

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.NO.931 OF 2012

S.Mukanchand Bothra

.... Appellant

-vs-

1. The Inspector General of Registration
Registration Department
Santhome High Road,
Chennai - 600 004.
2. The District Registrar,
Chennai Central,
Registration Department,
Chennai.
3. The Sub Registrar,
Registration Department,
Royapettah,
Chennai - 600 014.
4. A.Philip

.... Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.18489 of 2011 dated 22.02.2012 on the file of the High Court of Judicature at Madras.

W.P.No.18489 of 2011:-

Praying for the issue of a Writ of Certiorarified mandamus calling for the records pertaining to Letter No.19084/C1/11 of the 1st respondent herein and quash the order dated 04.05.2011 passed therein, directing the respondents herein to register/index the particulars contained in the Award dated 21.02.2011 passed under Arbitration and Conciliation Act 1996 by the Learned Sole Arbitrator.

For Appellant : Mr.Gagan Bothra
Party in Person

For Respondents 1 - 3 : Mr.T.M.Pappiah
Special Government Pleader

J U D G E M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

The appellant herein had filed a Writ Petition in W.P.No.18489 of 2011 seeking issue of a Writ of Certiorari Mandamus calling for the records pertaining to the letter No.19084/C1/11 dated 04.05.2011 of the 1st respondent and quash the same and consequently direct the respondents to register / index the particulars contained in the award dated 21.02.2011 passed under the Arbitration and Conciliation Act, 1996 by the sole arbitrator. Letter No.19084 / C1 / 11 dated 04.05.2011 was the communication under which the 1st respondent had rejected the request of the appellant to index the award in the Registering Office.

2. The facts in brief culminating in the filing of the instant appeal are herein below narrated.

3. The appellant would contend that he had entered into an agreement of sale dated 20.04.2007 with one Appu John. Since the said Appu John had not proceeded to execute the sale deed and as the agreement of sale contained an arbitration clause, the appellant had appointed the named arbitrator in the said agreement of sale to arbitrate the disputes.

4. The contention of the appellant is that under this agreement of sale, Appu John the owner had agreed to sell the property comprised in Door No.23, Nungambakkam High Road, Chennai - 600034, admeasuring a total extent of 8 grounds and 2338 Sq.ft for a total sale consideration of Rs.3,20,00,000/-. Since the said Appu John was due and owing a sum of Rs.80,00,000/- under two promissory notes dated 05.04.2007 (Rs.45,00,000/-) and 16.04.2007 (Rs.35,00,000/-), the same was treated as the advance. Thereafter, a sum of Rs.70,00,000/- had been paid. In all a sum of Rs.1,50,00,000/- had been received by the said Appu John. Nine months time was fixed for the performance of the contract.

5. The contention of the appellant is that the said Appu John had passed away and one Philip who is the heir of Mr.Appu John was made a party to the arbitral proceedings. By award dated 21.02.2011, the arbitrator had directed the respondent, described as A.Philip, Legal Representative of Appu John, to

execute the sale deed and deliver possession of the property to the claimant/appellant herein. In view of this award the appellant had sent a letter to the 3rd respondent dated 09.03.2011 enclosing a copy of the arbitral award dated 21.02.2011 requesting him to register and index the particulars in the award so as to avoid further encumbrances in the property.

6. To this letter, the 1st respondent had sent a communication dated 04.05.2011 bearing letter No.19084 / C1 / 11 stating that the request cannot be complied with. Therefore, challenging the said letter the appellant had filed the impugned Writ Petition. This Court by order dated 22.02.2012 had dismissed the said Writ Petition by holding that the petitioner should get the sale deed executed only through the executing Court and on obtaining such a sale deed or sale certificate through the executing Court, the respondents 1 to 3 would index and register the same. Challenging the said order the appellant is before this Court.

7. The appellant had appeared as a party in person before us. He would submit that the learned Judge had totally overlooked the provisions of Section 17 (e) of the Registration Act, which according to him had to be read along with the provisions of Section 89 (2) of the Act. It is his contention that in view of the above oversight the order passed in W.P.No.18489 of 2011 requires a re-look. He would submit that Section 17 (e) of the Registration Act includes an award as one of the documents that require compulsory registration under Section 17 of the Registration Act. Therefore, the impugned order suffers from an illegality.

8. Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents 1 to 3 would draw our attention to the impugned order, where the learned Judge has observed that the appellant herein had not deemed it fit to make the award debtor a party to the proceedings. Therefore the said Philip was suo moto impleaded by orders of this Court dated 16.08.2011 and notice was issued to the said Philip. On receiving summons the said Philip had appeared through counsel and filed a counter Affidavit. In the counter affidavit he has in very clear terms stated that he is in no way connected to the so called agreement holder Appu John and that he is the son of one T.Antony. He has categorically stated that he has not succeeded to the estate of Appu John.

9. He would also highlight the observation of the learned single Judge that the provisions of Section 89 (2) would show that the Court granting a certificate of sale of the immovable property under the Code of Civil Procedure shall send a copy of such certificate to the Registering Officer within whose

jurisdiction the whole or any part of the immovable property is situate. Immediately on receipt of the same, the Registering Officer should file a copy of the said document in Book No.I maintained by him. An arbitral award, after the introduction of Section 89 to the Code of Civil Procedure by virtue of the amendment in the year 2002, would also be treated as a decree.

10. However, the learned Judge has held that this analogy cannot be applied to the instant award since the award is one for specific performance of an agreement. This award has to be enforced only in the manner known to law. He would therefore submit that no exception can be taken to this well considered order of the learned single Judge.

11. When the arguments had commenced initially, one of us recollected that a proceeding relating to the award in question, was the subject matter of challenge in a pending revision proceedings in C.R.P.No.676 of 2013 initiated under 227 of the Constitution of India. Therefore, the said proceedings were called for by us for reference.

12. A perusal of the said revision would indicate that the said Appu John, under whom the appellant claims, is a defendant in a suit for partition filed by his nephew (brother's son V.K.John) in C.S.No.423 of 1995. It also appears that this Court by order dated 25.04.1996 and 22.07.1996 was pleased to grant an order of injunction restraining the defendants therein from alienating the property for a period of 12 weeks which was subsequently modified to include an injunction even with reference to altering and demolishing the property and orders were passed till the disposal of the suit. Admittedly the suit is still pending and the interim orders also remain in force.

13. It is also seen from the records that the appellant herein has moved execution proceedings in E.P.No.17 of 2012 in respect of the arbitral award and that execution proceedings is also pending. Sadly, these facts have been suppressed in the present appeal.

14. Be that as it may, a perusal of the award in question would show that it is one directing the respondent to execute the sale deed and deliver possession after receiving balance sale consideration. Therefore, the enforcement of this award has to be in terms of Section 36 (1) of the Arbitration and Conciliation Act, 1996. This means that the award has to be executed as per the provisions of Order XXI Rule 32 (1) & (5) of the Code of Civil Procedure. Without obtaining a sale deed the appellant has rushed to direct the respondents to index the

award in the encumbrance certificate. The learned single Judge has rightly held that Section 89 (2) of the Registration Act would be attracted only if there is a certificate of sale or a sale deed in respect of the immovable property issued by the Court under the Code of Civil Procedure and it is only this document that is capable of being filed / entered in Book No.I maintained by the Registering Authority.

15. The argument of the applicant that Section 89 (2) has to be read along with Section 17 (e) of the Registration Act cannot be countenanced since the award in question does not create or declare any right, title or interest of the appellant on the immovable property. As on date the appellant only has an award directing the 4th respondent to execute the sale in favour of the applicant. Further the award itself is subject matter of challenge in C.R.P.No.676 of 2013 and there is also suit pending before this Court for partition against the so called vendor of the appellant in respect of the very same property. The suit is prior in time to the alleged agreement of sale in favour of the appellant and the agreement of sale has also been executed in violation of the orders of injunction granted by this Court in O.A.No.293 of 1995 in C.S.No.423 of 1995 dated 22.07.1996.

16. We do not find any grounds to interfere with the well considered order passed by the learned single Judge. Accordingly, the Writ Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration
Registration Department
Santhome High Road,
Chennai - 600 004.
2. The District Registrar,
Chennai Central,
Registration Department,
Chennai.

3. The Sub Registrar,
Registration Department,
Royapettah,
Chennai - 600 014.

+1cc to the Government Pleader, S.R.No.23673

W.A.No.931 of 2012

AJB (CO)
CS/22/06/2021



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