



Rule 2 CPC and the agreement to sell dated 6.1.2005 has been admitted in evidence for collateral purpose.

Facts of the case are that the respondent-plaintiff (for short, 'the plaintiff') filed a suit for specific performance of the agreement to sell dated 6.1.2005 and permanent injunction against the defendants. The defendants filed the written statement and raised a specific objection that the purported agreement being unregistered and unstamped, was inadmissible in evidence. Issues were framed. Thereafter the defendants filed an application under Sections 33, 36 of the Act of 1998, Section 17 (f) of the Act of 1908 and Order 14 Rule 2 CPC with the prayer that issue no. 6 already framed, be decided as a preliminary issue, which has been dismissed by the trial court vide order dated 16.11.2010. Hence, this writ petition.

Learned counsel for the defendants submits that the purported agreement to sell dated 6.1.2005 is forged and fabricated. The defendants neither executed any agreement in favour of the plaintiff nor possession was given to him nor sale consideration was received by them. He further submits that the purported agreement to sell dated 6.1.2005 being unregistered was inadmissible in evidence in terms of the provisions of Section 17/49 of the Act of 1908 and being insufficiently stamped was required to be impounded and sent to Collector (Stamps) for determination and payment of the stamp duty and penalty thereon in terms of the provisions of the Act of 1998. He further submits that in the purported agreement to sell dated 6.1.2005, sale consideration of Rs. 1,51,000/- was mentioned and in view of clause (bb) of Sr. No. 5 of Schedule appended to the Act of 1998, 3% of the total consideration of the property, as set forth in the

agreement, which comes to Rs. 4530/-, was payable. Since the purported agreement to sell dated 6.1.2005 was alleged to have been executed on a stamp paper of Rs. 100/-, therefore, stamp duty of Rs. 4430/- alongwith penalty thereon was required to be paid by the plaintiff. In support of his contentions, he has placed reliance on the following judgments:

- i) Avinash Kumar Chauhan Versus Vijay Krishna Mishra reported in (2009) 2 Supreme Court Cases 532
- ii) Prembai Versus Khurshid Bano & Ors. reported in 2014 (3) WLC (Raj.) 221
- iii) Om Prakash & Ors. Versus Madan Lal & Ors. (S.B. Civil Writ Petition No. 7815/2016; decided on 26.7.2017)

On the other hand, learned counsel for the plaintiff submits that sale consideration of Rs. 1,51,000/- was received by the defendants and possession of the land in question was given to the plaintiff. He further submits that the suit was filed for specific performance of the contract and the agreement to sell dated 6.1.2005 could have been admitted in evidence for collateral purposes. He further submits that clause (bb) of Sr. No. 5 of the Schedule relates to purpose of sale of an immovable property, when possession is neither given nor agreed to be given. In the instant case, possession of the land in question was given to the plaintiff. Thus, clause (bb) would not attract in this case. Contrarily, clause (c) of Sr. No. 5 of the Schedule appended to the Act of 1998 shall apply, which provides that if not otherwise provided for (where possession is given), one hundred rupees

shall be the proper stamp duty. In this way, the agreement to sell dated 6.1.2005 was rightly executed on Rs. 100/- stamp paper.

Heard. Considered.

The main issue to be decided is whether an unregistered and unduly stamped agreement could have been admitted in evidence in a suit for specific performance?

It is an admitted fact that the agreement in question was unregistered. It has also been alleged by the defendants that the agreement was not duly stamped.

This Court thinks that the controversy has a complete solution in the bare reading of the provisions of Section 49 of the Act of 1908 and Sections 37 and 39 of the Act of 1998.

Proviso to Section 49 of the Act of 1908 provides that an unregistered document affecting immovable property and required by this Act (Registration Act) or the Transfer of Property Act, 1882 (4 of 1882), to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

Since the suit in which the agreement in question is sought to be admitted as an evidence is a suit for specific performance, the agreement despite its being unregistered was admissible in evidence.

Section 39 of the Act of 1998 provides that no instrument chargeable with duty under this Act 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. Provisos to said Section do not exempt any agreement of the kind which is under consideration herein from the general provisions of the said Section. Therefore, an agreement which had been disputed on the ground that it was not properly stamped or was under-stamped, could not have been received in evidence or acted upon, until proper stamp duty had been determined in respect thereof. Where the stamp duty payable on a document is disputed, proper course is to impound such document under sub-section (1) of Section 37 of the Act of 1998 and make a reference to the Collector (Stamps) under sub-section (4) thereof for determination of proper stamp duty and to receive such document in evidence only after it has been certified by the Collector (Stamp) under Section 44 or Section 46, as duly stamped.

In view of the above, the order of the learned court below cannot be sustained to the extent to which it purports to admit the agreement in question in evidence without adjudication of proper stamp duty payable thereon. Therefore, the order of the learned Court below is set-aside to that extent and the learned court below is directed to deal with the agreement in accordance with the provision of Section 37 of the Act of 1998 and refer it to the Collector (Stamps) for determination of proper stamp duty and endorsement as per the provisions of Section 44 or 46 thereof.

Since, the provisions of law applicable to the controversy in hand are very much clear and provide a complete solution, I do not propose to go into the case law submitted by the parties.

The writ petition is disposed of in the above terms. No order as to costs.

Consequent upon the disposal of the writ petition, the stay application and all pending applications, if any, also stand disposed of accordingly.

(PRAKASH GUPTA), J.

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RAJASTHAN HIGH COURT



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