THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.7516 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.329 of 2017 in O.S.No.1121 of 2007 dated 06.09.2017 passed by the I Additional Senior Civil Judge, Vijayawada.

The petitioner who is the sixth defendant before the Trial Court, filed I.A.No.329 of 2017 under Order XIII Rule 3 and Section 151 of C.P.C to reject or demark Ex.A-1 document i.e. agreement of sale dated 30.01.1994, allegedly executed by the first defendant in favour of the plaintiff, agreeing to sell the suit schedule property.

The main ground urged before this Court is that the document is required to be registered under Section 17 Registration Act and no unregistered document can be received in evidence under Section 49 of Registration Act and as such, the document is inadmissible in evidence. But, the Court did not consider the objection raised at the time of marking the document and requested to pass appropriate order demarking the document as exhibit by exercising power under Order XIII Rule 3 C.P.C.

The first respondent/plaintiff filed counter before the Trial Court denying the material allegations, *inter alia*, contending that the document is admissible in evidence in a suit filed for specific performance and that the document was not a possessory agreement of sale or agreement of sale, evidencing delivery of possession, thereby, the petition is not tenable and sought to dismiss the petition.

The Trial Court upon hearing argument of both the counsel, dismissed I.A.No.329 of 2017 holding that the Ex.A-1 document is admissible in evidence and the bar under Sections 17 & 49 of Registration Act has no application, since it is a suit for specific performance that would fall within the proviso to Section 49 of Registration Act.

Incidentally, the Court below adverted to Rule 47(a) of Schedule 1-A of Indian Stamp Act and discussed about the stamp duty paid on the document and concluded that by virtue of Amendment 21/1995 to Indian Stamp Act, held that agreement of sale followed by possession is chargeable as sale, thereby, said amendment is not applicable to Ex.A-1 document, as the amendment came into force with effect from 30.01.1994 and denied the relief claimed under Order XIII Rule 3 C.P.C.

Aggrieved by the order passed by the Court below, the present civil revision petition is filed under Article 227 of the Constitution of India, mainly on the ground that the document is inadmissible as it is compulsorily registerable under Section 17 of the Registration Act and no document is required to be registered under Section 17 and the same cannot be received in evidence, in view of the bar under Section 49 of the Registration Act.

The petitioner also raised certain objections with regard to admissibility of document based on non-payment of deficit stamp duty and penalty, as it is an agreement of sale, evidencing delivery of possession, which would fall under explanation 1 of Article 47-A of Schedule 1-A of Indian Stamp Act and this objection was not considered by the Trial Court in proper perspective and committed an error.

During hearing, learned counsel for the petitioner Sri Meherchand Noori mainly contended that, when the document is inadmissible in evidence, it is the duty of the Court to apply its mind and decide its admissibility by following necessary procedure contemplated under Order XIII Rule 3 C.P.C and mere marking of the document is not suffice to treat the same as part of evidence. When the Trial Court committed such a serious error in admitting the document, which is not sufficiently stamped, this Court can interfere with the order passed by the Trial Court by exercising power under Article 227 of the Constitution of India and requested to allow the civil revision petition, setting aside the order in I.A.No.329 of 2017 in O.S.No.1121 of 2007 dated 06.09.2017 passed by the I Additional Senior Civil Judge, Vijayawada.

Whereas, learned counsel for the respondent Sri Srikanth supported the order passed by the Trial Court in all respects, mainly contending that, the petitioner raised an objection as to the admissibility of the document on the ground of non-registration, but not otherwise. In such circumstances, recording a finding about the admissibility, overruling the objection with reference to Sections 17 & 49 of the Registration Act cannot be faulted and requested to dismiss the civil revision petition.

On a bare look at the Ex.A-1, document filed along with this petition under Order XIII Rule 3 C.P.C, it is suffice to conclude that the only objection raised by the petitioner is with regard to non-registration of an agreement of sale dated 30.01.1994 in a suit for specific performance of agreement of sale which is already marked as Ex.A-1. The main objection is only with regard to non-registration and a vague reference is made about Section 35 of

Indian Stamp Act also. But, admissibility of a unregistered document as it is compulsorily registerable under Section 17 of Registration Act, is no more *res integra*, in view of judgment of this Court in **R. Suresh Babu v. G. Rajalingam**[1] and this question need not be decided again. Hence, dismissal of a petition filed under Order XIII Rule 3 C.P.C, not accepting the petition raised by the learned counsel for the petitioner on the ground of non-registration is not required to be decided again.

However, Section 35 of Stamp Act deals with Instruments not duly stamped are inadmissible in evidence and according to it, 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 five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence

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against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of[66] [the[67] [Government]] or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

The objection as to admissibility of the document is based on the explanation to Article 47-A of Schedule I-A of Indian Stamp Act, then, there is justification in raising such contention before this Court, when no such contention was urged before the Trial Court. For the first time, such ground is raised in the ground of revision, because the Trial Court recorded an erroneous finding that the amendment came into force with effect from 30.1.1994. This contention for the first time cannot be permitted to be raised in the revision. Therefore, on the basis of the objection regarding admissibility of the document in evidence, as it would fall within the explanation to Article 47-A of Schedule I-A cannot be accepted. Apart from that, a separate application is filed by this petitioner questioning the admissibility of the document, raising an objection about admissibility, in view of Article 47-A of Schedule I-A of Indian Stamp Act. Such question can be decided in interlocutory application which is the subject matter of C.R.P.No.263 of 2016. Therefore, the finding of the Trial Court in paragraph 3 of the order that the amendment came into force with effect from 30.01.1994 is hereby set-aside, as it is beyond the scope of the petition filed before the Trial Court in I.A.No.329 of 2007.

In view of my foregoing discussion, I find no ground to interfere with the order in I.A.No.329 of 2017 in O.S.No.1121 of 2007 dated 06.09.2017 passed by the I Additional Senior Civil Judge, Vijayawada and consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:01.11.2018

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