THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3627 of 2015

ORDER:

This revision under Article 227 of the Constitution of India is directed by the plaintiff against the intermediary orders dated 24.07.2015 of the learned Principal Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad passed in regard to the admissibility of a document dated 08.04.1994 on the basis of which the suit in OS.no.684 of 2012 was filed for specific performance.

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

3. The facts, which are to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit in OS.no.684 of 2012 against his sister for specific performance of an agreement dated 08.04.1994 and to direct the defendant to execute a sale deed. The said document shall hereinafter be referred to as 'the agreement', for brevity. The defendant is resisting the suit. At trial, the plaintiff tendered in evidence, for being marked, the said agreement which was engrossed on a stamp paper of a value of Rs.100/-. The defendant raised an objection that the said agreement is not duly stamped and that it is compulsorily registerable and is inadmissible for want of stamp duty and registration. The plaintiff had contended that the said agreement can be admitted for collateral purpose in view of the proviso to Section 49 of the Indian Registration Act. The trial Court had held that the agreement is a construction and development agreement and is compulsorily registerable. Accordingly, the trial Court had refused to admit the agreement in evidence as it is not registered. Therefore, the aggrieved plaintiff had filed this revision.

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

The Court below had failed to appreciate that the nomenclature of the document is not the determinative factor. Further, from the contents of the document it not possible to accept the view that the agreement is a construction and development agreement. The trial Court had erroneously held that the agreement is a construction and development agreement. The trial Court failed to exercise its power and jurisdiction and had wrongly refused to admit the document in evidence. The decision of the trial Court is contrary to law and the facts.

5. On the other hand the learned counsel for the defendant supported the orders of the Court below.

6. I have bestowed my attention to the facts and the submission. I have carefully perused the copy of the agreement. There is 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 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 decisive factor. A plain perusal of the contents of the agreement discloses that the defendant, having voluntarily agreed to construct a first floor over her existing residential house and to give it to her brother, had received Rs.5,00,000/-, which was paid to the wife of the plaintiff by her parents towards 'pasupu kumkuma'. Therefore, from the transaction that is embodied in the document, it is evident that the defendant having received Rs.5,00,000/- had agreed to construct a first floor over her residential house and give it to her brother. In the light of the contents of the document, the plaintiff had filed the suit to direct the defendant to execute the sale deed in respect of that first floor of the house *inter alia* stating that the defendant is enjoying the same without executing and registering the sale deed inspite of repeated demands.

7. In this backdrop it is necessary to refer to the following provision of law:

Article 6 (A) & (B) of Schedule I-A of the Indian Stamp Act reads as under:

Description of Instrument	Proper Stamp duty
6. Agreement or Memorandum of an agreement not otherwise provided for:	
(A) Where the value:	
(i) does not exceed Rs.5,000/-	Ten Rupees
(ii) exceeds Rs.5,000/-	Twenty Rupees
(iii) exceeds Rs.20,000/- but does not exceed Rs.50,000/-	Fifty Rupees
· exceeds Rs.50,000/-	One Hundred Rupees
(B) If relating to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property	Five Rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities whichever is higher.

8. Since, under the instrument in question, the defendant had agreed to construct a first floor/building and give it to her brother for the consideration received, in the well considered view of this Court the agreement is stampable as per the above said provision of Article 6 (B) of Schedule I A of the Indian Stamp Act. However, since the document is only an agreement and as no interest or title in the immovable property is yet transferred or conveyed under the said document by the defendant to the plaintiff, in the well considered view of this Court, the said document does not require registration.

9. Viewed thus, this Court finds that the finding of the Court below that the document requires registration is unsustainable; however, since it is held supra that the document is required to be stamped as a construction agreement; and as it is only engrossed on a stamp paper of the value of Rs.100/- and is not duly stamped, it follows that the said document cannot be admitted in evidence unless the deficit stamp duty and the penalty payable are duly paid in accordance with the law.

10. Having regard to the aforesaid findings, the Civil Revision Petition is dismissed, however, holding that the agreement in question is not required to be registered; but, it is required to be stamped as an agreement for construction of a house or building and that as it is not duly stamped, it cannot be admitted in evidence unless the deficit stamp duty and the penalty payable are duly paid in accordance with the law. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

24th June, 2016

Vjl