

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1707 OF 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 07.02.2012, in I.A.No.1735 of 2011 in O.S.No.151 of 2011 passed by the II Additional District Judge, West Godavari District, Eluru.

2. The aforesaid Interlocutory Application was filed under Order XXXVIII Rule 5 of C.P.C. seeking attachment of petition schedule property before judgment. The said application was dismissed as there was no sufficient ground to attach the petition schedule property.

3. The facts of the case in brief are that one Vardhineedi Krishna Rajendra is the absolute owner of petition schedule property. He entered into development agreement with the petitioner/plaintiff on 14.07.2011, for which the petitioner paid an amount of Rs.20,00,000/- as advance. While so, the said Krishna Rajendra died on 20.07.2011, consequently the petition schedule property was devolved upon his legal heirs i.e., the respondent herein. Thereafter, the petitioner approached the respondent for repayment of advance amount as the development of property was not completed. But, the respondent did not respond to the request made by the petitioner and she is making hectic efforts to alienate the schedule property. Therefore, the petitioner sought for attachment of petition schedule property before judgment.

4. The respondent/defendant filed counter denying the material allegations and disputed the development agreement contending that the document itself is not sufficiently stamped and it is a forged

document, thereby the petitioner is not entitled to any relief and prayed to dismiss the petition.

5. Upon hearing the argument of both the counsel, the trial Court came to the conclusion that as the suit document is not sufficiently stamped, it cannot be looked into for any purpose and denied the relief sought for and dismissed the petition.

6. Aggrieved by the said order, the present revision petition is filed raising various grounds, mainly contending that due to death of the said Krishna Rajendra, the petitioner could not obtain the registered document and thereby non-registration of the development agreement is not a ground to deny the relief under Order XXXVIII Rule 5 CPC and it is only to safeguard the interests of both parties. It is also contended that only after getting the plan and estimates, it is possible to enter into a construction agreement, which comes under Article 6-B of Schedule 1-A of the Indian Stamp Act, but the Court below did not consider the same and committed an error in dismissing the petition.

7. During hearing, learned counsel for the petitioner would submit that the development agreement would fall under Article 6-B of Schedule 1-A of the Indian Stamp Act, therefore, the finding recorded by the trial Court that the document is inadmissible in evidence is not in accordance with law and prayed to set aside the impugned order of attachment of petition schedule property before judgment.

8. Learned counsel for the respondent supported the order of the trial Court in all respects.

9. As seen from the material on record, the development agreement, dated 14.07.2011, is an unregistered and insufficiently stamped one.

According to the contention of learned counsel for the petitioner, the said development agreement would fall within Article 6-B of Schedule 1-A of the Indian Stamp Act. Article 6 deals with Agreement or Memorandum of an Agreement and Clause (B) thereof deals with construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property and the stamp duty payable thereon is five rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities whichever is higher. Therefore, even accepting the contention of counsel for the petitioner, stamp duty is payable at rate of rupees five on every one hundred rupees or part thereof on the market value or estimated value of the construction. According to the counsel for the petitioner, the development agreement entered into in his favour is an unregistered and unstamped document. When stamp duty and penalty as per Sections 35, 37 and 38 of Stamp Act, is not paid as per Article 6-A of Schedule 1-A of the Indian Stamp Act, the document is inadmissible in evidence in view of bar under Section 35 of the Indian Stamp Act, which contemplates that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person by any public officer, unless such instrument is duly stamped, provided that if the document is required to be stamped, if not stamped it cannot be received in evidence for any purpose.

10. Here, the document is admittedly an unstamped and unregistered document though required to be stamped under Article 6-B of Schedule 1-A of the Indian Stamp Act, in such case, based on such inadmissible evidence, the Court cannot pass any order.

11. No doubt, admissibility of a document in evidence can be considered at the time of marking. Even for admitting a document for passing order an Interlocutory Application, the document has to be marked as per the Rules governing and controlling the suits will apply to the interlocutory proceedings under Rule 60 of the Civil Rules of Practice read with Section 35 of the Indian Stamp Act, in view of Rule 60 of the Civil Rules of Practice. The suit document is inadmissible in evidence and based on such document, no order of attachment of petition schedule property can be passed. The trial Court also discussed about the requirements of Order XXXVIII Rule 5 CPC, which reads thus:

- (i) *prima facie* case.
- (ii) There is an attempt of alienation of the property by the respondent
- (iii) Attempt of alienation was made with an intent to defeat the decree
- (iv) Source of information as to attempts of the respondent
- (v) Providing an opportunity for furnishing surety and in default of furnishing security, ordering attachment.

12. Here, in this case, the suit document is an unregistered and unstamped document and the same is inadmissible in evidence, consequently it is difficult to find *prima facie* case in favour of the petitioner/plaintiff, thereby dismissal of the petition by the trial Court cannot be faulted, warranting interference of this Court by exercising the power Article 227 of the Constitution of India. Hence, I find no

illegality or legal infirmity warranting interference of this Court. However, liberty is given to the petitioner to take necessary steps to get the development agreement impounded by paying necessary stamp duty and penalty as required under law and renew his request before the trial Court at appropriate time.

13. With the above observation, the Civil Revision Petition is disposed of. Miscellaneous petitions, if any, pending in this revision shall stand close. No costs.

M. SATYANARAYANA MURTHY, J

JUNE 02, 2017
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 02.06.2017

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