

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION Nos.3852 AND 3870 OF 2018

COMMON ORDER

These civil revision petitions filed under Article 227 of the Constitution arise out of the separate orders dated 05.03.2018 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in interlocutory applications filed by the plaintiff in O.S.No.286 of 2006. I.A.No.216 of 2018 was filed for reopening of the case to permit the plaintiff to mark a document while I.A.No.217 of 2018 was filed by him under Order 18 Rule 17 CPC to recall him as P.W.1 for marking the said document. By the separate orders, presently under revision, the trial Court dismissed both I.As. Aggrieved thereby, the plaintiff in the suit is in revision.

C.R.P.No.3870 of 2018 arises out of the dismissal of I.A.No.216 of 2018 in O.S.No.286 of 2006 while C.R.P.No.3852 of 2018 pertains to the dismissal of I.A.No.217 of 2018 in O.S.No.286 of 2006.

Heard Sri Srinivas Velagapudi, learned counsel for the petitioner, Sri N.Cheerala Prasad, learned counsel on caveat for the first and second respondents, and Sri E.Ajay Reddy, learned counsel on caveat for the sixth respondent.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.286 of 2006 was instituted seeking specific performance of the agreement of sale dated 08.04.2003 allegedly executed by the first defendant in relation to the suit schedule property, being an extent of land admeasuring 861 square yards in Sy.Nos.7 and 8 of Raidurg Village (Panmaktha), Serilingampally Mandal, Ranga Reddy District, by receiving the balance sale consideration of Rs.54,43,600/-. The plaintiff also sought

cancellation of the registered agreement of sale-cum-General Power of Attorney (GPA), bearing Document No.4623 of 2003, dated 17.04.2003 executed by the first defendant appointing the fifth defendant as her GPA and the consequential registered sale deed dated 26.06.2003 executed by the first defendant, through the fifth defendant, in favour of the sixth and seventh defendants in relation to the suit schedule property, apart from other alternative reliefs.

Admittedly, when the plaintiff examined himself as P.W.1 in the first instance, the alleged agreement of sale dated 08.04.2003, which also contained a separate receipt in acknowledgment of the first defendant having received Rs.1,00,000/- as token sale consideration, was not marked in evidence as it was not properly stamped. The plaintiff thereupon filed I.A.No.668 of 2015 in the suit and the trial Court ordered the same, allowing the document to be sent to the District Registrar, Ranga Reddy District, for validation and payment of stamp duty along with penalty. However, *vide* letter dated 11.02.2016, the District Registrar, Ranga Reddy District, opined that as the alleged agreement did not contain any details as to the description of the property proposed to be sold, it could not be validated and no stamp duty could be collected thereupon, as it was incapable of being quantified. It appears that the plaintiff again attempted to get the agreement of sale and receipt, both dated 08.04.2003, validated by placing reliance on the sale deed of the first defendant. The trial Court again allowed the plea of the plaintiff but once again, the District Registrar, Ranga Reddy District, *vide* letter dated 22.08.2017, returned the document without collecting any stamp duty or penalty on the same ground as was cited by him earlier.

This being the situation, the plaintiff filed the subject I.As. in the year 2018 and in the affidavits filed in support thereof, he stated that as a suit for specific performance would be maintainable even on the basis of an oral agreement of sale and as the defendants did not dispute the signature of the first defendant on the alleged agreement of sale dated 08.04.2003, the trial Court should mark the document as collateral evidence even without validation. As regards the receipt part of the document, he stated that the same merely acknowledged payment of Rs.1,00,000/- as a token amount and as a revenue stamp had also been affixed therein, whereupon the first defendant had signed, it had to be treated as a receipt which was admissible in evidence as it was properly stamped and no deficit stamp duty or penalty was payable on it.

It is on the strength of these averments that the plaintiff asked for reopening of the matter and to recall him as P.W.1 to mark the agreement of sale and the receipt, both dated 08.04.2003.

Separate counters were filed by the first and second defendants, on the one hand, and the fifth to seventh defendants, on the other, contesting the I.As. In their counters, the contesting defendants pointed out that the plaintiff had made extensive efforts twice to get the document dated 08.04.2003 validated but had failed and thereafter, he proceeded with his evidence by concluding his own examination as P.W.1 and then got examined P.Ws.2 and 3 also. They therefore asserted that it was too late in the day for him to again make attempts to get the document marked in evidence by taking recourse to the provisions of Order 18 Rule 17 CPC, which was wholly inapplicable to the case on hand as he was trying to fill up omissions in his own evidence.

On 05.03.2018, the trial Court passed a reasoned order in I.A.No.217 of 2018 wherein it observed that the plaintiff, having failed

twice to get the document validated and stamped, proceeded with his evidence and examined P.Ws.1 to 3, and therefore, he could not be allowed to recall himself as P.W.1 for the purpose of marking the very same document. The trial Court further observed that no valid reason was shown by the plaintiff to justify his prayer in the I.A. and accordingly dismissed it. In the light of the reasoned order passed in I.A.No.217 of 2018, the trial Court dismissed I.A.No.216 of 2018, by way of a separate order on the same day, holding that it had become infructuous.

At this stage, it would be relevant to note the contents of the subject document. The document dated 08.04.2003 is in two parts. It reads as under:

'08/04/2003

I, Mrs.Malati Prasad, W/o Late A K Prasad, owner of plot at Vitthal Rao Nagar, agree to sell the same in settlement of loans taken by my son, Mr.Suraj Narayan, Dr.B V Rama Rao & Mrs. G.Girija from Kalyan Bank, at a rate of Rs.7,600/ sq. yard. The excess amounts after settlement of the above three loans may please be paid to me directly. The plot is offered for sale to Mr.Prakash Reddy and/or his nominees at the above mentioned price.

Sd/- on Revenue Stamp of Re.1/-
(Smt.Malati Prasad)

I acknowledge the receipt of Rs.1 lakhs (Rupees one lakh only) from Ms.Prakash Reddy & his associates as a token amount on having accepted the above offer. The same has been remitted to the bank toward my a/c.

Sd/- on Revenue Stamp of Re.1/-
(Smt.Malati Prasad)'

Though the plaintiff's endeavour before the trial Court by way of the subject I.A.s was to get both parts of the Document dated 08.04.2003 marked in evidence, Sri Srinivas Velagapudi, learned counsel, would limit his prayer before this Court to the marking of the later part of the

document, which he claims is a simple receipt. He would point out that in terms of the Indian Stamp Act, 1899 (*for brevity*, 'the Act of 1899'), the stamp duty payable upon a receipt, as defined under Section 2(23) thereof, is only one rupee and therefore, sufficient stamp duty has been paid in relation to the receipt contained in the document dated 08.04.2003.

Per contra, Sri E.Ajay Reddy, learned counsel, would contend that the conduct of the plaintiff must also be taken into account by this Court. He would point out that after the second attempt on his part to get the document validated failed in August, 2017, the plaintiff kept quiet without taking the matter further and also completed his own evidence. It was only thereafter that he struck upon this new ploy to again attempt to get the document marked, in February, 2018. Learned counsel would assert that Sections 5 and 6 of the Act of 1899 would have application and would bar even the marking of the so-called receipt contained in the later part of the document dated 08.04.2003.

Sections 5 and 6 of the Act of 1899 read as under:

'5. Instruments relating to several distinct matters— Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Instruments coming within several descriptions in Schedule I— Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, or in Schedule I-A, as the case may be shall where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

Provided that nothing in this Act contained shall render chargeable with duty exceeding five rupees a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.'

It is the contention of Sri Srinivas Velagapudi, learned counsel, that though the agreement of sale relied upon by the plaintiff and the receipt in proof of payment of Rs.1,00,000/- by him, are contained in one single document, they are two separate and independent transactions which are severable and therefore, neither Section 5 nor Section 6 of the Act of 1899 would have application. He would assert that as the receipt is independent in itself and bears proof of payment of sufficient stamp duty, it can be independently marked in evidence.

Sri E.Ajay Reddy, learned counsel, would however contest this claim by stating that a mere reading of the so-called agreement in the first part and the so-called receipt in the later part of the document dated 08.04.2003 clearly demonstrates that it is not severable.

This Court finds merit in the submission made by Sri E.Ajay Reddy, learned counsel.

In the first part of the document, which is purportedly an agreement of sale, the first defendant described herself as the owner of a plot at Vitthal Rao Nagar and agreed to sell the same, in settlement of the loans taken by her son and others from Kalyan Bank, at a rate of Rs.7,600/- per square yard. She further stated that the plot was offered for sale to the plaintiff and/or his nominees at the above mentioned price. The receipt in the second part of the document reads to the effect that the first defendant acknowledged receipt of Rs.1,00,000/- from the plaintiff and his associates as a token amount on having accepted the above offer. The use of the words 'above offer' clearly shows that the first and the second parts are inextricably linked together and the receipt does not stand on its own but reads as if it is a continuation of the first part. No doubt, two separate revenue stamps of Re.1/- each were affixed, one under the agreement part and the other under the receipt part, but that

by itself would not have the effect of truncating the single transaction recorded in the document into two separate and independent ones. Reference in this regard may be made to CHALLA RAMA KRISHNA REDDY V/ s. PULUSU PERI REDDY¹, wherein a learned Judge of this Court observed that a document would have to be read as a whole and it would not be permissible for a party to ask the Court to consider one part of the document and ignore the other part.

Section 5 of the Act of 1899 puts it beyond doubt that any instrument comprising or relating to distinct matters has to be charged with the aggregate amount of duty with which separate instruments, each comprising or relating to one of such distinct matters, would be chargeable. Subject to the provisions of Section 5, Section 6 of the Act of 1899, states that if an instrument so framed comes within two or more of the descriptions in Schedule I or in Schedule I-A, as the case may be, and where the duties chargeable thereunder are different, the highest of such duties shall be chargeable.

In this regard, reliance is placed upon case law by Sri Srinivas Velagapudi, learned counsel. In BOMMAGUNI RANGAIAH V/ s. BOMMAGUNI RANGASWAMY², this Court had occasion to deal with an unstamped and unregistered document containing two separate instruments - a Settlement and a Will. As a Will does not require either stamp duty or registration and was admissible in evidence of the bequests made thereunder, this Court held that the Will part of the document would be admissible in evidence but not the Settlement part of it. It may be noted that this was not a case where the two instruments in the single document were inextricably interlinked as in the case on hand.

¹ 2012 (4) ALD 427

² 1971 (1) ALT 24

In **V.ANJANEYULU V/s. VADAPALLI PEDDANNA @ PEDDAIAH**³, the question before a learned Judge of this Court was as to whether an unregistered document evidencing two separate transactions, of which one was compulsorily registrable, would be inadmissible as a whole or could be admitted in evidence, in so far as it related to the transaction which did not require registration. In this regard, the learned Judge observed that it is not uncommon that a single document contains several transactions and Section 5 of the Act of 1899 refers to such documents in the context of stamp duty. The learned Judge further observed that when it comes to the question of admissibility, law did not prohibit the Court from bringing about an artificial separation of these two independent transactions to deal with the same in accordance with law. In that case, the two transactions in the document were an adoption and a settlement. Again, the said two transactions were not inextricably interlinked as in the case on hand.

In **KUKKU VENKATARATNAM V/s. K.SUJILABAI**⁴, a learned Judge of this Court observed that whenever a document, which is required to be stamped under the relevant provisions of law, is either not stamped at all or insufficiently stamped, the Act of 1899 prohibits the same from being received in evidence. However, such defect can be cured by collecting deficit stamp duty and in certain cases, by levying penalty. In that case, the attempt to get the document impounded failed on the ground that the suit property came within the ambit of Section 22-A of the Registration Act, 1908, which deals with documents registration of which is opposed to public policy. In such circumstances, the learned Judge observed that as the effort to get the defect cured was made but could

³ (2005) 5 ALD 206

⁴ (2013) 4 ALD 125

not fructify, the party could not be pushed to a state of helplessness and the readiness on the part of the concerned party to pay the deficit stamp duty and penalty could be treated as a sufficient ground to receive the document in evidence, if the concerned authority expressed inability or refuse to cure the defect. This case, in the opinion of this Court, turned on its own individual facts. There is no prohibition under Section 22-A of the Registration Act, 1908, attracted in the case on hand, and it was the loose manner in which the agreement so-called was drafted that invited the opinion of the District Registrar, Ranga Reddy District, that the document was incapable of being impounded. In any event, as rightly pointed by Sri E.Ajay Reddy, learned counsel, the plaintiff having suffered the refusal by the District Registrar, Ranga Reddy District, to impound the document no less than on two occasions, did not take any further steps to question the same but filed a fresh application once again having completed his own evidence. This case therefore does not come to the aid of the plaintiff.

In the case on hand, this Court is of the opinion that the receipt part of the document dated 08.04.2003 is inseparable from the agreement part and as it is the mandate of Section 5 of the Act of 1899 that in such an event, stamp duty payable on this document would be the aggregate amount of stamp duty payable upon the agreement as well as the stamp duty payable in respect of the receipt, put together. However, as already noted *supra*, the attempt of the plaintiff to get the agreement part in the document dated 08.04.2003 validated by payment of deficit stamp duty came to naught, as the District Registrar, Ranga Reddy District, was of the opinion that without description of the property proposed to be sold, the exercise of impounding the document for payment of deficit stamp duty along with penalty could not be undertaken. That being so, the document, being one single instrument pertaining to two distinct matters, cannot be

permitted to be marked in evidence in relation to even one such matter, without payment of the aggregate stamp duty.

Further, it may be noticed that Order 18 Rule 17 CPC enables the Court to recall any witness who has been examined so as to put such questions to him as the Court thinks fit. In *RAM RATI V/ s. MANGE RAM (DEAD) THROUGH LEGAL REPRESENTATIVES*⁵, in the context of this Rule, the Supreme Court observed as under:

'11. The respondent filed the application under Rule 17 read with Section 151 CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. "No prejudice is caused to either party" is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.'

Similar was the view taken by the Supreme Court in its earlier verdict in *VADI RAJ NAGGAPPA VERNEKAR (DEAD) THROUGH LRS. V/ s. SHARADCHANDRA PRABHAKAR GOGATE*⁶.

The aforesaid principles laid down by the Supreme Court would squarely apply to the case on hand, as the plaintiff did not choose to take any steps when the District Registrar, Ranga Reddy District, rejected his plea for impounding the document dated 08.04.2003 and for payment of deficit stamp duty thereon, on two occasions. He then completed his evidence by not only concluding his own examination but also went on to

⁵ (2016) 11 SCC 296

⁶ (2009) 4 SCC 410

examine P.Ws.2 and 3 and thereafter struck upon the idea of approaching the trial Court to again make an attempt to mark the very same document in evidence. The power vesting in the trial Court under Order 18 Rule 17 CPC could not be invoked in such circumstances.

On the above analysis, this Court finds that invocation of the power available to the trial Court under Order 18 Rule 17 CPC was not justified given the facts and circumstances of the case. That apart, even the so-called receipt portion in the document dated 08.04.2003 cannot be marked in evidence independently as it is inextricably linked with the so-called agreement contained in the first part of the said document and invariably attracted the provisions of Section 5 of the Act of 1899. As no stamp duty was quantified on the agreement portion of the document, the question of paying the aggregate of the stamp duties payable in relation to the two parts of the document did not arise. Therefore, notwithstanding the fact that the receipt portion of the document was sufficiently stamped, the admitted failure on the part of the plaintiff to pay stamp duty on the agreement portion of the document rendered the document, in its entirety, inadmissible in evidence. The order of the trial Court holding to this effect therefore does not warrant interference either on facts or in law.

The civil revision petitions are devoid of merit and are accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

JUSTICE SANJAY KUMAR

16th NOVEMBER, 2018
PGS