

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3908 of 2012

ORDER :

Heard both sides and perused the impugned order of the lower Court and the grounds urged in the revision petition.

2. Even from the grounds urged in the revision petition, it is not in dispute that after A.P. Amendment by Act 4 of 1999 to the Stamp Act incorporating in the Section 17, all the sale agreements must be compulsorily registerable documents, with effect from 01.04.1999, there is no amendment consequently to Section 49 of the Registration Act, particularly to the proviso of it which clearly says even required to be registered may be received in a suit for specific performance and for any collateral purpose or for part performance under Section 53A of Transfer of Property Act. No doubt, even from the ground No.5 urged in the grounds of revision, there is a Central Amendment by Act 48 of 2001, with effect from 24.09.2001, under which only Section 53A of Transfer of Property Act is amended deleting the earlier provision of agreement though required to be registered is not registered, to make possessory sale agreement required to be registered and consequently the second limb of the three limbs in the proviso to Section 49 of the Registration Act is deleted. There is a basic difference between doctrine of part performance and suit for specific performance, including from the amended proviso of Section 49 of the Registration Act and for the reason even the possessory sale agreement enforceability is barred by limitation provided by Article

54 of the Indian Limitation Act subject to compliance with the requirement of Section 53A of Transfer of Property Act, the agreement holder with possession is entitled to protect his possession as a shield under the doctrine of part performance.

3. Once such is the case, in ordering for marking of the document in the suit for specific performance by overruling the objection by the impugned order of the lower Court from duly impounded, the document on stamp duty, there is nothing to interfere but for to say the lower Court shall mark the same subject to objection on other aspects of admissibility, proof and relevancy to decide ultimately as laid down in **Bipin Shantilal Panchayal v. State of Gujarat**¹.

4. Accordingly, the civil revision petition is disposed of.

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

Dr. B. SIVA SANKARA RAO, J

2nd November 2017.

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¹ 2001 (3) SCC 1