THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.6305 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/plaintiff is directed against an intermediary order/docket order, dated 30.03.2016, of the learned I Additional Junior Civil Judge, Ranga Reddy District, passed in O.S.No.91 of 2015.

2. I have heard the submissions of *Sri Rajagopallavan Tayi*, learned counsel appearing for the petitioner/plaintiff, and of *Sri M.Siva Jyothi*, learned counsel for the respondents/defendants. I have perused the material record.

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

The plaintiff brought the suit against the defendants seeking the following relief:

> "(a) To grant mandatory injunction directing the defendants, their men, relatives, friends, agents, attorneys, henchmen, or anybody else claiming through them, to demolish the wall which was constructed at the stair case/steps of the 1st floor of the premises H.No.6-323, Balapur X Road, Saroor Nagar Mandal, R.R District which is named as Singireddy Dheraj Reddy Complex. In the event if the defendant failed to do so, the Court may be pleased to direct the plaintiff to demolish the same at the cost of plaintiff.
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> (b) to award costs; and
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> (c) to grant other relief or reliefs as the Hon'ble Court deems fit and proper in the circumstances of the case in the interest of justice."

3.1 The defendants are resisting the suit. The suit schedule property is a (back to back) hoarding of 40X25 feet size useful for the advertisement erected on roof top of the property belonging to the defendants, that is, premises bearing H.No.6-323, Balapur X Road, Saroor Nagar Mandal, R.R. District, which is named as Singireddy Dheeraj Reddy Complex. In the said suit, the plaintiff intended to mark a document styled as 'deed of agreement', dated 26.03.2012, entered into between the father of the defendants-S.Narasimha Reddy and the plaintiff and tendered the said document for being marked as an exhibit on the side of the plaintiff.

3.2 Learned counsel for the defendants raised an objection for marking the said document *inter alia* contending that under the said document, annual rent was fixed with a term for increase of the said rent by 5% every year and that the said document is a deed of lease, but not deed of licence and that the said document, which is not sufficiently stamped and unregistered, is inadmissible in evidence and, therefore, the plaintiff cannot be permitted to exhibit the said document and rely upon the said document for any purpose.

3.3 However, learned counsel for the plaintiff contended as follows: 'The transaction embodied in the document is a licence. Under the said document only a licence in respect of advertisement hoarding fixed on the open terrace of the premises as described in the suit schedule is granted by the owner, that is, the father of the defendants. It is only a deed of licence. The said document is sufficiently stamped and is not compulsorily registerable. Hence, the said document can be permitted to be exhibited and relied upon by the plaintiff for the purpose of proving the terms and conditions of the licence.'

3.4 However, on merits and by the orders impugned in this revision, the trial Court having referred to term nos.(2) and (3) of the said document observed that the period of licence is ten years from the date of erection of the hoarding and that the said agreed period is extendable after expiry of the said period and that the annual rent agreed to was Rs.20,000/- and that there is a term for increase of rent every year by 5% and hence, it is a deed of lease and that it requires registration and it is also not sufficiently stamped and. Aggrieved thereof, the plaintiff is before this Court.

4. Learned counsel for the plaintiff by drawing the attention of this Court to the terms and conditions of the deed of licence forcefully contended as follows: 'The nomenclature of the document is not the criterion. The transaction embodied in the document is only relevant for determination of the nature of the transaction embodied in the document. The terms of the document clearly reflect that the transaction is not a lease but a licence. Though it is stated in the deed of licence that the annual rent is payable, that term cannot be considered in isolation. All the other terms of the deed reflect that the transaction is a licence. The intention of the parties is to be gathered by reading all the terms incorporated in the document. Since the stamp duty of Rs.100/- is already paid on the document, no further stamp duty is payable and that the stamp duty or penalty, if any, are payable as per the Indian Stamp Act, 1899, as applicable to the States of Andhra Pradesh and Telangana, the plaintiff is prepared to pay the deficit stamp duty and penalty. The document is not compulsorily registerable as it is in respect of a hoarding/movable property and not immovable property. Hence, the trial Court was in error in holding that the document is a lease deed. Therefore, the order impugned may be set aside and the plaintiff may be given an opportunity to exhibit the document by paying the deficit stamp duty and penalty, if any, payable on the said document.' It is alternatively contended that even if the document is compulsorily registerable, the plaintiff is entitled to rely upon the same for collateral purpose and hence, the plaintiff may be permitted to rely upon the said document for collateral purpose after paying necessary deficit stamp duty and penalty, if any, payable, in the event the trial Court comes to the conclusion that the document is compulsorily registerable.

5. Per contra, learned counsel for the defendants while reiterating the objections of the defendants, which were raised before the trial Court and which were extracted supra, *inter alia* contended as follows: 'The nomenclature given to the document is not the sole criterion. The intention of

the parties must be gathered from the transaction embodied in the instrument. The entire document has to be read to know the nature of the transaction. As rightly observed by the trial Court, the terms (2) and (3) of the deed clearly reflect that the transaction is a lease, but not a licence. The agreed term of lease is ten years. The annual rent is Rs.20,000/-. The lease period is extendable. The rent is to be enhanced by 5% every year. The lease is for the purpose of erecting a hoarding and displaying advertisements on the hoarding. Hence, the order of the Court below is sustainable under facts and law.'

6. I have carefully gone through the document under consideration. Before adverting to the contents of the document, it is necessary to refer to the settled legal position.

6.1 There is no dispute with the proposition that the nature or substance of the transaction and also the requirement of stamp duty payable, if any, on the document and the compulsory requirement of registration of the document have to be determined with reference to the recitals in the document and the substance of the transaction embodied in the document/instrument and not with reference to the title or caption or the mere nomenclature of the instrument. The nomenclature of or the caption given to the document is not determinative and the nature or the substance of the transaction embodied in the document is only the determinative factor. Therefore, mere title of the document is immaterial, rather not much of relevance. Similarly, the language employed in the pleadings of the parties in regard to description of the document is not conclusive. The court need not necessarily agree with the description of the document in question as stated in the pleadings of the parties as the Court has to make its own decision on the said aspect as per the substance of the transaction embodied in the document, which is the only determinative factor.

7. Before proceeding further, it is also necessary to refer to Article 33 of Schedule I-A of the Indian Stamp Act, 1899, as applicable to the States of Andhra Pradesh and Telangana, which reads as under:

"33. Licence of immovable or movable property, that is to say licence granted by owner or authority for rent or fee or by whatever name it is called:		
(a) Whereby such licence granted for rent or fee or by whatever name it is called:		
(i)	Where the licence purports to be For a term of less than one year;	Two rupees for every one hundred rupees or part thereof for the first Rs.1000/- and for every Rs.500/- or part thereof in excess of Rs.1,000/- ten rupees, for the whole amount payable or deliverable under such licence;
(ii)	Where the licence purports to be for a term of not less than but not more than five years;	Two rupees for every one hundred rupees or part thereof for the first Rs.1,000/- Rs.1000/- and for every Rs.500/- or part thereof in excess of Rs.1,000/- ten rupees, for the amount or value of the average annual rent or fee or by whatever name it is called;
(iii)	Where the licence purports to for a term of not less than five years but not exceeding ten years;	Five percent on the amount or value of one and half times of the average annual rent or fee or by whatever name it is called;
(b) Where the licence is granted for a lumpsum amount advanced and where no rent or fee or by whatever name it is called is reserved;		Five percent on the lumpsum amount as set forth in the licence;
(c) where the licence is granted for a lumpsum amount advanced in addition to rent or fee or by whatever name it is called;		Five percent on the lumpsum amount advanced as setforth in the licence in addition to the duty which would have been payable on such licence if no lumpsum amount advanced had been paid or delivered;

8. Keeping in view the contentions and rival contentions and the above stated principles, it is now necessary to examine the recitals in the document to find out the nature, character and the substance of the transaction embodied in the said document. The document is styled as 'Deed of Agreement' and in the body of the document, it is mentioned as follows: 'NOW THIS DEED OF LICENCE WITNESSETH AS FOLLOWS'. Under the said heading, various terms, which are agreed to between the parties to the document are stated.

9. I have gone through the entire deed to know the nature and substance of the transaction and to gather the intention of the parties. The important/material first five terms of the deed are as follows:

> "1. The LICENSOR does hereby grant to the LICENSEE a LICENCE and permission to Erect and display a Hoarding (Lit/Non-Lit) on the back to back PREMISES.
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> 2. The License shall be for a period of 10 years commencing from the date of Erection which must be extended after the agreement period.
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> 3. The Licence Fee for the said portion of the hoarding back to back PREMISES unitized for erection and display of the advertisement Board of size 40X25 with annual Rent of Rs.20,000/-. Every year increment of 5%.
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> 4. The Licence is only for the purpose of erecting and displaying the advertisement Boards and the LICENSEE shall not put the SAID PREMISES to any other use.
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> 5. The LICENSOR shall permit the LICENSEE and/or his duly authorized agents to inspect/repair/paint the said board put up by the LICENSEE at all reasonable times. Such inspecting or repairing/painting agents should carry authorization letters issued by the LICENSEE."

10. In the considered view of this Court, a plain reading of the entire document makes it manifest that it is a deed of licence, but not a deed of lease. The document is also executed by referring to the parties as LICENSOR/ LICENSEE and it is clearly stated that the licence is only for the purpose of erecting and displaying advertisement boards and that the licensee shall not put the said premises to any other use. It is further stated that the term of licence is ten years. Under the said deed, a licence fee for the said portion of the hoarding, which was permitted to be erected and displayed for advertisements, was also stated. However, since in the term No.(3), the words 'annual rent of Rs.20,000/-' were employed, the trial Court was of the view that the instrument is a deed of lease, but not license. The trial Court erred in considering the said words in isolation, without harmoniously considering all the terms and conditions of the deed. Further, whenever a licence is granted

by the owner to the licensee for rent or fee or by whatever name it is called, the transaction still remains to be a licence. No doubt, depending upon the period/term of licence and the rent/fee fixed under the instrument, the stamp duty is payable as per the applicable provision and as envisaged in the above said article.

11. In that view of the matter, this Court finds that the finding in the order of the trial Court that the document is a lease deed is incorrect and the said finding is liable to be set aside.

12. On the above analysis and for the aforesaid reasons, this Court finds that the document in question is a deed of licence and that since it is in respect of movable property, it is not compulsorily registerable and that the plaintiff can be permitted to exhibit the said document by paying necessary deficit stamp duty and penalty by treating the same as a deed of licence.

13. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. Accordingly, on ascertainment of stamp duty payable on the transaction of licence contained in the subject document and on collection of the required deficit stamp duty and penalty, the trial Court shall permit the plaintiff to exhibit the said document, however, without insisting on the requirement of its registration as the document is not compulsorily registerable.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

27th October, 2017
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