

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

CIVIL REVISION PETITION No.5851 of 2015

ORDER:

This civil revision petition is filed questioning the docket order, dated 08.09.2015, passed in O.S.No.228 of 2005, by the Chief Judge, City Civil Court, Hyderabad.

The suit O.S.No.228 of 2005 is filed for recovery of a sum of Rs.13,60,000/- with interest.

The plaintiffs entered into two agreements of sale dated 29.04.2002 and 10.10.1996 with the defendants in the suit. However, for their own reasons, they have decided to sue for recovery of money only without filing any suit for specific performance. Accordingly, the suit for recovery of money was filed.

When the Memorandum of Understanding, dated 06.06.2002 and the agreement of sale, dated 10.10.1996 are sought to be marked in the evidence, the Court took an objection on the stamp duty and penalty that is payable on these two documents. The impugned order came to be passed on 8th September, 2015, by which, the court held that both the documents are admissible for collateral purpose but on payment of stamp duty and penalty. It is this order which is now questioned in the present revision petition.

This Court has heard Sri Damodar Mundra, learned counsel for the petitioners. The learned counsel for the petitioners points out that respondents Nos.1, 2 and 6 were served, but they did not appear. Notice sent to Respondent No.4 was unserved. The learned counsel has given

up the case against respondents Nos.3 and 5 and he also makes an endorsement to that effect on the case bundle.

The learned counsel for the petitioners argued the matter mainly relying on two judgments on the subject, which are pronounced by two learned single Judges of this court. The first judgment is in the case of *P.Veeraraju v. Lakkaraju Indira Bai*¹ and the second judgment is in the case of *Dr.Rayadurgam Gurappa and another v. Chowdam Kondappa*². Both these cases are cases where the suit is filed for recovery of amount under an agreement of sale. The document, dated 06.06.2002 is out and out agreement of sale and it contemplates registration at a later date. The second document which is styled as Memorandum of Understanding is also contains a paragraph with a recital that the second party is interested in purchasing an area of 1000 square yards from the first party after obtaining all the necessary clearances from the Government. The first party agrees to sell an extent of 1000 square yards at the rate of Rs.4,000/- per sq.yard from his share of the property and the sale is contemplated after the necessary permissions and clearances are obtained from the Government. Sri Mundra, learned counsel for the petitioners, contends that these documents do not create any right, title or interest in the property and they deal with the situation where another document is to be executed. In addition, it is also pointed out that both the judgments which are cited are squarely applicable to the facts and circumstances of the case.

This court also notices that the learned Single Judges of this Court discussed both the Sections 17 (1)(g) and Section 49 of the Registration

¹ 2015 (2) ALT 507

² 2005 (5) ALD 381

Act. According to these two decisions and the plain language of interpretation of the section, if a document which does not create any right in immovable property of Rs.100/- or more and is an agreement of sale which merely creates a right to obtain another document, it is not required registration. In addition, proviso to Section 49 of the Registration Act also clearly states that an unregistered document effecting immovable property can be received as evidence in a suit for specific performance and also as evidence of collateral transaction, that is not required to be effected by a registered instrument.

In the case on hand, the learned counsel points out that his clients are suing for recovery of money. Therefore, for filing of the suit, “registration” of the document is not really necessary. He points out that both these documents can be admitted in evidence as they fall within the exceptions carved out under Section 17(2)(v) and proviso to Section 49 of the Registration Act.

This court, after examining the proviso and the sections above mentioned, notices that an unregistered agreement of sale can also be received as evidence in a transaction which is not required by law to be effected by a registered instrument. As the suit in this case is only filed for recovery of money, this court is of the opinion that the judgments cited by the learned counsel for the petitioners are squarely applicable to the facts and circumstances of the case. The documents can be received in evidence without payment of any further stamp duty and penalty, as they are both stamped on Rs.100/- stamp paper which is enough for the purpose of seeking refund, as the documents amount to a receipt for money and nothing more.

Therefore, the civil revision petition is allowed. The impugned order is set aside. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 14.12.2018
Dsr

