HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL MISCELLANEOUS APPEAL Nos. 1034 & 1036 OF 2018

COMMON JUDGMENT: *(Per Hon'ble Sri Justice Sanjay Kumar)*

The appellant in these two appeals filed under Order 43 Rule 1 C.P.C. is defendant No.5 in O.S.No.448 of 2017 on the file of the learned XI Additional Chief Judge, City Civil Court, Hyderabad. C.M.A.No.1034 of 2018 was preferred by him aggrieved by the order dated 14.03.2018 passed by the trial Court in I.A.No.789 of 2017 in the aforesaid suit while C.M.A.No.1036 of 2018 was preferred by him aggrieved by the order dated 14.03.2018 passed in I.A.No.790 of 2017 filed therein.

2. O.S.No.448 of 2017 was filed by the 1st respondent in these appeals seeking specific performance of the alleged agreement of sale dated 04.03.2016 and for consequential reliefs. The alleged agreement of sale is styled as 'Agreement-cum-Receipt' dated 04.03.2016. It was allegedly executed by the 1st defendant in the suit by affixing her signature across two revenue stamps of Rupee one each.

3. Perusal of this document reflects that it records that the 1st defendant agreed to sell the property bearing Plot No.94 of Kalyan Nagar Co-operative Housing Society Limited, admeasuring 415 Sq. yards, situated at Kalyan nagar, Yousufguda, Hyderabad to the plaintiff for a total sale consideration amount of Rs.1,04,00,000/-.

4. In terms of Article 6(B) of Schedule I-A of the Indian Stamp Act, 1899 (as applicable in the States of Andhra Pradesh and Telangana), the stamp duty payable upon such an agreement would be Rs.5/- for every one hundred rupees or part thereof on the market value or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities, whichever is higher.

5. In terms of Section 35 of the Act of 1899, a statutory duty is cast upon the Court before which an unstamped or insufficiently stamped document is sought to be produced in evidence. Section 35 of the Act of 1899, to the extent relevant, reads as under:

> "**35. Instruments not duly stamped inadmissible in evidence, etc. –**
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> 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 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 fifteen rupees or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees of a sum equal to ten times such duty or portion;
>
> (b) …. "

6. In the light of the aforestated legal position, the trial Court ought not to have accepted the alleged agreement-cum-receipt dated 04.03.2016, let alone acted upon it by granting interim orders. On that short ground, neither of the orders under appeal is sustainable.

7. The appeals are accordingly allowed setting aside the orders dated 14.03.2018 passed in I.A.Nos.789 and 790 of 2017 in O.S.No.448 of 2017. The said I.As. are remanded for consideration afresh on merits after due steps are taken as indicated above. As it is now stated that further material is available with the parties, the trial Court shall permit filing of additional affidavits along with additional material by both parties in support of their respective claims and thereafter adjudicate the I.As. on their own merits and in accordance with law after collection of sufficient stamp duty. It is made clear that this Court has not gone into the merits of the matter and all issues are left open to be addressed by the trial Court.

8. As an application was filed under Order 41 Rule 27 of C.P.C. in I.A.No.3 of 2018 in C.M.A.No.1034 of 2018 but this Court does not propose to entertain the said application in the light of the order passed supra, the Registry is directed to return the certified copies of the documents filed along with the said I.A. upon substitution thereof with photocopies.

9. Pending interlocutory applications, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M.GANGA RAO, J

Date: 29.11.2018
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HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL MISCELLANEOUS APPEAL Nos. 1034 & 1036 OF 2018

29th day of November, 2018

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