HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHAVA RAO

CIVIL REVISION PETITION NOs.972 AND 1665 OF 2019

COMMON ORDER

M/s.Kura Homes Private Limited, Secunderabad, is the petitioner in these two revisions filed under Article 227 of the Constitution.

2. CRP No.972 of 2019 was filed by it aggrieved by the order dated 12.03.2019 passed in CEA No.14 of 2019 in CEA No.42 of 2018 in CEP No.30 of 2017 while CRP No.1665 of 2019 was filed by it against the order dated 17.12.2018 passed in CEASR No.6876 of 2018 in CEA No.42 of 2018 in CEP No.30 of 2017.

3. CEP No.30 of 2017 was filed by M/s.P.S.R.Constructions, Hyderabad, a partnership firm, the decree holder and the first respondent in these revisions, before the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad (*for brevity*, 'the Commercial Court'). Therein, it sought sale of the petition schedule properties belonging to the judgment debtors to satisfy its dues under the Arbitration Award dated 25.09.2009, as modified by the order dated 21.09.2012 in OP.No.243 of 2010, viz., a sum of Rs.1,59,59,733/-.

4. While so, the petitioner herein, being a third party to the execution proceedings, filed an application in CEA No.42 of 2018 in CEP No.30 of 2017, under Order 21 Rules 58 and 101 CPC, claiming interest in the Schedule D property in the petition schedule properties. Schedule D property is Flat No.505 on the fifth floor of 'Sri Sai Rajendra Pride' situated at Municipal Nos.1-4-887/1 and 1-4-887/2 in Bakaram, Hyderabad. According to the petitioner, it entered into a registered Development Agreement-cum-General Power of Attorney on 30.06.2007 with the

judgment debtors, viz., respondents 2 to 16 in the execution petition, and late Ruqya Bee. The petitioner claimed that as per this development agreement, it developed the property at the premises bearing Municipal Nos.1-4-887/1 and 1-4-887/2 at Bakaram, Hyderabad. The constructed area was to be shared by allotting 55% thereof to the petitioner while the remaining 45% was to be shared by the land owners. A supplementary agreement was stated to have been executed tentatively arriving at their respective shares. Thereafter, the parties entered into an unregistered Deed of Compromise on 31.10.2012, wherein they recorded that 1,084 square feet out of the total plinth area of 1,228 square feet in Flat No.505, the Schedule D property, fell to the share of the developer, *viz.*, the petitioner, while the balance 144 square feet fell to the share of the land owners. However, as the flat was indivisible in terms of the aforestated shares, the petitioner claimed that it paid the cost of the undivided share of the land owners and they acknowledged it by issuing a receipt. It is on this basis that the petitioner claimed absolute right, title, interest and possession over Flat No.505, the Schedule D property.

5. In this backdrop, the petitioner filed CEASR.No.6876 of 2018 in the claim petition under Section 49 of the Registration Act, 1908 (*for brevity*, the Act of 1908'), to mark the Deed of Compromise dated 31.10.2012 and the receipt as exhibits. It also filed CEA No.14 of 2019 in the claim petition under Order 16 Rules 1(2) and 21 CPC to summon Mohd.Akheel Ahmed, one of the land owners and respondent No.4 in the execution petition, who was a signatory to the Deed of Compromise dated 31.10.2012, to be examined as P.W.2 on its behalf to elicit the truth about its rights in the Schedule D property. By separate orders, the Commercial Court dismissed both IAs. Aggrieved thereby, the petitioner is before this Court.

6. Heard Sri K.R.Koteswara Rao, learned counsel for the petitioner, and Sri Venugopal Julakanti, learned counsel for the first respondent.

7. At the outset, we may note that unless the deed of compromise and the receipt are permitted to be marked in evidence, the question of examining anyone in connection therewith would not arise. Therefore, it would be appropriate to first deal with CRP No.1665 of 2019, which arises out of the dismissal of the application filed by the petitioner to mark the said documents. The basis for dismissal of this application was the finding of the Commercial Court that the recitals in the deed of compromise showed that it was in the nature of a relinquishment deed, which made it compulsorily registrable. The Commercial Court therefore held that this unregistered document was not admissible in evidence.

8. Sri K.R.Koteswara Rao, learned counsel, would argue that the document was a compromise deed whereby the shares under the registered Development Agreement dated 30.06.2007 were merely identified and ascertained. He would assert that the document was not compulsorily registrable and contend that it ought to have been marked in evidence after collection of deficit stamp duty, if any.

9. *Per contra*, Sri Venugopal Julakanti, learned counsel, would point out that even going by the terms and conditions of the deed of compromise, Flat No.505, the Schedule D property, did not fall to the share of the petitioner. He would assert that the act of the land owners in parting with their undivided share in this flat amounted to relinquishment, which compulsorily necessitated registration.

10. We find from a plain reading of the Deed of Compromise dated 31.10.2012 that, after allotment of individual flats to the land owners and

the developer, *viz.*, the petitioner, as per the prescribed shares, Flat No.505 was separately dealt with. The relevant portion reads as follows:

> 'Flat No.505 fell to the share of Builder full extent of Area-1228 Sft, wherein an Extent of 144 sft fell to the share of second part (2 to 16). Since Flat is not divisible the first part has paid the cost of balance undivisible share to the second part which is admitted by them by passing a receipt thereof.'

11. Thereafter, the land owners executed a 'Full and Final Settlement Receipt' acknowledging that they had received Rs.8,17,800/- from the petitioner in full and final settlement as per the Deed of Compromise dated 31.10.2012 and were registering Flat Nos.101, 107 and 505 (part area of 144 square feet only) in its favour.

12. The recital, extracted *supra*, puts it beyond doubt that so far as Flat No.505 was concerned, it was not subjected to the same treatment as some of the other flats, in terms of the shares prescribed in the registered Development Agreement dated 30.06.2007. As per the ratio stipulated therein, 144 square feet in this flat fell to the share of the land owners but they parted with the same upon receiving monies and released it in favour of the petitioner. Therefore, the deed of compromise, in so far as it pertained to Flat No.505, necessarily has to be construed as and would operate as a relinquishment deed.

13. Section 17(1)(b) of the Act of 1908 makes compulsorily registrable any non-testamentary instrument which purports or operates to extinguish title or interest in immoveable property of the value of Rs.100/- or more. That being so, we find that the Commercial Court rightly held to that effect and refused to allow the said unregistered document to be marked in evidence. We are also of the opinion that the *proviso* to Section 49 of the Act of 1908 has no role to play presently as the petitioner is not

seeking to mark this document as evidence of any collateral transaction which did not require to be effected by way a registered document. We therefore find that the order under revision in CRP No.1665 of 2019 does not brook interference. In consequence, refusal by the Commercial Court to summon one of the signatories to the deed of compromise also does not fall foul either on facts or in law. In effect, we hold that the order dated 12.03.2019 passed by the Commercial Court holding so also does not call for any interference.

14. Both 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.

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JUSTICE SANJAY KUMAR

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JUSTICE P.KESHAVA RAO

2nd AUGUST, 2019

PGS