IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

CRP No.735 of 2018

Between:

ASU VENKATANARSAMMA & ANOTHER

...Petitioners

&

PINDI RAMANUJA & OTHERS

...Respondents

DATE OF JUDGMENT PRONOUNCED: 16-04-2018

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

***THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

+ CRP No.735 of 2018

% 16-04-2018

ASU VENKATANARSAMMA & ANOTHER

...Petitioners

VERSUS

$ PINDI RAMANUJA & OTHERS

...Respondents

< GIST:

> HEAD NOTE:

! **Counsel for Petitioners: Sri T. Sharath**

^**Counsel for Respondents: None appeared for R1**

? Cases referred

1. AIR 1925 BOMBAY 327
2. AIR 1961 SC 787
3. AIR 1923 LAHORE 242

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.735 of 2018

ORDER:

The civil revision petition is filed by the defendants in the suit OS No.22 of 2011 against the order dated 05-01- 2018 passed by the Senior Civil Judge at Narsapur, West Godavari District whereby and whereunder the objection raised by revision petitioners herein (defendants) regarding the admissibility of suit agreement of sale dated 18-11-2010 on the ground that it is not signed by parties and properly stamped is overruled.

2. 1st respondent herein, the plaintiff in the suit, filed the suit for specific performance of agreement of sale dated 18-11-2010. During the pendency of the suit proceedings, plaintiff sought to mark the document styled as sale agreement dated 18-11-2010 curiously, not signed by either of the parties. The trial Court, on the plea of the plaintiff that the document is being brought on record only to prove that the plaintiff got the document prepared by reducing the terms of the sale agreement, as agreed to by the 1st defendant owner of the suit schedule property (1st petitioner herein), brought it to the office of the Sub-Registrar for

registration, but the 1st defendant denied to execute the same, admitted the same into evidence subject to assessing its evidentiary value at a later stage. Aggrieved by the same, this civil revision petition.

3. Facts of the case as emerging from the pleadings are; the 1st defendant-petitioner herein is the owner of the suit schedule property and other defendants are her close relatives. Plaintiff offered to purchase the suit schedule property for a sum of Rs.7,50,000/- which was accepted by the 1st defendant. An advance amount of Rs.1,40,000/- was paid on 15-11-2010 in the presence of 2nd defendant and one Seelam Rajesh, after settling the terms of sale at the house of 1st defendant. Further amount of Rs.5,10,000/- was paid to the 1st defendant, in respect of the same transaction on 18-11-2010 on the understanding that the 1st defendant would execute registered sale agreement and handover possession of the suit schedule property to the plaintiff. The latter condition was complied with as defendants 1 and 2 seems to have gone to the suit schedule property and handed over possession thereof to the plaintiff.

4. The grievance of the plaintiff is that the 1st defendant, though agreed to execute the registered sale agreement did not come forward to execute the sale agreement dated 18-11-2010 though it was drafted and prepared for registration, which necessitated him to file the above suit.

5. Sri T. Sharath, learned counsel for the defendants-revision petitioners contended under Section 3 of the Indian Evidence Act, 1872, a document can be anything like letters, figures or marks, a map, words printed, lithograph, photograph and even inscriptions made on the metal plate or stone and a caricature can be considered as document. Under Section 2(14) of the Indian Stamp Act, 1889, (for short, "the Stamp Act") a document to become an instrument, it has necessarily to be executed by the parties and unless the parties to a document execute the document, it does not become an instrument chargeable with duty and unless a document fulfils the requirement to be considered as an instrument, it does not attract stamp duty and for the purpose of collecting stamp duty, a document must assume the character of an instrument.

6. Though notices are served, none appears for the 1st respondent-plaintiff.

7. Now the point that falls for consideration is whether the agreement of sale dated 18-11-2010, which none of the parties have signed can be construed as evidence in the eye of law and; if so can it be received in evidence, particularly when possession of the suit schedule property is alleged to have been delivered to the plaintiff under that document ?

8. It is to be seen from the contents of the document dated 18-11-2010, the parties have agreed to enter into transaction in respect of sale of the suit schedule property by the 1st defendant to the plaintiff and the plaintiff is stated to have paid part sale consideration on two occasions on 15-11-2010 and on 18-11-2010 and on receipt of these amounts by the 1st defendant, both 1st and 2nd defendants went to the suit schedule property and handed over possession thereof to the plaintiff, implies that the sale agreement, though not signed by the 1st defendant, for reasons best known to her, it is a sale agreement with possession. By pressing the document into service, the plaintiff is trying to make out a case of contract between

himself and the 1st defendant in relation to sale of the suit schedule property. The interesting feature of the document styled as sale agreement dated 18-11-2010 is that it is not signed by either of the parties raising a question whether an unsigned document can be received in evidence. The word ***'evidence'*** signifies in its original sense something in the state of being evident and obvious. As soon as the document is produced before the Court it becomes evidence, and the Court can rely upon it, when the same is proved. Evidence is one thing, proved, disproved or not proved are different altogether.

9. A look at few provisions of law, relevant to the extent and for the purpose of the facts in issue would be worthwhile. As per Section 3 of the Indian Evidence Act, 1872, (for short, "the Evidence Act") interpretation clause, the term ***"evidence***" is described as follows:-

> *"Evidence" means and includes—*
>
> *(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;*
>
> *(2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence."*

10. This speaks of all statements required by law, to be made before the Court or all the documents including the electronic one, for the inspection of the Court are called oral and documentary evidence. It, nowhere, speaks of proving or disproving the document or the statements at the stage of leading evidence meaning, thereby the evidentiary value of a document can be assessed at a later stage. The term ***"document"*** is described as follows under Section 3 of the Evidence Act.

> ***"Document"***—*"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.*
>
> *Illustrations*
>
> *A writing is a document; Words printed, lithographed or photographed are documents; A map or plan is a document; An inscription on a metal plate or stone is a document; A caricature is a document.*

11. From the above definition clause it is understood that any letters, figures or marks, each of such expression is a document. The illustrations further clarify that a writing, words printed, lithographed or photographed are documents; a map or a plan, an inscription on a metal plate, on a stone or even a caricature are all documents. It goes to

show that anything can be a document which conveys a meaning or an indication, but it was not stipulated that to become a ***"document"***, the document is to be signed or authenticated by the executant thereof. In ***EMPEROR vs. KRISHTAPPA KHANDALA*** (AIR 1925 BOMBAY 327), the Bombay High Court dealing with similar issue held that a document need not necessarily be something which is signed, sealed or executed. Section 3 (18) of the General Clauses Act, 1897 which is in *pari-materia* with the interpretation given to the word ***"document"*** in Section 3 of the Evidence Act, is as follows:-

> *"document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;*

12. But in the instant case, it would suffice to refer to the interpretation of the word ***"document"*** given in the Indian Evidence Act, 1872 as reference to General Clauses Act, 1897, is required only when relevant enactment in that behalf is silent. Section 2(12) of the Stamp Act refers to ***"executed"*** and ***"execution"*** with reference to an instrument, which is thus:-

"(12) "Executed" and "execution", used with reference to instruments, mean "signed" and "signature".

13. Section 2 (14) of the Stamp Act refers to an ***"instrument"***. Section 2(14) reads as follows:-

"(14) "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

14. Section 2 (14) explains that instrument includes every document by which any right is, or purports to be created, transferred, limited, extended, extinguished or recorded. It is discernable that every document is not an instrument, but every instrument is a document. For the purpose of charging a document with stamp duty as also for impounding as Section 33 of the Stamp Act, statute mandates that the document must necessarily be executed so as to satisfy the definition of instrument under Section 2 (12).

15. Learned counsel for the revision petitioners raised two objections for marking the document, regarding its admissibility, firstly; it is not signed by parties and secondly; it contains an averment that possession was delivered, it being an agreement of sale has to be charged as

sale under Article 47-A of Schedule 1-A of the Stamp Act as same is insufficiently stamped and not admissible in evidence as per Section 35 of the Stamp Act. Regarding the second objection, had there been no clause in the document as to delivery of possession of suit property, it would have been admissible in evidence, since it is a document and documentary evidence creating rights falling within the definition of instrument. But it is not properly stamped, the same is inadmissible in evidence and requires to be impounded under Section 33 of the Stamp Act.

16. Section 33 of the Stamp Act, deals with examination and impounding of instruments not duly stamped. Sub-Section (2) of Section 33 of the Stamp Act, is thus:-

> *"(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument **was executed or first executed:** Provided that: (emphasis supplied)*
> (a)..........
> (b).........."

17. Analogous provision Section 74 of the Registration Act, 1908, also makes it incumbent upon the Registrar, when a document is refused registration by the Sub-Registrar on the

ground of denial of execution of such a document, to enquire whether the document has ***been executed*** and the requirement of the law have been complied with by the person presenting the document for registration.

18. Section 17 of the Registration Act, 1908, speaks of what documents are compulsorily registerable and Section 18 about the documents whose registration is optional. Proviso to Section 49 is an exception to Section 17 of the Registration Act, 1908, which reads as follows:-

> *"…..Provided that an unregistered document affecting immovable property and required by this 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 under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.*

19. *Proviso* to Section 49 prohibits the Court to receive in evidence any document affecting immovable property which is not registered as required under Section 17 of the Registration Act, 1908, of any provisions of the Transfer of Property Act, 1882. The *proviso* contains three exceptions, *viz.,* i) part performance of a contract for the purpose of Section 53-A of

the Transfer of Property Act; ii) contract in a suit for specific performance and iii) an unregistered document affecting immovable property required to be registered under law may be received as evidence of any collateral transactions not required to be affected by registered instrument.

20. In ***GOVT. OF UP vs. RAJA MOHAMMAD AMIR AHMAD KHAN***[1], the Supreme Court while interpreting Sections 31, 32 and 33 of the Stamp Act, at para 5 held thus:-

> *"……It was conceded that if the instrument is unexecuted, i.e., not signed and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows Section 32. Under that section, the Collector has to certify by endorsement on the instrument brought to him under Section 31 that fully duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the enforcement can be made only if the instrument is presented within a month of its **execution**…"*

[1] AIR 1961 SC 787

21. In ***TIRKHA vs SOHLU***[2]**,** the Lahore High Court observed that before a document can be treated as such for the purpose of registration, in fact for almost any purpose it must be executed. The operative portion thereof reads thus:-

> *"Now, before a document can be treated as such for purposes of registration, or, in fact, for almost any purpose, it must be executed, and, as defined in Section 2 (12) of the Stamp Act, "Executed" means "signed" a point explained in 22 I.C., 75, a Full Bench ruling of the Lower Burma Chief Court. If unsigned, the document is not liable to stamp duty and a fortiori is not compulsorily remittable, nor, in fact, remittable at all. The Registration Act presumes throughout that the document tendered for registration has been executed (see section 58 and section 74). Under section 58 the Registration Officer must endorse the signature of every person admitting the execution of the document. The first ground on which Registrar can refuse to register a document under section 74 is that it has not been **executed**.*

22. It is settled law that suit for specific performance is maintainable on oral agreement of sale. Admittedly, suit document contains a clause that suit property is delivered and it is also the case of the plaintiff that possession of the suit property is delivered and if that is the case, suit document has to be charged as sale as per *Explanation-I* to Article 47-A of Schedule 1-A of the Stamp Act. *Explanation-I* to Article 47-A of Schedule 1-A reads as follows:-

[2] AIR 1923 LAHORE 242

"Explanation-I

An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "sale" under this Article:

Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in Clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed."

23. Admittedly, stamp duty is not paid on suit document as sale, as such the same cannot be received in evidence as per Section 35 of the Stamp Act, unless it is impounded as per Section 33 of the Stamp Act. For impounding said document, it has necessarily to be executed as per Section 33 of the Stamp Act. But since same is not signed by parties, it is not executed as per Section 2 (12) of the Stamp Act which cannot be impounded as such, same cannot be received in evidence.

24. For the reasons stated above, the impugned order is set aside and accordingly, the civil revision petition is allowed. It is needless to state that any observations made hereinabove is for the purpose of disposal of this revision. The trial Court is to dispose of the suit OS No.22 of 2011 on its own merits

and in accordance with law without being influenced by any of the observations made hereinabove. Miscellaneous petitions if any pending shall stand disposed of. There shall no order as to costs.

A.RAJASHEKER REDDY, J

Dated:16-04-2018.
NRG

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.735 OF 2018

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Date: 16-04-2018

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