HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.2704 OF 2017

Date: 17.08.2017

Between:

Milkuri Vijender Reddy, s/o. Bakka Reddy, Aged 50 years,
Occu: Agriculture & Teacher, R/o. H.No.6-2-290,
Pinjarla Street, Hanamkonda, Warangal and others.

..... Petitioners/
defendants

and

Byreddy Balaji Rao, S/o. Venkata Ramana Rao,
Aged 37 years, Occu: Business, r/o.H.No.10-42,
Huzurabad Village and Mandal, Karimnagar District.

..... Respondent/
Plaintiff

The Court made the following:

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ORDER:

Petitioners are defendants. Respondent/plaintiff filed the suit to grant decree to perpetually restrain defendants from interfering with the plaintiff's exclusive possession and enjoyment over the suit schedule properties. In support of his claim, plaintiff sought to mark the registered document, titled 'agreement of sale-cum-GPA, dated 06.10.2005 as one of the exhibits. Petitioners herein raised objection for marking the said document. The objection was overruled on marking of concerned document by the order of the learned trial Court dated 11.04.2017. Aggrieved thereby, this revision is filed.

2. Heard Sri P.Prabhakar Reddy, learned counsel for the petitioners and Sri Gopala Rao Amancharla, learned counsel for respondent.

3.1. Learned counsel for petitioners contended that the document dated 06.10.2005 which was sought to be marked is, an agreement of sale-cum-GPA. The vendor received full sale consideration and was also handed over the possession of the subject property and, therefore, the said document is a sale deed and thus, stamp duty as a sale deed was required to be paid, whereas the stamp duty paid was based on the statement made by the plaintiff that it was only an agreement of sale. As document is under valued and full stamp duty was not paid, same is not admissible in evidence.

3.2. Learned counsel further submitted that earlier plaintiff filed I.A.No.237 of 2015 to send the document to the District Registrar for impounding and the said IA was dismissed. Learned counsel further contended that as agreement of sale-cum-GPA was followed by payment of full sale consideration and vesting of possession in the purchaser, Schedule-IA read with Article 47A of Indian Stamp Act is attracted and non-compliance thereof, disentitles the party to get the document admitted in evidence.

3.3. Learned counsel further submitted that earlier plaintiff sought to mark the document. Petitioners opposed the marking of the document. The objection of the petitioners was upheld and trial Court held that document cannot be received in evidence unless proper stamp duty and penalty are paid as per the Explanation-I of Article 47-A of the Stamp Act even for a collateral purpose. He, therefore, submitted that the trial Court having upheld the objection earlier, there is no justification to once again allow the plaintiff to mark the document overruling the objections of the petitioners.

3.4. Learned counsel for petitioners contended that the decision relied upon by the respondent has no application to the facts of the case. According to the learned counsel, the District Registrar failed to apply his mind to the facts relevant for the purpose of collection of proper stamp duty as required by law. The endorsement given by him that deficit stamp duty was already collected even at the stage of registration is erroneous. By pointing out the endorsement as referred to by the District Registrar in his letter addressed to the trial Court, learned counsel submitted that reading of the endorsement on the back of the document would disclose that document was processed treating it as agreement of sale-cum-GPA, but not as sale deed. This issue was not even considered by the District Registrar before returning the document. He therefore submitted that the District Registrar's endorsement is not valid in law and, thus, as document is not sufficiently stamped, it is not admissible in evidence.

3.5. In support of his contentions, learned counsel placed reliance on the following decisions:

i) **B.Ratnamala v. G.Rudramma**[1] and

ii) **Vanapalli Jayalaxmi @ Venkata Jayalaxmi v. Annem Kondalarao and others**[2].

4.1. Learned counsel for respondent/plaintiff contended that the issue is at the stage of marking of the document. Admissibility of the document based on the contentions urged by the learned counsel for petitioners can be gone into at the stage of trial and, therefore, at the stage of marking of document, the contentions urged need not be gone into.

4.2. Learned counsel further contended that the earlier objection was that the document was not properly stamped, as required, holding that it is an agreement of sale-cum-GPA with possession and, therefore, full sale consideration was required to be taken in to consideration and sufficient stamp duty to be paid. The document was impounded but the District Registrar, after considering the stamp duty already paid, vide his letter dated 18.01.2017 informed the trial Court that the then Registering

[1] 1996 (6) ALD 160 (DB)
[2] 2014 (1) ALD 491

Officer noticed, at the time of registration of the document itself, that the document was under valued and collected the required deficit stamp duty for total market value of 18,70,000/- under Sections 41 and 42 of Indian Stamp Act and endorsed the same on back of sheet no.3. Thus, the original un-impounded registered document was sent to the Court. He, therefore, submitted that the document in issue can no more be called as insufficiently stamped and, therefore, the contention of the petitioners that the document cannot be marked is not valid in law.

4.3. Learned counsel further contended that frivolous objection was raised only to protract the trial. The suit is of the year 2005 and petitioners are dragging on the issue on one reason or the other delaying final adjudication of the suit.

4.4. Learned counsel for the respondent/plaintiff further contended that the decision of the revenue authority is final and conclusive and the trial Court cannot go into that issue, at any rate, at the stage of marking of the document. The principle of law is well settled and, therefore, the objection of the petitioners is not valid in law. In view of the endorsement given by the District Registrar, the document presented by the plaintiff cannot be called as insufficiently stamped and inadmissible in evidence.

4.5. In support of his contention, he placed reliance on the following decisions:

i) **Golla Amaravathi v. Golla Bhaskara Naidu and others**[3];

ii) **Nukala Sailaja Devi and others v. District Registrar, Nalgonda District and others**[4];

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[3] 2002 (2) ALT 15

iii) **Suraj Lamp and Industries Private Limited v. State of Haryana and another**[5]**;** and

iv) **Syed Yousuf Ali v. Mohd. Yousuf and others**[6].

5. The basic facts are not in dispute. The record would disclose that earlier also plaintiff sought to mark the agreement of sale-cum-GPA with possession in support of his contention. Petitioners herein raised objection at that stage. Primary contention urged was, full sale consideration was paid and possession was also granted to the plaintiff and, therefore, the said document has to be treated as sale deed. The market value of the land at the time of entering into sale deed was 18,00,000/- and stamp duty payable on the said market value was 1,44,000/-, whereas plaintiff paid only 18,000/-. Thus, there was deficit in payment of stamp duty and thus inadmissible in evidence.

6. Plaintiff earlier filed I.A.No.237 of 2015 to send the document to the District Registrar for impounding. However, the same was dismissed by the trial Court observing that the document was already impounded by the District Registrar and, therefore, question of sending the document again for impounding would not arise. Trial Court observed that plaintiff was seeking to exhibit the document in evidence in support of his claim over the suit schedule property as a vendee and not for any collateral purpose and admittedly, stamp duty was not collected by treating it as registered sale deed. The trial Court therefore held that the document cannot be received in evidence unless proper stamp duty and penalty were paid as per the explanation-I of Article 47A

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4 2007 (6) ALT 368
5 (2012) 1 SCC 656
6 2016 (2) ALT 557

of the Stamp Act even for a collateral purpose. This decision of the trial Court dated 25.10.2016 upholding the objection of the petitioners herein on marking of the document has become final.

7. The changed circumstance which plaintiff sought to rely upon to mark the document was a letter addressed by the District Registrar on 18.01.2017 informing the trial Court that on verification he found that even at the stage of registering the document, the under valuation of the document was noticed and at the time of presentation of the document itself, deficit stamp duty was collected for the total market value of 18,70,000/- and, therefore, need not be impounded. Learned trial Court placed reliance on the said document to overrule the objection for marking of the document.

8. Learned counsel for petitioners sought to contend that the trial Court ought not to have relied upon the said opinion of the District Registrar in overruling the objection. By referring to the endorsement on the registered document, learned counsel pointed out that stamp duty collected was by treating the document as agreement of sale-cum-GPA and not as sale deed.

9. It is settled principle of law that if agreement of sale is coupled by payment of full sale consideration and delivery of possession, said document has to be treated as sale deed and appropriate stamp duty as required by Indian Stamp Act has to be paid for the purpose of registration of such document and admissibility of such document in evidence. The issue in the present revision is distinct from the long run of precedents relied by the learned counsel for petitioners.

10. In the case on hand, the District Registrar opined that even at the stage of registration of the document, deficit stamp duty was noticed and collected by treating the market value of the property at 18,70,000/-. What is required to be noticed is the view expressed by the District Registrar in his letter addressed to the trial Court on 18.01.2017 is not subject matter of contest before the trial Court and before this Court. Whether the assessment made and conclusion arrived at by the District Registrar that sufficient stamp duty was already paid is valid cannot be gone into at this stage.

11. In **Golla Amaravathi**, the very issue was considered by this Court. The trial Court dismissed the application to call for the document from the Revenue Division Officer, Chittoor without impounding the same. During the trial, plaintiff sought to mark agreement of sale to prove that she was in possession of the property. The said document was impounded and levied the penalty. Not satisfied with the stamp duty and penalty levied by the Court, plaintiff requested the Court to refer the document to Collector for impounding the document. The RDO valued the document as per the prevailing market value and directed the petitioner to pay certain amount for impounding the document. Petitioner then filed application to recall the document from the RDO without impounding the same, which was dismissed. Learned single Judge of this Court upheld the decision of the trial Court by placing reliance on two earlier decisions of this court. In the two earlier decisions, this Court held that the certificate given by the revenue authority is conclusive under Section 40 of the

Indian Stamp Act and binding on the civil court on question of inadmissibility on the ground of its being insufficiently stamped.

12. In view of the principle laid down by this Court in **Golla Amaravathi**, following the two precedent decisions and the decision of the District Registrar as informed to the trial Court that even at the time of registration of the document, the deficit stamp duty was already collected and, therefore, no reason for impounding, the initial hurdle created to mark the document is cleared. Having regard to these facts, I do not see any error in the decision of trial Court overruling the objection raised by petitioners to mark the document dated 06.10.2005 as exhibit warranting interference by this Court. Revision deserves to be dismissed. It is accordingly dismissed. The issue considered in this revision is only regarding marking of document. It is also made clear that there is no expression of opinion on merits and as rightly pointed out by learned counsel for respondent, it is open to petitioners to raise all pleas as available in law during the course of trial.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 17.08.2017
Kkm/tvk

HON'BLE SRI JUSTICE P.NAVEEN RAO

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