THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P.NO.117 OF 2018

ORAL ORDER

Vide the present petition, the petitioner has challenged the order dated 12.12.2017 passed in O.S.No.25/2015, whereby the court below rejected the unregistered agreement of sale sought to be marked by defendants through D.W.2.

The main suit was filed by the plaintiff against the defendants for declaration of title and for consequential possession. When the main suit was coming up for marking of the documents through D.W.2 and when the defendant placed the agreement of sale to be marked, the learned counsel for the plaintiff objected.

The said agreement discloses that it is an agreement of sale said to have been executed by the plaintiff in favour of one Valaparla Lakshmi Narayana on 6.1.2000 and the total consideration was Rs.65,000/-. Out of the said amount, Rs.49,000/- was paid towards advance of sale consideration and the remaining sale consideration was to be paid by the end of April and obtain regular registered sale deed. The said agreement of sale is reduced into writing on a white paper.

As per Article 6 of Schedule IA of the Indian Stamp Act, 1899 (for short the 'Stamp Act') the stamp required is Rs.100/-, but the present agreement of sale is reduced into writing on white paper and without any attestors thereto. Section 35 of the Stamp Act, reads as follows:

> Section 35: Instruments not duly stamped inadmissible in evidence, etc—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 or by any public officer, unless such instrument is duly stamped.

Provided that—

(a) any such instrument not being an instrument chargeable with a duty of twenty paise or a mortgage of crop (Article 36(a) of Schedule I-A) chargeable under Clause (aa) or (bb) of Section 3 with a duty of forty paise or a bill of exchange or promissory note, shall subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such relief, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupees by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act.1. Subs by Act 43 of 1955.

The learned Senior Counsel appearing on behalf of the petitioner submits that learned court below failed to see that document, which is sought to be marked, as an exhibit, is only an agreement of sale under which possession was not delivered. Such documents are very much admissible in evidence, since they do not fall under Articles 6-A and 47-A of Schedule I-A of the Stamps Act. The agreement of sale dated 6.1.2000, which is rejected by the court below for the purpose of marking, would clearly show that it is a simple agreement of sale and that it has not delivered possession of the suit schedule property. Hence, such a document should have been marked by the court below.

By applying the provision of Section 35 of Stamp Act to the instrument on hand, the same shall not be admitted in evidence for any purpose. As per Section 17(1)(g), the agreement of sale of immovable property of value of Rs.100/- and upwards, shall be a registered one with effect from 1.4.1999.

Admittedly, the present document in question is reduced into writing on a white paper and it is not registered. As per proviso of Section 49 of the Registration Act, 1908 if an unregistered document affecting immovable property and required by the said Act or the Transfer of Property Act, 1882 to be registered, may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. The said provision cannot come in aid to the defendants, as the suit on hand has been field for declaration and for consequential relief of recovery of possession and the claim of the defendant is founded in said document and as such, the agreement of sale cannot be marked.

In view of above findings of the trial court, I find no illegality or perversity in the order passed by the trial court.

Finding no merit in the present petition, the same is accordingly dismissed.

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

SURESH KUMAR KAIT,J

DATE:19—01—2018

AVS