THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2440 OF 2011

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, against an intermediary order in O.S.No.2128 of 2009 dated 30.11.2010 passed by the III Junior Civil Judge, City Civil Court, Hyderabad, holding that the document in question i.e. agreement between the petitioner and respondent is lease and agreement to let-out the mulgi after its reconstruction and the Court concluded that it falls within the Article 31(a)(1) of Schedule 1 of Stamp Act and directed the office to collect stamp duty and penalty on the document.

Aggrieved by the intermediary order passed by the Trial Court, the present civil revision petition is filed on the ground that the document is only an agreement to let-out the premises after completion of construction and not intended to be a document transferring right to enjoy the property. But the Court committed an error in considering the document without going through the contents of entire document and therefore, the order passed by the Court below is erroneous and prayed to set-aside the same.

The plaintiff/petitioner filed O.S.No.2128 of 2009 claiming the following reliefs:

(i) That the plaintiff is entitled to occupancy right of the suit mulgi No.2 admeasuring 12ft x 10 ft being part and parcel of property bearing Municipal No.11-1-290/C, situated at Aghapura, Hyderabad, be ordered to be

delivered to the plaintiff, as per the Agreement dated 01.03.2008;

(ii) Directing the defendants to hand over the vacant and peaceful possession of the suit schedule Mulgi, part and parcel of property bearing Municipal No.11-1-290/C, situated at Aghapura, Hyderabad, to the plaintiff;

(iii) In case the defendants fails to deliver the vacant and peaceful possession of the suit mulgi to the plaintiff, direct the Court bailiff to remove the defendant no.2 from possession and put the plaintiff in possession of the same on the same monthly rent of Rs.1,200/- per month.

(iv) Cost of the suit be awarded to the plaintiff;

(v) Any other relief/s as this Hon'ble Court may deem fit and proper be awarded in the circumstances of the case and in the interest of justice.

As per the material on record, the basis for claim is the agreement dated 01.03.2008. In pursuance of the terms and conditions of the agreement, it is sought to be marked and tendered for marking before the Court below, which allegedly created right to claim occupancy right of the Mulgi No.2, which is described in the schedule property annexed to the plaint.

Even according to the terms of agreement, sought to be marked, the parties to the document are referred as lessor and lessee and the terms are relevant for deciding the present controversy and the terms are as follows:

1. That the lessor intends to construct building with mulgis by demolishing the existing structure in premises H.No.11-1-290/C, Agapura, Hyderabad.
2. That the lessor is required the premises leased out to the lessee for construction of building with mulgis. The lessor is hereby under take in clear terms that he shall give the same extent of mulgi with measurements of 10.0' feet x 12-0 feet towards road facing, on lease on the same terms and conditions. The amount which is paid towards advance shall be kept with the lessor with an assurance that after constructing the building the mulgi will be given in lease to the above named lessee.
3. That the lessor agreed to complete the ground floor construction within a period of 3 months from the date of handing over of mulgi and further agreed to give the said mulgi in lease to the above named lessee soon after it is completed.
4. That the lessee having agreed for the above terms, has surrendered the possession of above said premises to the lessor subject to the condition that the lessor shall give the existing the leased premises to him after constructing the building with mulgi facing towards main road on the same terms.
5. That the parties have joined their hands on the above mentioned day month and year and executed the agreement in the presence of the witnesses.

Thus, the document is an agreement to lease out the property after its reconstruction, though styled as agreement to lease out the property after completion of construction. Nowhere, it is mentioned that lessor agreed to execute lease deed subsequently. Therefore, the intention of the parties is to let out mulgi No.2 after completion of construction and not intended to execute any other document in future in pursuance of the document which is sought to be marked before the Court. Thus, the intention of the parties is clear and that the lessor created a lease in favour of the lessee with mulgi No.2 and the basis for claim is document which is tendered for marking as exhibit before the Court.

The Trial Court held that it would fall within Article 31(a)(1) of Schedule 1 of Stamp Act and directed the office to collect stamp duty and penalty on the document. Now, the contention before this Court is that the document and intention of the parties have to be looked into to decide whether it would fall within the ambit of lease deed.

Further, learned counsel for the petitioner placed reliance on the judgment of the Kerala High Court in **M.R. Sreedharan v. G. Gopi**[1], wherein, the Kerala High Court while considering the admissibility of a document, held that, an implied obligation cannot convert acknowledgment into bond. Real test to decide whether it is a bond or agreement is to find out after reading the document as a whole, whether an obligation is created by the

[1] AIR 2004 KERALA 167

document itself or whether it is merely an acknowledgment of a pre-existing liability.

Even according to the principle lad down in the above judgment, the entire document has to be looked into.

On bare look at the contents of the document, the defendant agreed to let-out the premises measuring 10 feet x 12 feet on lease on the same terms and conditions, while agreeing to keep the advance amount paid by the lessee to the lessor.

Section 105 of the Transfer of Property Act defines the term 'lease', 'lessor', 'lessee', 'premium' and 'rent'. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The words Lessor, lessee, premium and rent are defined as, the transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Here, in this case, the executant document is referred as lessor and the petitioner as lessee and agreed to lease out the premises on completion of construction on the same rent. Therefore, the document would fall within the definition of Section 105 of Transfer of Property Act.

In the present facts of the case, the property though agreed to be delivered after completion of reconstruction of the premises,

it is an out and out lease deed on the face of contents of the documents. Therefore, the document sought to be marked as only a lease deed, but not intending to execute any document in future, in pursuance of this document.

In **State of Uttarahand v. Harpal Singh Rawat**[2], the Supreme Court held that, a lease agreement by which collection of tools is let, is lease within the meaning of Article and is chargeable with stamp duty under Article 35(b) of Schedule I-B of U.P. Amendment Act.

The principle laid down in the above judgment is applicable to the present facts of the case. Hence, the document tendered for marking, which is the basis for claim in the suit is document of lease, as defined under Section 2(16) of Indian Stamp Act and it reads as follows:

> *"Lease* :-- "Lease" means a lease of immoveable property and includes also:
>
> (a) a patta;
>
> (b) a kabuliyat or other undertaking in writing not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immoveable property;
>
> (c) any instrument by which tolls of any description are let;
>
> (d) any writing on an application for a lease intended to signify that the application is granted"

If, this definition under Section 2(16) of Indian Stamp Act is applied, straightaway, the document would fall within the definition of 'lease' of immovable property. Therefore, the document is liable to be stamped.

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[2] AIR 2011 SC 1506

The Trial court held that the document is liable to be stamped under Article 31(a)(1) of Schedule 1 of Stamp Act, but, for the State of Andhra Pradesh, Schedule I has no application. Schedule I-A alone is applicable to the documents executed within the State of Andhra Pradesh. As the document falls within the ambit of 'lease', as defined under Section 2(16) of Indian Stamp Act, the stamp duty shall be paid as per Article 31 of Schedule I-A of the Indian Stamp Act (A.P Amendment). Hence, the finding recorded by the Trial Court to the extent that the petitioner has to pay stamp duty and penalty under Article 31(a)(1) of Schedule 1 of Stamp Act is set-aside, while holding that, it would fall within Article 31 of Schedule 1-A of Stamp Act, stamp duty and penalty shall be collected on the document to admit, otherwise, the document is inadmissible.

Thus, the document is not admissible, unless stamp duty and penalty is paid. Hence, the civil revision petition is devoid of merits and it is liable to be dismissed.

In the result, the civil revision petition is dismissed, while modifying the order passed by the Trail Court, that the document detained for marking would fall under Article 31(a)(1) of Schedule (I) of Indian Stamp Act.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.03.2018

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