THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3274 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner-defendant is directed against the intermediary order, dated 05.06.2017, of the learned XIX Additional Senior Civil Judge, City Civil Court, Secunderabad, passed in O.S.No.357 of 2013.

2. I have heard the submissions of Sri B. Nalin kumar, learned counsel for the petitioner-defendant. There is no representation for Sri R. Ranganathan, learned counsel for the respondent-plaintiff, on caveat. I have perused the material record.

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

The respondent-plaintiff brought the suit against the revision petitioner-defendant for specific performance on the basis of an original receipt-cum-agreement of sale said to have been entered into between the plaintiff and the defendant on 04.10.2012 and for a direction to the defendant to handover physical possession of the suit schedule property after execution of the registered sale deed and for other reliefs. The subject matter of the suit is a residential premises admeasuring 45 Square yards and built up area of 100 Square Feet more fully described in the schedule annexed to the plaint. At the stage of trial, when documents are tendered on behalf of the plaintiff for being marked, the defendant raised an objection for marking the afore-stated receipt-cum-agreement of sale, dated 04.10.2012, on various grounds. The plaintiff submitted that the document can be treated as an unstamped document and required stamp duty and penalty can be collected and the document can be permitted to be marked on payment of stamp duty and penalty. The trial Court by the orders impugned in this revision treated the document as an unstamped document and held that the document can be permitted to be marked subject to payment of stamp duty and penalty. Aggrieved thereof, the defendant filed this present revision petition.

4. Learned counsel for the revision petitioner-defendant would submit as follows:

The document in question is written on the reverse side of a non judicial stamp paper, dated 27.11.2009, of the value of Rs.10/-. On the front side of the said non-judicial stamp paper, which is purchased in the name of T. Fredrick, an instrument chargeable with duty was already written and the said instrument relates to a transaction between the said Fredrick and one Devender Reddy. The present alleged receipt-cum-sale agreement was written on the reverse of a stamp paper, which already contained an instrument chargeable with duty on the front side. As per the Section 14 of the Indian Stamp Act, no second instrument chargeable with duty shall be written on a piece of stamp paper upon which an instrument chargeable with duty has already been written. As no second instrument chargeable with duty shall be written upon a piece of stamp paper upon which an instrument chargeable with duty has already been written, the order of the trial Court treating the said document as an unstamped document and the finding of the trial Court that stamp duty and penalty can be collected and the document can be permitted to be marked are unsustainable under facts and in law. The instrument chargeable with duty written on the reverse of the afore-stated stamp paper cannot be marked even subject to payment of stamp duty and penalty.

5. Having heard the submissions of the learned counsel for the revision petitioner-defendant and considered the provisions of law, this Court is of the view that the revision petition can be disposed of at the stage of admission.

6. Before proceeding further, it is necessary to refer to Sections 14 & 15 of the Indian Stamp Act, which read as under:

> 14. Only one instrument to be on same stamp – No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby , or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.
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> 15. Instrument written contrary to section 13 or 14 deemed unstamped - Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

The receipt-cum-sale agreement, dated 04.10.2012, was admittedly written on the reverse of a non judicial stamp paper of a value of Rs.10/-. On the front side of the said stamp paper, an instrument chargeable with duty was already written. The second instrument was written on the reverse of such non judicial stamp paper. In that view of the matter and the provision of Section 15 of the Indian Stamp Act, the instrument written, on the reverse of the said non judicial stamp paper, in contravention of Section 14 shall be deemed to be unstamped. Be it noted that an instrument chargeable with duty was already written on the front side of the stamp paper; the present receipt-cum-sale agreement was written on the reverse of the very same piece of stamp paper; hence, it is an instrument written in contravention of the provisions of the Stamp Act and shall be deemed to be unstamped. If that is so, such instrument not duly stamped is liable for impounding and such instrument can be admitted in evidence on payment of duty with which the same is chargeable together with penalty payable, if any, on such instrument.

7. On the above analysis, this Court finds that the contentions of the revision petitioner-defendant are untenable and do not merit consideration and

that in the facts and circumstances of the case and as per the legal position obtaining, the trial Court is justified in passing the impugned order.

8. In the result, the Civil Revision Petition is dismissed confirming the orders impugned, however, subject to the observation that in case the document comes to be tendered in evidence on payment of duty with which the same is chargeable together with penalty, if any payable, the defendant shall be at liberty to raise the objection with regard to want of registration provided the law permits; and, if any such objection comes to be raised by the defendant at the appropriate stage, it is needless to state that the trial Court shall consider and decide the said objection, in accordance with procedure and law, however, after giving an opportunity of hearing to both the sides.

There shall be no order as to costs.

Miscellaneous petitions pending if any shall stand closed.

JUSTICE M. SEETHARAMA MURTI

21.08.2017
Note: LR copy to be marked.
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