HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.749 and 798 OF 2015

COMMON ORDER:

The revision petitioner is plaintiff in O.S. No.165 of 2014. The suit was filed for Specific Performance of contract for sale maintained against the executant as 1st defendant by also showing Manager, Punjab National Bank, Warangal Branch and Joint Sub-Registrar, Warangal (Urban) as co-defendants. Pending suit, the plaintiff maintained I.A. Nos.1763 and 1764 of 2014 for the reliefs of temporary injunctions restraining the defendants from alienating to create any charge over the petition schedule property to the third parties and not to interfere with the possession and enjoyment of the schedule property respectively. The temporary injunctions mainly on the contest by the 1st defendant, so-called executant, ended in dismissal vide common order dated 30.10.2014, impugning the same these two revision applications are maintained.

2) Undisputedly, the sale agreement not exhibited in the suit for trial not commenced. It is a suit for Specific Performance of contract for sale in which an unregistered agreement dated 26.04.2014 is filed as a suit document. The question of impounding a document for stamp duty or deciding any requirement of registration arises while exhibiting the same, no doubt, to decide instantaneously when the matter camp for such consideration, on the Stamp duty and Registration, but for any other objections to postpone while marking subject to objection.

3) In this case, that stage has not been arisen as it is in the course of hearing two temporary injunction applications (supra), while dismissing the injunction applications, from the contest of 1st respondent, there was an observation saying that the sale agreement

requires stamp duty as a sale/ conveyance and also registration, if any.

4) It is the contention of the learned counsel for the revision petitioner that the question of consideration with regard to stamp duty and registration arises while admitting the documents in the suit and it is premature for deciding at the stage of interlocutary applications and there is no question of marking exhibits in interlocutary applications as per the settled law but for at best, for the sake of convenience of the Court to refer by giving numbers for such reference by the Court and not a right of a party either side.

5) It is also further contention of the learned counsel for the revision petitioner that the suit sale agreement no way refers much less evidencing possession of the property as the possession was delivered orally as mentioned in the notice and reply exchanged between the parties and prayer of the suit, for the Court even to say there is any recital or whisper regarding the possession to say it is liable for stamp duty as possessory sale agreement.

6) It is also the submission that Rs.100/- stamp fee is the maximum that is enough on the agreement which is stamped more than that, thereby, it requires no stamp duty much less for impounding further for no deficiency of stamp duty. In a suit for Specific performance of the contract for sale though under Section 17 (g) of the Indian Registration Act, A.P Amendment by Act 4 of 1999 w.e.f., 01.04.1999, sale agreement requires registration by virtue of the subsequent provision contained in provisio 2 Section 49 of the Registration Act, it is exempted for the suits relief to Specific Performance, thereby by virtue of the provisio 2 Section 49 of the Act, in a suit for Specific Performance sale agreement unregistered even admissible though requires to be registered under Section 17 (g) of the Act and it is in a suit based on possessory contract for sale under part performance even to invoke the Central Amendment under Amended

Act 48 of 2001 w.e.f., 24.09.2001, as the claim of the petitioner/ plaintiff is that there was oral delivery of possession and nothing refers in the sale agreement in question and it is the submission there from that despite prima facie case, balance of convenience and likelihood of suffering irreparable injury made out as the principle requisites for entitlement to the equitable relief of injunction in the two applications in question, the trial Court went wrong in dismissing the applications mainly on the ground of agreement not duly registered and impounded cannot be looked into. Thereby, sought for allowing the revision by setting aside the orders of the lower Court by allowing the applications before the lower Court granting injunction.

7) Whereas it is the contention of the learned counsel for 1st respondent that it need not contain any recital regarding delivery of possession or evidencing possession but once it is on the date of alleged agreement when possession said to have been orally delivered it has to be so construed, if not even contemporaneous evidencing possession pursuant to the agreement and thereby, the lower Court is right in coming to that conclusion. The respondents placed reliance upon the judgment of the Division Bench expression of this court in **B.Ratnamala vs G.Rudramma**[1] in support of that apart from saying that there is no prima facie case, balance of convenience in favour of the petitioner to get the relief of injunction for the alleged possession is oral with no foundation and thereby, sought for dismissal, for this Court while sitting in revision against the impugned order of the lower Court, there is nothing to interfere.

8) Heard and perused the material on record.

9) The expression of the Division Bench in Ratna Mala supra, at para No.9, it is very clear from what is the ratio laid down that, an agreement containing a specific recital of delivery of possession or indicating delivery of possession even in the past, it is liable for stamp

duty as a sale under the explanation to Article 47-A of Schedule 1-A of the Stamp Act. The conclusion in the expression is very clear of a recital must be there in the agreement even indicating delivery of possession. Here from the agreement in question, there is no whisper even indicating delivery of possession, as what is whispered regarding possession is in the alleged notice prior to filing of the suit. Therefore, such a conclusion of the lower Court is not correct, when the agreement whispers nothing indicating possession delivery, for holding the agreement requires stamp duty, for what orally contended of possession delivered orally on the date of agreement subsequent to the agreement.

10) So far as the Registration is concerned, as referred supra, once it is not a suit under doctrine of part performance invoking Section 53-A of Transfer of Property Act, 1882 (for short 'T.P Act') in compliance there with to say a possessory sale agreement invoking under the doctrine to rely requires registration as per the amended provision by the Central Act 48 of 2001 in the provisio 2 of Section 49 of the Registration Act and in the absence of which even Section 17 (g) of the Indian Registration Act w.e.f 01.04.1999 by A.P Amendment Act 4 of 1999 incorporated of requirement of every agreement for sale, registration, once the provisio 2 Section 49 exempts the agreements without registration for admissibility in a suit for specific performance of contract for sale, in the present suit for specific performance, the admissibility of the agreement is not a bar but for any stamp duty payable, for mere non-registration. Here the stamp duty payable for not referring anything regarding delivery of possession or indicating delivery of possession, only Rs.100/- as not even agreement-cum-general power of attorney to pay stamp duty more than Rs.100/-. Thus, the conclusions arrived by the lower Court are unsustainable.

11) Accordingly, the revision petitions are allowed and the impugned orders of the lower Court are set-aside and both the

applications are remitted back for fresh consideration to decide by the lower Court and in the meantime, both parties shall maintain existing status-quo. No order as to costs.

12) As a sequel, miscellaneous petitions if any pending in this Civil Revision Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.29.07.2016
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[1] 1999 (6) ALT 59