THE HON'BLE SRI JUSTICE N.BALAYOGI

C.R.P. No.735 of 2016

ORDER:

This revision under Article 227 of constitution of India is filed seeking to set aside the orders of the Senior Civil Judge, Nandigama dated 06.01.2016 allowing I.A.No.598 of 2015 in O.S.No.70 of 2011 filed by the plaintiffs to reject the possessory agreements of sale dated 19.06.1996, 02.07.1993 and 26.05.1992 as inadmissible in evidence.

2. The petitioner herein is the defendant No.3; respondents 1 and 2 are the plaintiffs and the other respondents are defendants 1,2 and 4 to 11 respectively. The contention of the 3rd defendant/petitioner herein is that the trial Court ought to have seen that the possessory agreements of sale that are sought to be marked by the petitioner herein are duly stamped and as such the trial Court is bound to receive the same in evidence under Section 35(a) of the Stamp Act notwithstanding the provisions of Registration Act particularly, when the order in I.A.No.111 of 2015 has become final. Section 49 of the Registration Act makes it clear that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 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. It is contended that the petitioner being the defendant No.3 in the suit sought to mark the possessory agreement for a collateral purpose to prove that the suit schedule property cannot be partitioned in a manner

stated in the plaint. The trial Court failed to examine the scope of the provision of Section 49 of the Registration Act and the purpose for marking the same by the petitioner for collateral purpose.

3. The brief facts of the case are that the plaintiffs/respondents 1 and 2 herein filed I.A.No.598 of 2015 in the suit under Section 35 of the Stamp Act and Section 17 of the Registration Act and Under Order 13 Rule 3 and 4 of C.P.C. to reject the possessory agreements of sale, dated 19.06.1996, 02.07.1993 and 26.05.1992 as inadmissible in evidence. The case of the plaintiffs/respondents 1 and 2 herein is that they filed the suit for partition of the plaint schedule properties into 3 equal shares and for allotment of one such share. The suit is coming up for chief-examination of 3rd defendant/petitioner herein and for marking of certain documents, which are inadmissible in evidence. As per the chief-affidavit filed by the 3rd defendant, her case is that she purchased the plaint schedule properties from the defendants 1 and 2, who are respondents 3 and 4 herein and their brother by name, Anumala Vinayaka Rao under a possessory agreement of sale dated 19.06.1996, but, according to plaintiffs, their father Vinayaka Rao did not execute the said alleged agreement of sale dated 19.06.1996 in favour of the 3rd defendant/petitioner herein. The 3rd respondent/revision petitioner is intended to tender the said agreement in evidence, which is inadmissible in evidence as per the provisions contemplated under the Indian Stamp Act and Registration Act. According to the plaintiffs, stamp duty on the said agreement of sale was already impounded by the District Registrar even though it is a compulsory registrable document. The 3rd defendant is not seeking the relief of specific performance under the

said sale agreement, but she is seeking the ownership over the schedule land. It is the case of the plaintiffs that as per Section 17 of the Registration Act, the possessory sale agreement deemed to be sale deed and compulsory registrable document and therefore, the said agreement dated 19.6.1996 cannot be received in evidence and liable to be rejected. Further the possessory sale agreements dated 26.5.1992 and 2.7.1993 are also liable to be impounded stamp duty and penalty thereon and are compulsorily registrable documents and as such they are also liable to be rejected.

4. The 3rd defendant/petitioner herein filed the counter resisting the I.A.No.598 of 2015 contending that the defendants 1 and 2 have purchased some part of land out of Ac.4.51 cents (item No.1) and their father purchased only Ac.0.58 cents out of Ac.4.51 cents and after the death of their father, they along with their brother Vinayaka Rao jointly sold away the said Ac.4.51 cents of land to him (3rd defendant/petitioner herein) under possessory agreement of sale dated 19.6.1996 and since then, she has been in possession and enjoyment of the said land. She filed I.A.No.111 of 2015 requesting the Court to send the document to the District Registrar for impounding the Stamp Duty and penalty, which was allowed and the same was impounded by the District Registrar as per law and as per the orders of the District Registrar, the 3rd defendant/petitioner herein paid the stamp duty and penalty, but the plaintiffs/respondents 1 and 2 herein did not raise any objection with regard to registration of the said document and that they have not preferred any revision against the said orders. Considering the rival contentions, the trial Court allowed I.A.No.598

of 2015 rejecting the possessory agreements of sale dated 19.6.1996, 2.7.1993 and 26.5.1992 as inadmissible in evidence.

5. Now the point that arises for determination in this revision is:-

"Whether the order of the trial Court in I.A.No.598 of 2015 can be sustainable under law?"

6. It is not in dispute that the plaintiffs/respondents 1 and 2 herein filed the suit to pass preliminary and final decree in their favour and against the defendants for partition of plaint schedule properties into 3 equal shares and for allotment of one such share to the plaintiffs by metes and bounds. It is also clear from the averments in I.A.No.598 of 2015 that at the stage when the suit is coming up for the evidence of D.W.1 and when the documents are tendered for marking through D.W.3, an objection was raised by the plaintiffs/respondents 1 and 2 herein for marking them on the ground that they are compulsory registrable instruments and liable for stamp duty and penalty under Section 35 of the Stamps Act.

7. As seen from the record, the 3rd defendant/petitioner herein filed I.A.No.111 of 2015 seeking to send the agreement of sale dated 19.6.1996 to the District Registrar for collection of stamp duty and penalty, which was allowed and as per the orders of District Registrar, necessary stamp duty and penalty were paid. It is also not in dispute that the documents which are now sought to be marked are of the value above Rs.100/-. It is not disputed by the revision petitioner that the said documents are compulsorily registrable under Section 17 of the Registration Act and are liable for stamp duty under Section 35 of the Stamp Act. The 3rd

defendant/revision petitioner wants to mark those documents for collateral purpose under Section 49 of the Registration Act. In support of the said contention, the learned counsel for the petitioner relied on a decision reported in **Yarramreddy Chandra Reddy v. Thumma Kaspa Reddy and another**[1]. In the said decision, the plaintiffs filed the suit for permanent injunction restraining the defendants from interfering with their possession over the plaint schedule property. During the course of evidence of plaintiffs' side and during the course of evidence on the defendant's side, the latter sought to mark documents, dated 2.2.1995 and 6.8.1985, in evidence. Document, dated 2.2.1995 is a purported partition list, which is unstamped and unregistered. Document, dated 6.8.1985 is an unregistered agreement of sale containing the recital of delivery of possession of the property to the defendant. The lower Court held that the document dated 6.8.1985 is hit by Section 17(1-a) of the Registration Act, 1908 and accordingly, it is not admissible in evidence. The lower Court further held that the said document is not admissible in evidence even for collateral purpose without registration and payment of proper stamp duty. On revision being filed, this Court upheld the findings of the lower Court that the document dated 6.8.1985, which is an unregistered agreement of sale containing the recital of delivery of possession of property, is not admissible in evidence unless it is registered and properly stamped. This Court held that however, the lower Court has not assigned proper reasons for not accepting the said document for collateral purpose viz., proving the possession of the defendant. With regard to the other document, regarding payment of stamp

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[1] (2015 (6) ALD 107)

duty, this Court held that till Article 6 of Schedule-(1)(A) of the Stamp Act was amended, the prescribed stamp duty for every agreement of sale was Rs.5/- and by A.P. Act 21 of 1995, the said Article was amended by prescribing different stamp duties depending upon the value of the property. Evidently, the aforesaid document was executed on 6.8.1985 i.e. much prior to the above mentioned amendment and at the time of execution of the said document, the prescribed stamp duty was only Rs.5/- and a stamp duty of Rs.10/- was paid. In that view of the matter, this Court held that the lower Court has overlooked this crucial aspect and erroneously held that the same can be admitted in evidence, subject to payment of stamp duty and penalty. Such finding is based on the assumption that the stamp duty was paid more than required.

8. In the instant case, as per orders in I.A.No.111 of 2015 filed by the revision petitioner, the stamp duty and penalty was collected by the District Registrar. In the case of **Chinnappa Reddy Gari Muthyala Reddy v. Chinnappa Reddy Gari Venkata Reddy**[2], this Court held as under:

"…..the whole process of partition contemplates three phases, i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various sharers but not for the primary purpose i.e. division of joint properties by metes and bounds. Therefore an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded."

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[2] (AIR 1969 AP 242)

9. The Apex Court in the case of **K.B.Saha and Sons Private Limited v. Development Consultant Limited**[3] held that 'a document requires to be registered, if unregistered, is not admissible in evidence under Section 49 of the Registration Act; such unregistered document can however be used as an evidence for collateral purpose as provided in Section 49 proviso of the Registration Act; a collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating etc., any right, title or interest in immovable property of the value of one hundred rupees and upwards; and if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that, to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.'

10. In the case on hand, as already discussed above, by virtue of orders passed in I.A.No.111 of 2015, necessary stamp duty and penalty was collected by the District Registrar. In the case of ***Golla Dharmanna vs. Sakari Poshetty And Others***[4] this Court held that a document required to be registered is not admissible in evidence under Section 49 of the Registration Act. Merely because stamp duty and penalty have been paid under Section 35(a) of the Stamp Act, it would not automatically make the said document admissible in evidence, if as per law, the document is also required to be registered compulsorily.

[3] {(2008) 8 SCC 564}
[4] {2013 (6) ALT 205}

11. In the instant case, the documents viz., unregistered possessory agreements of sale dated 19.6.1996, 2.7.1993 and 26.5.1992 are valued more than Rs.100/- and are compulsorily liable for stamp and registration under Section 17 of the Registration Act. Merely because stamp duty and penalty have been paid under Section 35(a) of the Stamp Act, it would not automatically go back and give original status and it is inadmissible in evidence as rightly objected by the plaintiffs/respondents 1 and 2 herein. Even though the contention of the petitioner is admitted that from the date of document, the possession was delivered, mere payment of penalty for the sale deed will not cure the defect as the sale deed and it required registration and therefore, said unregistered sale deed is inadmissible in evidence. Further, in the grounds of revision itself, the revision petitioner's plea is that the petitioner being defendant No.3 in the suit sought to mark the possessory agreement of sale for collateral purpose to prove that the suit schedule property cannot be partitioned in a manner stated therein. Therefore, the petitioner is claiming right and title under the possessory agreements of sale stating that the property is not feasible for partition. The contention of the revision petitioner is that she wants to mark those unregistered possessory agreements of sale, for which stamp duty and penalty were paid as per orders in I.A.No.111 of 2015 and therefore, it does not attract the proviso to Section 49 of the Registration Act to receive the same as a collateral security. The said plea does not fall under any of the clauses under proviso to Section 49 of the Registration Act.

12. In view of the facts and circumstances discussed above, I find that the order of the trial Court dated 06.01.2016 in allowing

I.A.No.598 of 2015 in O.S.No.70 of 2011 does not suffer from any illegality or infirmity warranting interference by this Court.

13. In the result, the Civil Revision Petition is dismissed while confirming the order dated 06.01.2016 in allowing I.A.No.598 of 2015 in O.S.No.70 of 2011 rejecting the possessory agreements of sale, dated 19.6.1996, 02.07.1993 and 26.05.1992 as inadmissible in evidence for want of registration. No order as to costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

25th April, 2018

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