***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+CRP.No.3333 of 2013

% 07-06-2018

#Tatineni VEnkata Subba Rao (died LRs brought on record)

... Petitioners

Vs.

$ Kodali Jayalaxmi Devi,
S/o late Raja Krishna Prasad,
Dr.No.6-51, Vasantha Nagar,Kanur,
Krishna District.

... Respondents

! Counsel for the appellants: Sri V.Narasimha Murthy

Counsel for the Respondents: ----

< Gist:

> Head Note:

? Cases referred:

[1] 2003 (2) ALD 638
[2] 010 (2) ALT 648
[3] 009) 2 SCC 532
[4] 012) 1 SCC 656
[5] 014) 1 SCC 618

[6] 04 (3) ALD 817
[7] 07 (1) ALT 668
[8] 08 (8) SCC 564
[9] 11 AIR SCW 4484
[10] 2007 (5) ALT 758

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No.3333 of 2013

O R D E R:

This Civil Revision Petition is filed against order, dated 05.07.2013, in EA.No.48 of 2013 in OS.No.25 of 2017 on the file of the Court of the II Additional District Judge, Krishna at Vijayawada.

EA.No.48 of 2013 is filed under Order VII Rule 14 of CPC by the petitioner in the lower Court (by the claim petitioner in the claim petition) to receive the documents, which are filed along with the said application. The respondent filed a counter stating that the documents cannot be received in evidence. His particular objection was about document No.4, which is an agreement of sale dated 06.10.1974. The objection raised in the counter is that the document cannot be received as evidence as it is not validly stamped and is also not registered as required under law. The lower Court, after hearing the application, held that the objections raised are not sustainable in law and particularly, as the application is filed to condone the delay in receiving the documents. The application was allowed; the delay was condoned and the documents were directed to be received subject to proof and relevancy. It is this order that is questioned in this appeal.

This Court has heard Sri V.Narasimha Murthy, learned counsel appearing for the petitioner. Despite opportunities, the respondents did not appear and argue.

The short and simple question that involved is, whether document No.4 can be received in evidence or not. Learned counsel for the revision petitioner argued that the document cannot be received in evidence as it is neither properly stamped nor registered. Learned counsel for the petitioner filed additional papers on 13.04.2018 in which a copy of the agreement of sale dated 08.10.1974 (document No.4) and the gift deed executed subsequent thereto were filed. The contention of the learned counsel for the petitioner is that document No.4, which is an agreement of sale, is a document of title and that therefore, it requires registration and stamp duty. Learned counsel relies upon the recitals in the gift deed dated 13.10.2005 (document No.4695/2005), wherein the vendor states that she has acquired title to the property by the document dated 08.10.1974. Therefore, the argument of the learned counsel is that as the parties treated the agreement dated 08.10.1974 as a sale deed transferring title to the property, it cannot be received in evidence at all. Learned counsel relied upon the following case laws:

1. Rachakonda Ramakoteswara Rao and others v. Manohar Fuel Centre, Nereducherla, Khammam[1],

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[1] 2003 (2) ALD 638

2. Pariti Suryakanthamma and another v. Saripalli Srinivasa Rao and another[2],

3. Avinash Kumar Chauhan v. Vijay Krishna Mishra[3],

4. Suraj Lamp and Industries Private Ltd., v. State of Haryana and another[4], and

5. Omprakash v. Laxminarayan and others[5].

Relying on these judgments, learned counsel vehemently argued that the agreement of sale dated 08.10.1974 cannot be received in evidence as it neither stamped nor registered. He relies upon the recitals of the gift deed for which this document dated 08.10.1974 is a link document. The vendor/donor states that she has acquired title through this document. Therefore, learned counsel's argument is that it is to be treated as a document of title and cannot be received in evidence.

The two applicable sections/provisions of law, which fall for consideration in this revision are Section 35 of the Indian Stamp Act, 1899 (for short 'the Stamp Act') and Section 49 (c) proviso of the Registration Act, 1908.

Section 35 of the Stamp Act is to the following effect:

> **35 - Instruments not duly stamped inadmissible in evidence, etc.** No instrument chargeable with duty shall be admitted in evidence <u>for any purpose</u>

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[2] 2010 (2) ALT 648
[3] (2009) 2 SCC 532
[4] (2012) 1 SCC 656
[5] (2014) 1 SCC 618

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 shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an 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 receipt, 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 rupee 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 any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 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.

Section 49 of the Registration Act is to the following effect:

Section 49 in The Registration Act, 1908

49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: [54] [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 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 (3 of 1877) [55], [56] [***] or as evidence of any

> collateral transaction not required to be effected by registered instrument.(emphasis supplied)

The provisos to both these Sections have a fundamental impact on the present case.

Under Section 35 of the Stamp Act, it is clearly mentioned that no instrument chargeable with duty shall be admitted in evidence "for any purpose". (emphasis supplied).

Whereas, Section 49 of the Registration Act, does not contain such express language and on the other hand, the proviso says that document can be received as evidence of any "collateral transaction" not required to be effected by a registered instrument. (emphasis supplied)

In ***Rachakonda Ramakoteswara Rao's*** case *(1 supra)*, the learned single Judge of this Court noticed the difference between Section 35 of the Stamp Act and Section 49 of the Registration Act and held that if a document is not properly stamped or insufficiently stamped, it cannot be received in evidence for any purpose under Section 35 of the Stamp Act. But under Section 49 of the Registration Act, if a document is not registered, it can be received for collateral purpose. He however concluded at para 4 as follows: "All of this will not have any significance once the requisite stamp duty and penalty are paid".

Similarly, in ***Pariti Suryakanthamma'***s case (2 supra), the learned Judge clearly held that as the document is insufficiently stamped; it cannot be used for any purpose. Because it is not registered, it can be used for collateral purpose. In that case the learned Judge found that the parties were using the document for a main purpose and not a collateral purpose.

Next judgment cited is ***Avinash Kumar Chauhan v. Vijay Krishna Mishra*** (3 supra). In this case also the Hon'ble Supreme Court held that under Section 35 of the Stamp Act, unless the document is properly stamped, it cannot be received in evidence. The Hon'ble Supreme Court held that either for collateral purpose or for a main purpose, an insufficiently stamped document cannot be used in evidence. Therefore, the Court held that an insufficiently stamped agreement of sale cannot be acted upon by the Court. The word "any purpose whatsoever" were interpreted to mean both main and collateral purpose.

Suraj Lamp and Industries Private Ltd. (4 supra) is a case, wherein the Hon'ble Supreme Court of India reiterated the need for having a registered document for sale and held that GPA cum agreements of sale are not sale deeds.

In ***Omprakash'***s case (5 supra), the Hon'ble Supreme Court again was called upon to decide a similar question and in paras 15 and 16, the Court held that unless the agreement of sale was adequately and properly stamped, it cannot be received in evidence. The Supreme Court also pointed out that the recitals in the document are important. There was an explanation in the State of Madhya Pradesh, which was material in this decision. Therefore, the Supreme Court held that the document was inadmissible in evidence. The question that fell for consideration before the Hon'ble Supreme Court was whether the admissibility of a document would depend upon the recitals in the document or upon the pleadings. In this case, the Supreme Court clearly held that at the time of considering the question of admissibility of a document, it is the recitals in the document that would decide the admissibility of the document.

In the present case argued before this Court, it is recited in the document dated 08.10.1974 that the possession has been handed over to the vendee. However, the document also states that because of a bar/ban in the area for registration, the registration is being postponed and that when the bar is removed, the property would be registered either in the name of the vendee or his nominee. The document clearly mentions that for the present, registration is not possible and that immediately after the bar is removed, the registration will be affected.

Therefore, it is clear that this document by itself contemplates a future registration and the conveyance of title.

The submission of the counsel is that in the subsequent sale deed that is executed on 13.10.2005, (document No.4695/05), it is recited that the vendor acquired title under the document dated 08.10.1974. The counsel hence contended that the document dated 08.10.1974 is to be treated as a sale deed only and as it is not registered, it cannot be received in evidence at all.

This submission cannot be appreciated and the Court relies upon the findings of the Hon'ble Supreme Court in ***Omprakash's*** case (5 supra), wherein the Hon'ble Supreme Court held that at the time of admissibility of a document, the recitals in the document alone are critical and the parties interpretation of the same either in the pleading or elsewhere in not material. As noticed, the document dated 08.10.1974 contemplates the execution of a further registered document. This Court also notices that a Division Bench of the Andhra Pradesh High Court in a case reported in ***A. Kishore @ Kantha Rao vs. G. Srinivasulu***[6] held that an un-registered document can be marked for a collateral purpose. The Division Bench answered the reference made by considering the three judgments of the Hon'ble Supreme Court of India and ultimately came to the conclusion that an un-registered lease deed, which is compulsorily registerable can be admitted in evidence for a collateral purpose.

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[6] 2004 (3) ALD 817

In ***R.Suresh Babu v. G.Rajalingam and others***[7], a learned single Judge of this Court undertook a review of the case law on a very similar question and noticed the judgments of the Supreme Court of India in ***K.B.Saha and Sons Pvt. Ltd. v. Development Consultant Ltd.***[8], and also the judgment of ***M/s. Sms Tea Estates P.Ltd. v. M/s. Chandmari Tea Co. P. Ltd.***[9] and other judgments and ultimately held that for a collateral purpose the document can be received in evidence. Although this was a case relating to an agreement of sale, still the discussion in this case is valid and appropriate. In any view of the matter, the Division Bench in ***A. Kishore's*** case (6 supra) is good law.

Another single Judge of this Court in ***Nookala Krishnaiah and Anr. v. Nookala Dakshina Murthy and Ors.***[10] also held that for a collateral purpose an un-registered document can be received in evidence.

Therefore, on a review of the entire case law available on record, this Court is of the opinion that an insufficiently stamped document cannot be received in evidence for any purpose (main or collateral). If an insufficiently stamped document comes before a Court, a duty is cast upon the Court to impound the document by following the procedure under the Stamp Act and ensure that the requisite stamp

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[7] 2007 (1) ALT 668
[8] 2008 (8) SCC 564
[9] 2011 AIR SCW 4484
[10] 2007 (5) ALT 758

duty is paid. Only after the requisite stamp duty is paid, the document becomes admissible in evidence. If the duty/penalty is not paid, it is wholly inadmissible.

In case of a document that is required to be registered under law, but is not registered, as per the proviso to Section 49 (c) of the Registration Act, which is a Central Act, the document can be received for a collateral purpose in terms of the proviso.

In this revision, as the issue involved is decided, this Court is not pronouncing on what is a "collateral or a main purpose". The witness is not before this Court and this Court cannot comment for what purpose the witness is tendering the documents. The Court that is faced with that question has to decide the purpose for which the document is being tendered- whether it is tendered in evidence for a main purpose or a collateral purpose.

For the purpose of answering and deciding this revision petition, it is enough to state that the recitals in the document dated 08.10.1974 are critical for deciding its admissibility. The mere fact that in a subsequent document this document dated 08.10.1974 is relied upon as a document by title is not very material as the Supreme Court clearly held that the subsequent conduct of the party is not important and the recitals in the document are important.

Therefore, the revision petition is dismissed.

In the result, the Civil Revision Petition is dismissed. No order as to costs.

D.V.S.S.SOMAYAJULU, J

Date: 07.06.2018

KLP

Note: L.R.Copy be marked.