

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1630 of 2017

ORDER :

The revision petitioner is the plaintiff in O.S.No.126 of 2009 on the file of the VIII Additional District and Sessions Judge, Vijayawada and the revision respondents are the defendants.

2. The revision is filed impugning the docket order of the trial Court, dated 27.12.2016, which reads as follows:

“I have perused the case record. The unregistered agreement of sale dt.13.03.2005 is a compulsorily registerable document according to Section 17(1)g of the Registration Act, 1908. It is admissible in evidence only in a suit for specific performance or for collateral purpose, according to section 49 of the said Act. This is the suit filed for cancellation of a sale deed and not a suit for specific performance. The plaintiff sought to admit the said agreement of sale but not for any collateral purpose. So, the said document is not admissible in evidence and so this court has denied to admit the said document into evidence and mark the same as an exhibit.”

3. This is the suit of the plaintiff in claiming a right over the plaint schedule property based on sale agreement, dated 13.03.2005 (suit filed in 2009) entered by defendant No.2 and his late brother, no other than the husband of defendant No.3 and father of defendant Nos.4 and 5 (leave about defendant No.1 is the son of defendant No.2), for part of the property covered by the sale agreement the defendant No.2 sold in favour of defendant No.1 and the same is liable to be cancelled vide

registered sale deed, dated 28.03.2007 on the file of the S.R.O., Vijayawada of Krishna District. It is in the suit during trial, the said sale agreement supra, dated 13.03.2005, sought to be exhibited and the trial Court refused to exhibit the document by entering the contention of same is admissible even for collateral purpose from the docket order of the trial Court supra, which is the subject matter of the impugnement.

4. Learned counsel for the revision petitioner contends that trial Court did not properly advert to the scope of law contemplated by Section 17 read with 49 of the Registration Act and the impugned order is liable to be set aside when an un-registered document is admissible for a collateral purpose as per the three limbs of proviso to Section 49 of the Registration Act irrespective it is a compulsorily registerable document under Section 17 read with 49 of the Registration Act.

5. Whereas, it is the submission of the learned counsel for the respondents-defendants that the impugned order of the lower Court no way requires interference. The document is not even duly stamped and without stamp duty, question of marking for a collateral purpose does not arise, that too only the original to be impounded if at all with ten times penalty by the Court and that once without determination of the stamp and payment of penalty after impounding, question of considering for a collateral purpose or main purpose does not arise, as

held by this Court in **Buddha Jagadeeswara Rao v. Sri Ravi Enterprises, represented by its Proprietor, Kedarsetty Gurumurthy**¹ for collateral purpose is unknown to the Stamp Act, which is a fiscal legislation. Thus without payment of stamp duty and penalty on being impounded by the Court, the Court has no option but for to collect the stamp duty with ten times penalty, unless the parties seek to refer the document to the District Registrar to pay the stamp duty with penalty and cause certification, and once certified by Registrar that is curing the defect of the insufficient stamp duty, as the case may be. It is only then the question of considering the document for want of registration can be marked for a collateral purpose or not to decide before marking, leave about any such marking is subject to any other objections. The document in question referred by the plaintiff in the plaint is sale agreement. The defendants' claim is that it is the so-called construction agreement. It is in fact executed only on Rs.300/- worth, stamp papers (3) in number besides (3) white papers, total six pages. The Court is bound to decide what is the stamp duty payable on the document in question first and if it is in deficit, to impound with penalty if it is an original, for a copy cannot be impounded either by Court or by District Registrar as held by the Apex Court in Buddha Jagadeeswara Rao supra (referred in para 22), and also that unless the party requests by an application to the Court to refer the document to the District Registrar for impounding and

¹ 2017 (2) ALT 736

payment of the stamp duty with penalty, if any there and to cause certify and produce before the Court, the Court has to impound with ten times penalty and collect and remit the amount to District Registrar under respective head of account through challan. Once it is complied with as above, the Court has to consider whether the document can be marked for any collateral purpose from any requirement of registration. Undisputedly, by the A.P. Amendment Act 4 of 1999, with effect from 01.04.1999, by amendment to Section 17 of the Registration Act, all sale agreements are compulsorily registerable documents. However, Section 49 proviso is not amended. The effect is that though required to be stamped under Section 17 of the Act though otherwise not admissible under Section 49 of the Act, once compulsorily registerable by virtue of the proviso to Section 49 of the Act, the document can be marked even not registered though compulsorily registerable in three contingencies even after the A.P. Amendment Act 4 of 1999 supra. The proviso containing three limbs, one is in a suit for specific performance, the second one is under doctrine of part performance of a possessory sale agreement and the third one is any compulsorily registerable document for a collateral purpose. After the A.P. Amendment Act to Section 17 of the Stamp Act supra, there is a Central Amendment by Act 48 of 2001, with effect from 24.09.2001, amending Section 53A of Transfer of Property Act deleting the words though required to be registered is not registered and similar words in the middle portion of the proviso to

Section 49 of the Act, it is to say after 24.09.2001 for the doctrine of part performance, an unregistered sale agreement is inadmissible in evidence.

6. Even after the Central Amendment by Act 48 of 2009, with effect from 24.09.2009, the proviso to Section 49 containing the other two limbs not amended, one is in a suit for specific performance and the other is for collateral purpose. Once such is the case, if the original is available and duly impounded, then it is to consider whether the document to be marked for collateral purpose or not. In view of the same, the order of the lower Court is set aside. The lower Court is required to re-hear and pass orders in first deciding by impounding the document unless in a application filed by the plaintiff to refer the document to the District Registrar and after duly impounding, if at all to mark, then to consider whether there is any collateral purpose for which the document can be marked under the third limb (part) of the proviso to Section 49 of the Registration Act.

7. With the above conditions and directions, the revision is allowed.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

7th November 2017.

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