



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No.209 of 2023

Between:

Mogali Satyanarayana Reddy

... PETITIONER

AND

M/s. Srinilayam,
Rep. by its Managing Partner A. Raghavendra
And two others

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 04.07.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

1. Whether Reporters of Local Newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may be
Marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to
See the fair copy of the order? Yes/No

RAVI CHEEMALAPATI,J



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI**

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! Counsel for petitioner : Sri Virupaksha Dattatreya Gouda,
Representing Sri Vivekananda Virupaksha

^Counsel for Respondents : Sri M.Santhosh Reddy

<GIST :

>HEAD NOTE:

? Cases referred:

1. 2004) supreme (SC) 13
2. 1994 0 Supreme (Mad) 869



HON'BLE SRI JUSTICE RAVI CHEEMALAPATI
CIVIL REVISION PETITION No. 209 of 2023

ORDER:

This Civil Revision Petition is filed aggrieved by the docket orders dated 28.12.2022 passed in I.A.No.621 of 2022 in O.S.No.124 of 2022 by the learned Principal Senior Civil Judge, Ananthapuram.

2. The petitioner is the defendant and the respondents are the plaintiffs in O.S.No.124 of 2022 filed for permanent injunction.

3. The respondents filed I.A.No.621 of 2022 under Order-39, Rules 1 and 2 of the Code of Civil Procedure for grant of *ad interim* injunction pending disposal of the injunction suit filed by them. In the said application, when the respondents sought to mark the lease/rent agreement dated 10.07.2019, the petitioner objected the same on the ground that since the said document purports lease of the property for a period of 10 years, the same cannot be marked as an exhibit, being unregistered and insufficiently stamped. Consequently, the trial Court, upon hearing both the parties and upon considering the decisions relied on by them in support of their respective contentions, overruled the objection raised by the petitioner holding that the document sought to be marked is



only an executory agreement but not a lease or agreement for lease and thus the same is admissible in evidence and the same can be marked.

4. Aggrieved thereby, the petitioner filed this Civil Revision Petition invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

5. Heard *Sri Virupaksha Dattathreya Gouda*, learned counsel, for *Sri Vivekananda Virupaksha*, learned counsel for the petitioner, and *Sri Medapati Santosh Reddy*, learned counsel for the respondents.

6. *Sri Virupaksha Dattathreya Gouda*, learned counsel, in elaboration would submit that the subject document since stipulates all the terms and conditions a valid lease deed ought to contain, such as-tenure of lease and its extension after completion of the initial tenure of lease of 10 years, quantum of rent and its periodical enhancement and all the other rights and liabilities of the parties thereto, thus the said document is a Lease Deed. Even if the said document is treated as an agreement to lease, it comes within the sweep of 'lease' as per section 2(7) of the Registration Act and thus the document requires registration and the same is to be sufficiently stamped as per Section 29(c) and Article 21 of the Schedule 1A of the Indian Stamp Act, 1899.



The learned counsel would further submit that, nomenclature of the document is immaterial, but its terms and conditions would determine the nature and character of the document and the Court must gather the intention of the parties from embodiment of the document. The subject document clearly spells out the intention of the parties thereto is to treat the document as a lease deed but not as a proposed agreement to lease. However, the lower court swayed away by the nomenclature of the document and also upon misconception of the facts of the case as well as the pronouncements relied on by the respective parties committed a grave error in coming to the fallible conclusion that the subject document is only an executory agreement but not lease/agreement to lease and thus admissible in evidence. The learned counsel would further submit that, the Court below has shirked away the duty cast upon it to ensure collection of deficit stamp duty as envisaged in section 33 of the Stamp Act. The order impugned is unsustainable, irrational, suffers from patent irregularity and perverse. Hence, sought interference of this Court and prayed to allow the Civil Revision Petition.

7. Per contra, *Sri Medapati Santosh Reddy*, learned counsel for the respondents, would submit that, the duties of the first part to fourth part



(lessors) to the subject document clarifies that they are not even owners of the building property and that construction of the tenanted building was not completed in all aspects as on the date of the execution of the document. This, coupled with the nomenclature of the document, speaks volumes of the intention of the parties that it is only an arrangement of agreed terms arrived at between the parties for execution of the lease agreement in future. Thus, the subject document, since a proposed lease/rent agreement, requires neither registration nor stamp duty penalty. The Court below has scanned the material on record in right perspective and overruled the objection raised by the petitioner. There are no grounds either raised or urged in this Civil Revision Petition warranting interference of this Court with well reasoned and impeccable order of the trial Court. Hence, prayed to dismiss the Civil Revision Petition.

8. Perusal of the material placed on record would indicate that the respondents filed a suit against the petitioner for permanent injunction. During enquiry in the petition filed for grant of *ad interim* injunction vide I.A.No.621 of 2022, the subject document was sought to be marked by the respondents, which was objected to by the petitioner and consequently the impugned orders came to be passed.



9. Before the trial Court, the respondents herein relied on a decision in ***Food Corporation vs. Babulal Agarwal***¹. In the said decision, a suit was filed by the landlord for recovery of damages and other amounts on the ground that the FCI having entered into a contract with him for construction of plinths, resiled from its promise. When the contract entered into between plaintiff and FCI was sought to be marked, it was objected to on the grounds that it was unregistered and insufficiently stamped. A Division Bench of Madhya Pradesh High Court by analyzing clause Nos.8 & 9 of the contract held that by the date of entering into the contract, the construction of the plinths had yet to start and that the construction of the plinths was to be strictly in accordance with the specifications of FCI. Thus possession or right or title having not been passed in *praesenti* on the date of the contract and as there were many prior conditions attached thereto, the said contract is only an executory agreement and not an agreement creating rights in the immovable property.

10. In another decision relied on by the respondents before trial Court in ***S.Raman vs. Nithyakalyani Flush Doors Company Private***

¹. 2004) supreme (SC) 13



Limited, by its Director, S. Ramanujam and another². In the said decision, in a suit filed for specific performance of an agreement for lease, marking of the said agreement of lease was objected to by the adverse party on the ground that since the document creates present rights in the property the said document is a compulsorily registerable document, whereas the plaintiff therein contended that the document is only an agreement and there is no present demise and no lease is created by virtue of the document. The High Court of Madras by relying on T.N.Habib Khan v. Arogya Mary Shanthi Lucien, (1981)2 M.L.J. 298: (1981)94 L.W. 539: A.I.R. 1982 Mad. 156 held that, since the document does not create a present demise, it is only an executory contract. The parties bind themselves as to conditions of a lease when the lease comes into force. It is not disputed that there was an obligation on the part of the lessor to complete the constructions suggested by the proposed lessee, and the rent is fixed inclusive of the buildings to be constructed. The entire subject matter of the lease was not in existence, when the document was executed. The rent is also payable only when possession is handed over. Possession is retained by the lessor, promising to construct the building.

². 1994 0 Supreme (Mad) 869



11. Relying on the above two decisions, and upon perusal of the subject document, having observed that since the lessors themselves were not even owners of the property and they have to get registered conveyance deed in their favour and that the document did not create a present demise, as the subject building was not made ready for occupation as on the date of execution of the document and that no interest or right is created in *prasaenti*, came to conclusion that the subject document is only an executory agreement executed by the parties to bind themselves of the terms arrived at, but not an executed agreement and thus it neither requires registration nor any additional stamp duty and the same can be admitted in evidence.

12. The nomenclature of the subject document is "LEASE/RENT AGREEMENT PROPOSED". The title given to this document suggests that this document is executed narrating the proposed terms and conditions of an agreement to lease to be executed in future. However, in view of the axiomatic principle of law that nomenclature of the document is not decisive and the real intention of the parties in executing the document has to be gathered from the contents adumbrated therein, it is necessary to conduct a close examination of the contents of the document.



13. The document was entered into between the proposed building owners comprising First to Fourth part and the tenant styled as fifth part. It was executed on 10.07.2019. It delineates the duties of the proposed buyers as well as the proposed tenant. The proposed owners (first to fourth part) are burdened with the obligation of getting the building property registered in their names as per the sale agreement entered into by them with their seller and further to make ready the building for occupation in all aspects by 31.08.2019. Coming to the duties imposed on the proposed tenant (fifth part), they enumerate the period of lease being for 10 years, monthly rental being Rs.4,00,000/- with a condition for 15% enhancement for every three years, payment of two months' rent in advance refundable after the period of agreement upon due adjustment of arrears, if any, and mode of payment of rent separately to the proposed owners in proportion to their specified shares. The document further specifies that six (06) months advance notice is required to be given by the tenant to the owners of the building, if he wishes to vacate the premises. Besides, the document states that there can be extension of lease after completion of period of 10 years.



14. Thus the subject document did contain all the necessary trappings of a lease deed and further, as the said document does not contain any stipulation requiring execution of any other document for effectuation of the terms and conditions embodied therein.

15. However, the subject document was executed on 10.07.2019, whereas the lease was to commence from 01.09.2019 and the rent amount was payable from 01.09.2019 onwards. Meaning thereby, the lease would commence not on the date of execution of the document but on a specified date in future. The contents of the subject document no doubt impose obligations on the lessors for completion of construction of the building and to get valid registered conveyance deed for the said property. Thus, by the date of execution of the subject document, the proposed lessors are not even owners of the property. Further, enjoyment of the property by the lessee is from a future date and the rent is payable from the date of occupation of the property.

16. As rightly held by the Court below that possession of the property was not delivered as on the date of execution of the document and moreover the lessors were not even the owners of the property as on that date. In view of the same, the subject document does not create a



present demise and hence, it is only an executory contract as on the date of its execution, for the reason that some conditions stipulated in the document are yet to be accomplished. If the things end there itself, there would have been nothing for this Court to interfere with the decision arrived at by the trial Court.

17. At this juncture, it is apt to peruse the contents of the plaint. The suit was filed by three plaintiffs. The Fifth part/tenant under the subject document is the 2nd plaintiff, whereas second and fourth part/proposed Building owners were arrayed as 1st and 3rd plaintiffs respectively. The first part/ proposed Building owner is the sole defendant to the suit. The Managing partner of the 2nd plaintiff is one of the proposed Building owners as well as tenant under the subject document. Thus, three out of the four Building owners and tenant are the plaintiffs and the other Building owner is the defendant. The contents of the plaint explicitly show that subsequent to execution of the subject document, the property mentioned therein was purchased by the 2nd plaintiff firm under registered sale deed dated 19.02.2020 and the 1st plaintiff firm was inducted into possession of the said property as tenant thereof and the 2nd plaintiff has



been paying rents to the 1st plaintiff. Thus, there was accomplishment of all the obligations imposed by the said document.

18. In view of the events occurred subsequent to the execution of the subject document and since the tenant (2nd plaintiff) claims to have gained over possession of the property by virtue of the subject document, nothing remains to be performed. Therefore, soon after the tenant got himself inducted into possession of the property, *de hors* a stipulation for execution of any registered deed or document, the nature of the document, which was till then an executory agreement, thenceforth transforms into an executed agreement. Thus, the Courts must also see not only the intention of the parties in executing the document but also the result it had yielded by the date when it was sought to be introduced in evidence. It is also to be borne in mind that this is not a suit filed for specific performance of the agreement to lease. This is a suit filed for permanent injunction claiming possession over the property by virtue of the subject document. However, the trial Court failed to take into consideration the events that occurred subsequent to execution of the subject document and though the 2nd plaintiff in the suit claims possession of the property under the subject document, unmindful of the same, held



that the document does not create a present demise. Thus, the subject document is a lease deed executed in relation to an immovable property in respect of a lease for ten (10) years tenure.

19. According to section 107 of the Transfer of Property Act, a lease of immovable property exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

20. Further, Section 17 (d) of the Registration Act, 1908 envisages that documents in relation to leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; shall be registered.

21. In view of Section 107 of the Transfer of Property Act and Section 17(d) of the Registration Act, the subject document being a document executed in relation to a lease of immovable property for more than one year, it is a compulsorily registerable document. Admittedly, the subject document is unregistered.

22. Hence, Section 49 of the Registration Act excludes such a document from being received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.



23. However, there is an exception to this general rule. The proviso to Section 49 of the Registration Act would show that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882) to be registered may be received as evidence of any collateral transaction not required to be effected by registered instrument.

24. This being a suit filed for permanent injunction, the paramount consideration would be as to who was in possession of the property as on the date of filing of the suit. Thus the subject document though unregistered can be received in evidence for the collateral purpose of establishing possession over the subject property. Therefore, non-registration of the document is not at all an impediment from admitting it in evidence.

25. Article 31 of the Schedule 1A of the Stamp Act prescribes that in relation of deed where the lease purported to be for 5 to 10 years, stamp duty at 1% on AAR, if the premises is used for residential purposes and at 2% on AAR, if the premises is used for other purposes, is payable. The copy of the subject document filed along with the Civil Revision Petition shows that the document was written on four (04) hundred rupee



denomination stamp papers. Thus, the document is not sufficiently stamped as required under the Stamp Act.

26. Section 35 of the Stamp Act debars such an instrument from being admitted in evidence for any purpose, unless the deficient stamp duty along with and penalty levied in respect thereof has duly been paid. Thus, the subject document shall be impounded for collection of stamp duty and penalty treating it as a 'lease deed'.

27. It is also relevant here to note that Section 33 of the Act casts a statutory duty on the Courts to impound the document and collect the deficit stamp duty & penalty as per the provisions of the Act, when the document is admittedly not duly stamped to make good the loss caused to exchequer of the State Government.

28. In *Parchuri Sireesha and another vs. Challapalli Jalaja*³, this Court held as follows:

"12. In the light of the settled legal position and the duty that is cast upon the learned Judge of the trial Court, the learned Judge is obliged nay duty bound to impound (seize/take possession of) the document and collect the deficit stamp duty & penalty as per the provisions of the Act, when the document is admittedly not duly stamped, and see that no loss of revenue is caused to the exchequer of the State Government. Therefore, turning a blind eye to the statutory mandate and dismissing of

³. 2019 SCC OnLine AP 268



the petition of the defendants by the trial Court on the ground that no purpose would be served by collection of deficit stamp duty & penalty on the gift deed as it is unregistered, though compulsorily registerable, is erroneous as any document brought before a Court should comply with the requirement of Section 35 of the Indian Stamp Act and the Court is duty bound to impound and collect deficit stamp duty & penalty, if any such document is found to be not duly stamped. In that view of the matter, this Court finds that the trial Court committed a grave error in refusing the request of the defendants to pass orders to collect stamp duty and penalty on the subject gift deed.”

29. The observations referred to above makes it clear that, the Court is duty bound to impound and collect deficit stamp duty & penalty, if any such document is found to be not duly stamped. Despite the clear mandate, the trial Court did not take any step in that direction.

30. In view of the above, the impugned order suffers from patent illegality and the same is irregular. Thus, the same requires interference of this Court.

31. Accordingly, the Civil Revision Petition is allowed. The docket order impugned dated 28.12.2022 passed in I.A.No.621 of 2022 in O.S.No.124 of 2022 by the learned Principal Senior Civil Judge, Ananthapuramu is set aside. The trial Judge shall impound the document and take steps for collection of deficit stamp duty and penalty. The subject document can be marked as an exhibit subject to collection of deficit



stamp duty and penalty as required by law. There shall be no order as to costs.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

JUSTICE RAVI CHEEMALAPATI

4th July, 2023

Note: LR copy to be marked

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HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No.209 of 2023

4th July, 2023

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