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Mohammed Riyaz Vs. John Joseph

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Court : Kerala

Decided On : Jul-01-2015

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Mohammed Riyaz

Respondent : John Joseph

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE1T DAY OF JULY2015/10TH ASHADHA, 1937 OP(C).No. 567 of 2014 (O) ---------- AGAINST THE

ORDER
IN OS NO. 192/2010 of SUB COURT,KATTAPPANA DATED1402-2014 PETITIONER(S)/PLAINTIFF: ---------- MOHAMMED RIYAZ S/O.T.S.M.MOHAMMED RAWTHER, AGED36YEARS, T.S.M.HOUSE OLD HOSPITAL STREET, UTHAMAPALAYAM TOWN, THENI TAMILNADU, PIN-625 533. BY ADVS.SRI.P.B.KRISHNAN SRI.P.M.NEELAKANDAN SRI.P.B.SUBRAMANYAN SRI.SABU GEORGE RESPONDENT(S)/DEFENDANTS: ---------- 1. JOHN JOSEPH, S/O.JOSEPH, AGED58YEARS VALIPLACKAL HOUSE, (JJ BUILDING), 18TH MILE VAZHOOR EAST PO, VAZHOOR VILLAGE KANJIRAPPALLYTALUK, KOTTAYAM, PIN-686 508 2. LALLY JOHN, W/O. JOHN JOSEPH,

AGED47YEARS, VALIPLACKAL HOUSE, 18TH MILE, VAZHOOR EAST PO, VAZHOOR VILLAG, KANJIRAPPALLY TALUK, KOTTAYAM PIN-686 508 REPRESENTED BY HER POWER OF ATTORNEY HOLDER JOHN JOSEPH S/O.JOSEPH, AGED58YEARS, VALIPLACKAL HOUSE18H MILE, VAZHOOR EAST PO, VAZHOOR VILLAGE KANJIRAPPALLYTALUK, KOTTAYAM, PIN-686 508.

3. P.D.JOSEPH, AGED50YEARS, S/O.DEVASIA, PULIMOOTIL HOUSE, ANICKADU VILLAGE ELAMPALLY KARA, KANJIRAPPALLY TALUK, KOTTAYAM, PIN-686 503.

4. JOSE MATHEW, S/O.MATHEW,AGED46YEARS EDAYODIL HOUSE, RAJAKKADU VILLAGE KOCHUMULLAKKANAM KARA, IDUKKI, PIN-685 566. OP(C) NO.567/2014 2 5. ELSY JOSE, W/O.JOSE MATHEW, AGED45YEARS EDAYODIL HOUSE, RAJAKKADU VILLAGE KOCHUMULLAKKANAM KARA, IDUKKI, PIN-685 566.

6. UNION BANK OF INDIA M.G.ROAD BRANCH ERNAKULAM REPRESENTED BY ITS MANAGER, PIN-682 035 R1 TO R3BY ADV.SRI.M.GOPIKRISHNAN NAMBIAR R1 TO R3 BYADV.SRI.P.GOPINATH R1 TO R3 BY ADV. SRI.P.BENNY THOMAS R1 TO R3 BYADV.SRI.K.JOHN MATHAI R6 BY SRI.A.S.P.KURUP,STANDING COUNSEL, UBI THIS OP (CIVIL) HAVING BEEN FINALLYHEARD ON0107-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 567 of 2014 (O) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- EXT.P1 - TRUE COPY OF THE PLAINT IN OS NO.192 OF 2010 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, KATTAPPANA. EXT.P2 - TRUE COPY OF THE WRITTEN STATEMENT WITH COUNTER CLAIM FILED BY DEFENDANTS1AND2IN OS NO.192 OF 2010 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT KATTAPPANA. EXT.P3 - TRUE COPY OF THE WRITTEN STATEMENT WITH COUNTER CLAIM FILED BY DEFENDANTS3TO5IN OS NO.192 OF 2010 ON THE FILE OF THE SUBORDINATEJUDGE'S COURT KATTAPPANA. EXT.P4 - TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PLAINTIFF TO THE COUNTER CLAIM OF DEFENDANTS1AND2IN OS NO.192 OF 2010 ON

THE FILE OF THE SUBORDINATE JUDGE'S COURT KATTAPPANA. EXT.P5 - TRUE COPY OF THE AGREEMENT DATED38-2009 EXT.P6 - TRUE COPY OF THE

ORDER

DATED1402-2014 IN OS NO.192 OF 2010 ON THE FILE OF THE SUBORDINATEJUDGE'S COURT KATTAPPANA. RESPONDENT(S)' EXHIBITS ----------: NIL //TRUE COPY// A.HARIPRASAD, J.

---------- O.P.(C) No.567 of 2014 ----------

Dated this the 1st day of July, 2015

JUDGMENT

Plaintiff in O.S.No.192 of 2010 on the file of the Subordinate Judge's Court, Kattappana is the petitioner. The suit is filed for a decree for specific performance of Ext.P5 agreement executed between the plaintiff and defendants on 03.08.2009 in respect of plaint A to E schedule properties. They together have a total extent of 14.6 acres of cardamom plantation. As per Ext.P5, the property was agreed to be purchased by the plaintiff at the rate of `7,00,000/- per acre and the total sale consideration comes to `1,01,50,000/-. Plaintiff also claimed to have paid excess amount to the defendants and return of the same is also sought for in the plaint. Ext.P1 is the copy of the plaint. Exts.P2 and P3 are the separate written statements filed by the defendants raising some counter claims. Ext.P4 is the written statement filed by the plaintiff in the counter claim. Ext.P6 is the impugned order.

2. Heard the learned Senior Counsel for the petitioner and the learned counsel for the contesting respondents.

3. As per Ext.P6 order, the learned trial Judge found that Ext.P5 agreement to assign was insufficiently stamped and, therefore, OP(C) No.567/2014 2 inadmissible in evidence. Strangely, the trial Judge did not invoke the power under Section 33 of the Kerala Stamp Act, 1959 for impounding the same.

4. Learned Senior Counsel for the petitioner contended that the order passed by the trial court is legally incorrect. According to him, the decisions relied on by the trial Judge were rendered by the Supreme Court in totally different contexts. Learned trial Judge arrived at a conclusion that Ext.P5 agreement to assign is a compulsorily registerable document falling under Section 17 of the Registration Act. The reason stated for arriving at that conclusion is based on the decisions reported in Avinash Kumar Chauhan v. Vijay Krishna Mishra (AIR 2009 SC1489 and Omprakash v. Laxminarayan (2013 (4) KLT SN78(C.No.70) (SC)).

5. Learned Senior Counsel contended that the above said decisions were rendered by the Supreme Court while interpreting the Indian Stamp Act, 1899 as amended by the State of Madhya Pradesh as recovery of stamp duty is a matter in the concurrent list. In Avinash Kumar Chauhan's case (supra), the Supreme Court considered the amendment to the Central Act by the Madhya Pradesh Legislature in paragraph 14. It reads as follows: "Indisputably an instrument was executed. By reason of such an instrument not only the entire OP(C) No.567/2014 3 amount of consideration was paid but possession of the property had also been transferred. Explanation appended to Article 23 of Schedule IA of the Stamp Act as substituted by M.P. Act No. 19 of 1989 reads as under :- "Explanation. - For the purpose of this Article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution after execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly : Provided that the provisions of Section 47A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section : Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale, which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance subject to a minimum of Rs. 10."" The Apex Court held that the said Explanation has been inserted with effect from 15.11.1989 and by reason of the provision, a legal fiction has been created. Although ordinarily an agreement to sell would not be subject to OP(C) No.567/2014 4 payment of stamp duty which is payable on a sale deed, but having

regard to the purpose and object it seeks to achieve the legislature thought it necessary to levy stamp duty on an instrument whereby possession has been transferred. But this principle of law stated by the Supreme Court has no application to the law prevailing in the State of Kerala. The provisions in Section 17 Registration Act and Section 53A of the Transfer of Property Act, 1882 were amended by the Amendment Act of 2001. Subsequently in 2013 the Registration Act was amended by the Registration (Kerala Amendment) Act, 2012 (Act 31 of 2013) and it came into effect from 28.08.2013. Section 17 of the Registration Act was amended by adding inter alia Clause (f) stating that the instrument purporting or operating to effect a contract for the sale of immovable property of the value of `100/- and upwards will be treated as a document compulsorily registrarable. Indisputably this amendment is only prospective and it will not affect Ext.P5 agreement. Therefore, the court below wrongly relied on the decision of the Apex Court and the principles of law considered in the context of Madhya Pradesh amendment to Indian Stamp Act. Reliance on Omprakash's decision made by the court below is also erroneous. That was also a case wherein the provisions of the Indian Stamp Act modified by the Madhya Pradesh legislature was considered. It has no bearing to the facts in this case. Section 54 of the Transfer of Property Act defines the term "sale". It OP(C) No.567/2014 5 clarifies that a contract for sale of immovable property does not, of itself, create any interest in or charge on such property. Learned Senior Counsel relying on Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana ((2012) 1 SCC656 contended that the Supreme Court has considered the scope of an agreement for sale and clearly held that such agreements do not convey title and do not amount to transfer, nor can they be recognized for valid mode of transfer of immovable property.

6. For the above said reasons, I find that the logic applied by the trial court for arriving at the conclusion that Ext.P5 agreement is insufficiently stamped is without any basis as it does not convey title to the property included in Ext.P5. In the result, the petition is allowed. The impugned order, Ext.P6, is set aside. A. HARIPRASAD, JUDGE. cks

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