HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION NO.4993 OF 2011

Date : 14.12.2017

Between :

Karri Chinna Rao S/o Durgalu
47 yrs, R/0 20-2-24, Sidderswaram colony
Musalanaidupalem, Gajuwaka
Visakapatnam

Petitioner

And

Tippala Appala Narasamma W/o Late Apparao
29 yrs, Pedagantyada RH Colony,
Siddeswaram, Gajuwaka,
Visakapatnam and another

Respondents

The Court made the following:

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ORAL ORDER:

Heard learned counsel for petitioner-plaintiff Sri K Sarva Bhouma Rao and learned counsel for respondents-defendants Sri D.L.Kiran Prakash. For the sake of convenience, parties are referred to as they are arrayed before the Court below.

2. Suit was instituted praying to grant specific performance of agreement of sale and to execute registered sale deed for the suit schedule property. Plaintiff intended to mark agreement of sale/sale deed dated 15.2.1997. Objection was raised by the defendants on admissibility of said document contending that it was insufficiently stamped. Trail Court by order dated 25.2.2011 held that agreement of sale requires payment of stamp duty and registration for being marked in evidence and directed listing of the matter on 5.3.2011 for stamp duty and penalty. Hence, this revision.

3. Learned counsel for plaintiff submitted that in the suit for specific performance, the agreement of sale is crucial document. In view of proviso appended to Section 49 (C) of the Indian Registration Act 1908 (for short the Act, 1908), in a suit for specific performance unregistered/not duly stamped agreement of sale/sale deed can be admitted in evidence. He would therefore submit that trial Court erred in holding that it requires payment of stamp duty and registration. In support of the said contention, learned counsel placed reliance on the decisions of this Court in

K.Ramamoorthi Vs C.Surendranatha Reddy[1], **R.Suresh Babu V.G Rajalingam and others**[2], **Gankidi Venkateshwar Reddy Vs. Podem Veeraiah and others**[3], **Attirala Chinnamma Vs.Gummadi Ravindraiah**[4], **Sardar Ram Singh Vs. Sardar Ram Singh and another**[5], **Dadi Reddy Sivanarayana Reddy Vs. Kasi Reddy Chinnamma**[6] and decision of Supreme Court in **S.Kaladevi Vs. V.R.Sopmasundaram and others**[7].

4. Per contra, learned counsel for defendants contended that as the document in issue is compulsorily registerable under Section 17 of the Act 1908 and in view of the provision in Section 35 of the Indian Stamp Act,1899 (for short the Act, 1899) unless proper stamp duty is paid and document is registered, the same is not admissible in evidence even for collateral purposes and therefore supports the view taken by the trial Court. In support of said contention, he placed reliance on decisions of this Court in **V.L.Narasimha Rao Vs K T Pentaiah and others**[8] and **Syed Jaheer Ahamad Vs. Haji Jandamanu Yusuf Saheb (died) & ors**[9].

5. In the light of the submissions made by both counsel, the only issue for consideration is, whether the decision of the trial Court in refusing to admit the document in evidence and requiring the plaintiff to pay the stamp duty and penalty is valid?

6. Section 35 of the Act 1899 is in mandatory terms. No instrument chargeable with duty shall be admitted in evidence for

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[1] CRP No. 1623 of 2012 dt 27.7.2012
[2] CRP No. 4066 of 2016 dt 30.11.2016
[3] 2016 (6) ALT 594
[4] 2009 (2) ALD 305
[5] 2004 (4) ALD 735
[6] 2001 (1) ALD 349
[7] (2010) 5 SCC 401
[8] AIR 2002 AP 218
[9] 2009 (1) APLJ 406 (HC)

any purposes by any person. Section 17 of the Act, 1908 mandates that the transaction in the immovable property whose value exceeds 100/- has to be compulsorily registered.

7. Section 49 of the Act, 1908 holds that no document which requires registration under Section 17 of the Act, 1908 or by any provisions of the Transfer of Property Act, 1882 should be received in evidence of any transaction affecting the property or conferring such power unless it has been registered. However, an exception is carved out in proviso appended to Section 49 of the Act, 1908. In terms thereof an unregistered document affecting immovable property though requires Registration, can be received as evidence of a contract in suit for specific performance under Chapter II of the Specific Relief Act, 1877.

8. In several decisions, this Court consistently held that in a suit for specific performance, an unregistered and insufficiently stamped agreement of sale/sale deed can be marked in evidence. Suffice to note few decisions hereunder.

8.1. In **Sardar Ram Singh** (cited supra) this Court held as under:

> "7.............The exception applies to three categories, namely, (i) the document may be received as evidence of a contract in a suit for specific performance; (ii) as evidence of part performance of a contract for the purpose of Section 53-A of the Transfer of Property Act, 1882; and (iii) as evidence of any collateral transaction not required to be effected by registered instrument. **In respect of these three categories of transactions, notwithstanding the fact that the document which is required to be registered has not been registered and, therefore, shall not be received as evidence, can be received as evidence**." (emphasis supplied)

8.2. In **Dadi Reddy Sivanarayana Reddy** (cited supra) learned single Judge reviewed the entire case law on subject and culled out the principles that emerge from the examination of the legal provisions codified in paragraph 14. For the purpose of this case, it is suffice to note principle No.(iv), which reads as under:

> "14........(iv) In any event, the prohibition under S. 49(c) of the Registration Act does not apply to an unregistered document affecting immovable property in a suit for specific performance under the Specific Relief Act or as evidence of part performance of contract or as evidence of any collateral transaction not required to be effected by registered document."

8.3. It is seen from the judgment in **V.L.Narasimha Rao** (cited supra) learned single Judge has not considered the effect of proviso appended to Section 49 (c) of the Registration Act, whereas in all other decisions, more particularly the decisions relied by the learned counsel for plaintiff the effect of proviso appended to Section 49 (c) of the Act,1908 was considered and decision was made. Thus, decisions relied by learned counsel for respondents do not come to the aid of the respondents.

9. Be that as it may, the very issue was considered by the Supreme Court in **S.Kaladevi** (cited supra). The question considered by the Supreme Court was on admissibility of an unregistered sale deed in a suit for specific performance of contract. At the time of examination of PW1 unregistered sale deed was tendered for being marked. Objection raised on admissibility of the said document was sustained by the trial Court, which decision was affirmed by the High Court.

9.1. On construing the provision in Section 49 of the Act, 1908 the Supreme Court held as under:

> "12................**By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs 100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract**. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act. (emphasis supplied)

9.2. Supreme Court further held as under:

> 16...............looking to the nature of the suit, which happens to be a suit for specific performance, the trial court was not justified in refusing to admit the unregistered sale deed dated 27-2-2006 tendered by the plaintiff in evidence.
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> 17............By admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of the 1908 Act is affected; rather the court acts in consonance with the proviso appended to Section 49 of the 1908 Act.

10. Following the consistent view of this Court and the authoritative pronouncement by Supreme Court in **S.Kaladevi**, it is beyond pale of doubt that in a suit for specific performance, an agreement of sale/sale deed, even if it is not registered and not duly stamped, can be admitted in evidence. Thus, the trial Court erred in holding that the agreement of sale requires payment of stamp duty and registration for being marked in evidence. The order dated 25.2.2011 in O.S.No.51 of 2009 is not sustainable and it is hereby set aside. Revision is accordingly allowed. The Court

below is directed to receive the subject document in evidence without insisting for payment of stamp duty and registration of the said document. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

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TVK

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