavit averments, a reference is made.

Though the plaintiff claims he is in possession by residing since 1999, what the receipt refers is permissive possession of the vendee under the vendor and not any delivery of possession by virtue of the oral contract for sale. Once it is not a document evidencing possession much less contemporaneous to any factum of delivery of possession and not reference to possession under sale agreement, but for saying he is residing with permissive possession, it cannot be construed, within the purview of Article 47-A of Schedule I of the Indian Stamp Act, to say the same is liable for stamp duty as a conveyance. The lower Court observed that the pleadings contain delivery of possession and receipt contains delivery of possession. In fact the lower Court clearly misread what the receipt contains that is criteria. No doubt if at all to construe from the pleadings at best as to reference of possession either contemporaneous or evidencing of possession given some time before or the document refers to it, that what is the law laid down in B. Ratnamala supra. The lower Court thus went wrong in saying the document is liable for stamp duty from it refers to possession, though by no stretch of imagination, it refers to possession pursuant to the agreement much less acknowledgment of possession under contract for sale; but for speaks of only permissive possession. Thus, pursuant to the oral contract for sale in the receipt passed for what the consideration received and what to be received no doubt by further undertaking to execute sale deed to construe the same as an agreement of sale as contract for sale non-possessory, the stamp duty liable on the document is Rs.100/- and though what the lower Court rightly held of the same is an sale agreement for sale which requires no interference, what it further held of same is liable to stamp duty as conveyance is not at all sustainable.

Accordingly and in the result, the revision is allowed in part while setting aside the order of the lower Court holding the receipt is liable for stamp duty as a conveyance by clarifying the same as liable for stamp duty as non-possessory agreement for sale with stamp liable of maximum Rs.100/-. It is for the plaintiff to pay stamp duty with 10 times penalty on Rs.100/- for impugning by the trial Court if at all want to rely for trial including in the injunction application. Needless to say if not prepared to pay on impounding of Rs.1,100/- it is left open to seek to refer to the District Registrar for impounding and certifying on the original.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.08.2016
Note: L.R. copy to be marked
(B/o)
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[1] 1999 (6) ALD 160 (DB)