SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Abdul Majeed and Others Vs. Chandrakanth and Others

Abdul Majeed and Others Vs. Chandrakanth and Others

SooperKanoon Citation : sooperkanoon.com/1192706

Court : Karnataka Kalaburagi

Decided On : Mar-08-2017

Judge : The Honourable Mrs. Justice Rathnakala

Appeal No. : Writ Petition No. 206395 of 2015 (GM-CPC)

Appellant : Abdul Majeed and Others

Respondent : Chandrakanth and Others

Judgement :

1. Petitioners are before this Court aggrieved by the order of the Trial Court whereby their application filed under Section 37 read with 34 of the Karnataka Stamp Act, 1957 ('Act' for brevity) and Section 151 of CPC, for collecting the duty and penalty on an agreement of sale dated 2.4.2002 is rejected on the ground that unregistered agreement of sale is not admissible in evidence, hence, the question of collecting the stamp duty and penalty does not arise at all.

2. Sri. Apparao Sugoor, learned Counsel for the petitioners (plaintiffs) submits that the original plaintiff filed a suit for specific performance of the contract and for perpetual injunction against the defendant/respondent herein and at the same time, the respondent has also filed a suit for declaration and injunction against the plaintiff in O.S. No.77/2011. Both suits are dubbed and are tried together. The plaintiff since was well acquainted with the defendant entered into contract to purchase the suit property for a consideration of Rs.9,76,000/- from him and after

receiving the entire consideration, defendant executed a receipt for a full consideration amount in his own writing and delivered the physical possession of the property on 22.2.2006 with a condition that the plaintiff will get the registered sale deed executed at his convenience. Now on the death of the original plaintiff, his legal heirs are prosecuting the case. After completion of the pleadings, during the course of evidence of the plaintiff, the plaintiff marked certain documents and with regard to the agreement of sale, the Trial Court, though there was no resistance from other side, vide order dated 15.10.2014, held that the agreement of sale dated 2.4.2002 is not admissible in evidence by virtue of Section 17(1-A) of the Registration Act. The petitioners now intend to pay stamp duty and penalty and there is no prohibition under Section 17 or Section 49 of the Registration Act to collect the requisite stamp duty. The case is still at the stage of recording the evidence; at this stage, the court below could not have curbed the right of the plaintiff without there being any application from the defendant Hence, the Order under challenge at Annexure-A is liable to be quashed.

3. In reply, Sri.Ravi B.Patil, learned Counsel for the respondent submits that the suit for specific performance of the contract since based on unregistered deed of agreement, is hit by Section 17(1-A) of the Registration Act, 1908 and the same is not admissible in evidence in the light of the judgments of this Court in 2017(1) KLR 45 in the case of Gurushantappa v. Subhash; W.P.No.203424 2014 in the case of Meenabai v. Vijayakumar and the judgment of the Apex Court in 2016(2) KLR 551 : [2016(3) HLR (S.C.) 3 : 2016(4) ICC (S.C.) 366] in the case of Subraya M.N. v. Vittal M.N. and others. Under Section 34 of the Karnataka Stamp Act 1957, any instrument unless duly stamped will not be received in evidence. But the unregistered deed of agreement of sale since already held to be inadmissible in evidence by the Court by its order dated 11.10.2014 and the said order since not challenged by the plaintiff, rightly court below rejected to subject the said document for impounding under Section 34 of the Karnataka Stamp Act.

4. In the light of the above rival submissions, a short question that needs to be resolved is:

"Whether the unregistered deed of agreement on which the entire suit is founded can be prevented from payment of due stamp duty and penalty?"

5. As pointed out at the Bar, the stage of the case is still at recording the evidence of the plaintiffs and the document, which is now sought to be subjected to payment of stamp duty and penalty, is held inadmissible in evidence by the order of the Court and the said order is not challenged till now.

6. Question is, could a document, which is not otherwise qualified to be received in evidence, be legalized by paying required duty and penalty? As such, Section 34 of the Act mandates that unless an instrument is duly stamped cannot be received in evidence. Under Section 33 of the Act, such documents are liable to be impounded and thus, there would not have been any inhibition under the Karnataka Stamp Act 1957 on the plaintiff to get his document duly stamped and subjected to penalty but for the previous order passed by the very same Court holding the said document inadmissible in evidence by virtue of Section 17(1-A) of the Registration Act. Though in this petition the order questioned is regarding refusal by the Trial Court to admit the document for duty and penalty as required by Section 33 of the Act, virtually the question is about admissibility or otherwise of an unregistered sale agreement in a suit for specific performance of the contract by the transferee.

7. The petitioners have suffered an order at the hands of the Trial Court that 'The agreement of sale deed of 2.4.2002 is not admissible in the evidence, since it is not registered one'. Said order having not been challenged is the ground for Trial Court to reject the prayer of plaintiffs for impounding the document. Out above order of Trial Court is erroneous and illegal for the reasons to be discussed in the foregoing paras. Though said order is directly not in challenge in the petition, it is ameanable to judicial scrutiny of this Court in exercise of power under Article 227 of the Constitution of India.

8. Placing its reliance on the reported judgment in the matter of A.N. Nagarajaiah v. Aravind , the Trial Court misdirected itself to pass the order supra on its own. Virtually it is an order non suiting the plaintiffs at the inception. Fortunately for the plaintiffs the suit is kept pending till date. The statutory provisions pressed into

action against the petitioners is section 17(1(i)) and provisio to section 49 of the Registration Act 1908 which were brought to statute by Act 48 of 2001 w.e.f. 24.9.2001. While Section 17 with its sub-sections 1 to 3 enumerates the documents of which registration is necessary, sub-section 1A placed immediately after sub-section 1 reads thus:

"1A. The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Relates laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A".

9. Sub-section 2(i) to (xii) of Section 17 pertains to documents exempted from registration other than the non testamentary instruments requiring compulsory registration contemplated by sub-section (l)(a) and (b) of Registration Act. For our purpose explanation clause to sub-section(2) is important which reads thus:

"A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money."

10. While section 17 is a disabling section, section 49 gives teeth to section 17 by providing effect of registration and non registration of documents required to be registered. Reading the section 49:

Effect of non-registration of documents required to be registered - No document required by section 17 (or by any provision of the Transfer of Property Act, 1882(4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered):

11. Thus, the above provisions of Registration Act settle to the position that an unregistered deed of contract of sale which is admissible in evidence in a suit for specific performance of contract cannot be received as evidence of any transaction affecting such immovable property and it will not confer any power relating to the property. Section 53-A of Transfer of Property Act, for whose purpose the agreement of sale deed is mandatorily to be registered reads thus:

"53-A. Part performance - Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

It is clear from the above that a transferor who has taken possession of the immovable property or a part of the immovable property gets protection to his possession if only the said agreement of sale is registered, not otherwise. For the purpose of Section 53-A of Transfer of Property Act, registration of agreement of

sale is the legal requirement.

12. Very same question of law fell for consideration before the Apex Court in the case of S. Kaladevi v. V.R. Somasundaram, (2010)5 SCC 401 : [2010(2) ICC (S.C.) 721]. Para. 12 of the judgment has direct bearing on the legal question under consideration before us and the same reads thus:

"12. The main provision in Section 49 provides that any document which is required to be registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908, Act."

13. While referring to the 5 principles enunciated in the judgment of K.B. Saha and Sons Private Limited v. Development Consultant Limited, during further discussion the additional principle was enunciated thus in the above judgment.

"To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance."

14. The judgment of co-ordinate Bench of this court relied by the respondent in Gurushantappa's case (supra) pertains to unregistered deed of agreement of sale,

and there is no deviation from the principle enunciated by the Apex Court in its judgment in S.Kaladevi's case (supra). Another judgment of this Court in Mecnabai's case and the judgment of the Apex Court in Subraya's case have no substance to the circumstance at hand.

15. The Trial Court in its previous order, while holding sale agreement of 2.4.2002 as inadmissible in evidence, had wrongly placed reliance on the judgment of Co-ordinate Bench of this Court in A.N. Nagarajaiah (supra). The controversy in that case was the plaintiff filed a suit for declaration and title on the basis of a registered sale deed. Counter to that, the defendant filed suit for specific performance of contract on the basis of unregistered deed of agreement of sale and claimed injunction. That occasioned this Court to hold the amended provision sub-section (1A) of Section 17 makes it clear that if the benefit of Section 53A of the Act is to be available, then the contract for sale shall be registered".

16. In the present case, the question of possession of the suit property was not before the Trial Court nor it was called upon to grant temporary injunction in favour of either of the parties. A.N. Nagarajaiah (supra) ought not to have been read to the present fact and circumstance of the case.

17. To epitomize the outcome into two sentences,

1. The agreement of sale deed dated 2.4.2002 is admissible in evidence.

2. The order at Annexure-A rejecting plaintiff's application for sending the above document to the Deputy Commissioner (for the purpose of collecting duty and penalty under sections 37 and 34 of the Stamp Act) on the misconception that, said document is inadmissible in evidence, is erroneous, illegal and liable to be quashed.

18. The petition is allowed. Though the previous order of the Court dated 11.10.2014 is not under challenge in this petition, to avoid any further confusion in exercise of jurisdiction conferred by Article 227 of the Constitution of India, said order along with Annexure-A is quashed. The Trial Court shall reconsider the matter afresh in the light of the observation supra.

No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com