THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4119 of 2018

ORDER:

The unsuccessful petitioner/plaintiff filed this civil revision petition, under Article 227 of the Constitution of India, assailing the order (intermediary order), dated 05.06.2018, passed by the learned Senior Civil Judge, Kandukur, in O.S.No.51 of 2016.

2. I have heard the submissions of Sri *G.Krishna Murthy,* learned counsel appearing for the revision petitioner/plaintiff ('plaintiff' for brevity); and of Sri *I.Koti Reddy,* learned counsel appearing for the respondent/defendant ('defendant' for brevity). I have perused the material record.

3. The introductory facts, which are necessary for consideration and for disposal of this civil revision petition, in brief, are as follows:

The plaintiff filed the suit against the defendant for recovery of Rs.12,90,000/- with interest @ 24% per annum simple from the date of the suit till the date of realisation. The suit is filed on the basis of two Promissory Notes, dated 02.02.2013, for Rs.4,00,000/- and Rs.3,50,000/-. The defendant filed a written statement denying the borrowal of the amounts under the alleged suit promissory notes and *inter alia* contended that the plaintiff has no capacity to lend the said amounts and that he had no occasion to borrow on one day, such huge amounts and that the defendant has also no financial capacity and that, therefore, no person would lend such huge amounts to the defendant, who is having a small extent of agricultural land and that the said promissory notes are forged with the assistance of scribe and attestors. The defendant further pleaded in his written statement to the following effect: 'In fact, previously, the defendant, for his necessities, agreed to sell his landed property (Ac. 3.45 cents in Survey No.916 of Machavaram Revenue Village) to one Nalluri Ramesh Babu for an amount of Rs.10,35,000/- by executing an Agreement of Sale, dated 11.09.2011, in his favour and received an amount of Rs.7,50,000/- towards advance sale consideration from the said Nalluri Ramesh Babu. Subsequently, disputes arose between the said Nalluri Ramesh Babu and the defendant, as the said Nalluri Ramesh Babu insisted for the signature of the brother of the defendant for obtaining regular registered sale deed. Therefore, the dispute was brought to the notice of the plaintiff, who is no other than cousin [brother] of the defendant. The said dispute between the defendant and the said Nalluri Ramesh Babu was settled by the plaintiff in the year 2013. As per the said mediation, Nalluri Ramesh Babu agreed to receive back the advance sale consideration amount of Rs.7,50,000/- from the defendant. As the said amount was not readily available with the defendant, as per the mediation held by the plaintiff and as per the demand of said Nalluri Ramesh Babu, the defendant signed on two blank promissory notes for the said advance amount and kept the same as security for due payment, with the plaintiff, as the plaintiff is the mediator and elder between the said Nalluri Ramesh Babu and the defendant. As per the said compromise, the defendant has to pay the said agreed amount to Nalluri Ramesh Babu within six months. On the failure of the defendant so to pay, the said empty signed promissory notes will have to be handed over by the plaintiff to the said Nalluri Ramesh Babu, so as to enable him to utilize the same for recovery of his amount from the defendant. As per the said mediation, on such payment of the amount by the defendant to the said Nalluri Ramesh

Babu, he has to return the original Agreement of Sale to the defendant. Subsequently, the defendant paid within the stipulated time, the said advance amount to Nalluri Ramesh Babu and obtained the original Agreement of Sale, dated 11.09.2011, from Nalluri Ramesh Babu. The said Nalluri Ramesh Babu had also endorsed the said receipt of advance amount on the back of the Agreement of Sale, on 18.08.2013. Subsequently, the defendant approached the plaintiff and requested him to return the said two blank promissory notes. But, the plaintiff did not return the said two blank promissory notes stating that the same were misplaced. He promised that to return the same to the defendant as and when they are traced.' While pleading accordingly, the defendant further stated in his defence that in the circumstances stated in the written statement he did not insist upon the plaintiff for return of the promissory notes and that later the plaintiff demanded the defendant to sell a house plot of the defendant situated nearer to Kandukur Town, with a view to start some business in the said place and that as the defendant refused to accept the said request of the plaintiff, disputes arose between him and the plaintiff and that, therefore, the plaintiff made use of the blank promissory notes and filed the suit.'

3.1 In the backdrop of the pleadings, during the course of trial, the defendant wanted to mark the unregistered Agreement of Sale, dated 11.09.2011, referred to in his written statement to substantiate his defence. The plaintiff opposed for marking of the said Agreement of Sale stating that it is unregistered. The plaintiff also contended that an unregistered Agreement of Sale can be marked in a suit for specific performance, but not in any other suit. However, the defendant contended that in view of his defence in the written statement, the Agreement of Sale, which requires no registration, can be admitted in evidence, more particularly, for a collateral purpose. Having considered the pleadings of the parties and the contentions as to the admissibility of the document, the trial Court, by the impugned order, held that as per proviso of Section 49 of the Indian Registration Act, the unregistered Agreement of Sale, dated 11.09.2011, can be marked in evidence for collateral purpose and accordingly, posted the suit for marking documents including the subject document and for cross-examination of the defendant DW1. Aggrieved thereof, the plaintiff preferred this revision.

4. Learned counsel for the revision petitioner/plaintiff contended that the suit is filed by the plaintiff for recovery of money on the basis of promissory notes and that the trial Court failed to properly appreciate the scope of the suit and erroneously permitted the defendant to mark an unregistered and insufficiently stamped Agreement of Sale on an erroneous view. He further submitted that the Agreement of Sale is a compulsorily registerable document and, therefore, the order of the trial Court is unsustainable.

5. However, learned counsel for the respondent/defendant contended that under the Agreement of Sale, possession of the property was not delivered and the Agreement stood cancelled and that the defendant returned the advance amount to the agreement holder and that an endorsement, dated 11.09.2011, was made on the reverse of the first page of the Agreement of Sale by the agreement holder stating that he received back the advance amount and that the agreement was cancelled and that the said endorsement clearly supports the defence of the defendant and, hence, the trial Court is justified in permitting the Agreement of Sale for being marked for collateral purpose. Admittedly, the suit is for recovery of money based on promissory notes. The defence of the defendant is already extracted supra. To substantiate his defence, he intends to file the Agreement of Sale entered between him and a third party to show that the Agreement of Sale with respect to the intended sale of his house property was cancelled and that he returned the advance money of Rs.7,50,000/- to the agreement holder, on 11.09.2011, and that the agreement holder made an endorsement on the reverse of the first page of the Agreement of Sale and that the said Agreement of Sale with the said endorsement substantiates his defence in the instant suit for recovery of money filed by the plaintiff. Admittedly, under the Agreement of Sale, possession of the property was not given by the vendor to the vendee. More over, the Agreement of Sale is cancelled and it is no longer enforceable. It is being relied upon by the defendant as one more piece of evidence in support of his defence in the written statement, which is also already stated supra. After the amendment of the Indian Stamp Act, an Agreement of Sale followed by/or evidencing delivery of property agreed to be sold shall be chargeable as a sale, but an Agreement of Sale not followed by/or evidencing delivery of property agreed to be sold need not be chargeable as a sale and that it can be engrossed on a stamp paper of the value of Rs.100/-. The Agreement of Sale in question which the defendant intends to mark in support of his defence is engrossed on a stamp paper of a value of Rs.100/- and is, therefore, charged with a duty of Rs.100/-. More over, the document is being relied upon not for specific performance, but only to prove the defence of the defendant, which according to the defendant is collateral to the main purpose of specific performance and his request, is to receive the cancelled Agreement of Sale as evidence of a transaction not affecting any property.

6. On the above analysis, this Court finds that the trial Court is justified in permitting the defendant to mark the document to substantiate his defence by overruling the objections of the plaintiff.

7. Before parting, it is to be noted that the learned counsel for the plaintiff relied upon the following three decisions viz., **(i) Sakalabhaktula Lalitha and another v. Nandana Ranga Rao (Died) and others[1]; (ii) Golla Dharmanna v. Sakari Poshetty and others[2];** and, **(iii) Vysashramam Amanduru Village, Chittoor Dist. Rep. by its Peetadhipathi Sri Paripoornananda Swamy,** in support of the contentions that the documents, which are insufficiently stamped and which are required to be registered, but are unregistered are inadmissible in evidence and such documents cannot be received in evidence for any purpose. There is no dispute with ratios in the cited decisions. However, the decisions in the cited cases are rendered with reference to the facts of those cases and by considering the nature and character of the subject transactions embodied in the documents that are the subject matters of those cited cases. In view of the facts peculiar to the present case & the legal position applicable to the case on hand; and, as the cancelled agreement of sale, which contains the endorsement of refund of advance amount, is already sufficiently charged with the duty of Rs.100/-, it is obvious that the ratios in the cited decisions have no application to the instant case facts and therefore, the same do not help the plaintiff to advance his contentions any further.

[1] 2012 (3) ALT 1
[2] 2013 (6) ALT 205

8. Viewed thus, this Court finds that the impugned order does not brook interference.

9. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 14th September, 2018

KL

338

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4119 of 2018

Date: 14th September, 2018

KL