

Ameer Minhaj vs Dierdre Elizabeth (Wright) Issar on 4 July, 2018

Equivalent citations: AIRONLINE 2018 SC 525

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Bench: D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 18377 OF 2017

AMEER MINHAJ

:Versus:

DIERDRE ELIZABETH (WRIGHT) ISSAR
AND ORS.

... Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. This appeal emanates from the decision of the High Court dated 2nd December, 2016 allowing the application preferred by respondent Nos.1 & 2 (defendant Nos.3 & 4) whereby the admissibility of the documents produced by the appellant (plaintiff) in the suit filed by him for relief of specific performance of contract with alternative relief of refund of Reason:

advance amount and permanent injunction against the defendants was questioned.

2. The appellant filed a suit in the Court of District Judge of the Nilgiris at Udhagamandalam, being O.S. No.23 of 2010, against Mr. Charles Thomas Orme Alford Wright who died during the pendency of the suit whereafter respondent Nos.1 & 2 herein (defendant Nos.3 & 4) were brought on record as

his heirs and legal representatives. It was asserted in the suit that the original defendant No.1 was the absolute owner of 4.80 acres of land in Survey No.H□48A in R.S. No.332/1 of Coonoor Rural Village. He had entered into an agreement of sale with respondent No.3 (defendant No.2) on 12 th November, 1995 agreeing to sell the said property either to the second defendant or its nominees. It is further asserted by the appellant (plaintiff) that in furtherance of the said agreement to sell the second defendant was put in possession of the property agreed to be sold, in part performance of the agreement of sale and that fact has been recited in the agreement of sale itself. The agreement also authorized the second defendant, at its discretion, to develop the property by constructing dwelling units thereon for which the predecessor in title of respondent Nos.1 & 2 (namely the original 1 st defendant) was to cooperate and give consent, whenever and wherever necessary, for the unhindered development of the property. It was then asserted by the appellant (plaintiff) that to effectuate the stated agreement to sell, a registered Power of Attorney was executed in favour of the second defendant (respondent No.3) by the owner (original first defendant). That Power of Attorney was registered on 2nd May, 1996 in the office of Sub Registrar, Coonoor. It was then stated that since respondent No.3 (defendant No.2) was unable to develop the said property due to unavoidable situation, he requested the appellant (plaintiff) to execute the project of developing the suit property into building sites for dwelling units and to sell it to prospective purchasers. The appellant (plaintiff) accepted the said offer after doing due diligence and resultantly, an agreement of sale came to be executed on 9 th July, 2003 by the 1st defendant □ the original owner of the suit property namely the predecessor in title of respondent Nos.1 & 2 □ in favour of the appellant (plaintiff) through his Power of Attorney holder, namely, respondent No.3 (2nd defendant) for a consideration of Rs.1 crore. Earnest money of Rs.25 lakh was paid at the time of the execution of agreement of sale and the balance was to be paid within a period of 12 months, subject to certain stipulations. The appellant (plaintiff) was put in possession of the suit property upon execution of the agreement of sale dated 9th July, 2003. The 1st defendant did not fulfill his obligation within the stipulated period as a result of which a suit for specific performance, permanent injunction and alternative relief of refund of the advance amount came to be filed on 2nd August, 2010.

3. Admittedly, neither the agreement to sell dated 12 th November, 1995 executed in favour of defendant No.2 (respondent No.3) nor the agreement to sell dated 9 th July, 2003 executed in favour of the appellant (plaintiff) has been registered. The Power of Attorney in favour of respondent No.3 (defendant No.2) dated 2nd May, 1996 has been registered but executed on a stamp paper of Rs.100/□ only.

The defendants filed their written statement to counter the claim set up in the plaint by the appellant. It is not necessary to dilate on the factual matrix as the issue to be answered in the present appeal/proceedings is very limited.

4. Suffice it to observe that the contesting defendants have asserted that the Power of Attorney executed in favour of respondent No.3 (defendant No.2) by the original owner of the suit property (defendant No.1) and predecessor in title of respondent Nos.1 & 2) has been cancelled on 2nd January, 2002. As a result, respondent No.3 (defendant No.2) could not have executed the agreement to sell in favour of the appellant (plaintiff) on 9th July, 2003.

5. Be that as it may, respondent Nos.1 & 2 (defendant Nos.3 & 4) moved a formal application for deciding the admissibility of unregistered agreements to sell and also to impound the Power of Attorney for having been executed upon payment of insufficient stamp duty and to impose suitable penalty before proceeding with the trial. That application was rejected by the Trial Court on 20th June, 2011 against which the original defendant No.1 and defendant No.3 (respondent No.1) filed a revision petition before the High Court of Judicature at Madras, being CRP (MD) No.3422/2011.

They were unsuccessful as the High Court dismissed the revision petition on 30th September, 2011 holding that the question of payment of stamp duty or the admissibility of the document could be decided only when the stated documents were sought to be marked through witnesses and not at that stage. Therefore, after the plaintiff filed an affidavit of evidence and sought to rely on the said three documents, defendant Nos.3 & 4 (respondent Nos.1 & 2) who were brought on record as legal heirs of original defendant No.1, filed a joint application, being I.A. No.26/2013, for deciding the question whether the three documents could be received as evidence. That application was decided by the Trial Court on 1st June, 2016 partly in favour of defendant Nos.3 & 4. The Trial Court essentially answered the question with reference to the mandate of Section 17(1A) of the Registration Act, 1908 (for short, "1908 Act") which was inserted by Act 48 of 2001 with effect from 24th September, 2001. The Trial Court took the view that the agreement to sell dated 12th November, 1995, having been executed prior to the cut-off date, was admissible and could be marked as an Exhibit. As regards the Power of Attorney executed in favour of respondent No.3 (defendant No.2) on 2nd May, 1996, the Trial Court opined that since it was a registered document, there was legal presumption about the correctness of the valuation of the document for the purpose of stamp duty. Further, the document was only a General Power of Attorney deed and did not refer to any consideration amount. Further, it only authorized respondent No.3 (defendant No.2) to act in terms of the Power of Attorney and therefore, it could not be construed as a document of conveyance. Accordingly, the Trial Court rejected the objection of respondent Nos.1 & 2 (defendant Nos.3 & 4) for receiving the said document as evidence. However, with regard to the third document, being an agreement

to sell dated 9th July, 2003, the Trial Court opined that since the same was executed after coming into force of Section 17(1A) of the 1908 Act, it was required to be registered. But then, considering the purport of the said provision, the document could still be exhibited and even if exhibited, the prayer in respect of relief of protection of possession in terms of Section 53A of the Transfer of Property Act, 1882 (for short, "1882 Act") could not be granted. In the ultimate analysis, the Trial Court opined that all the three documents could be marked and received as evidence. The Trial Court, however, made it clear that it was not examining any other contention regarding the genuineness, validity and binding nature of the documents or whether they were hit by the provisions of the Indian Stamp Act, 1899 (for short, "1899 Act") and 1882 Act. The documents were marked and merely exhibited subject to proof and relevancy.

6. Being aggrieved by the said decision, respondent Nos.1 & 2 (defendant Nos.3 & 4) preferred a civil revision petition before the High Court of Judicature at Madras being CRP (P.D.) No.1700/2016. The High Court reversed the decision of the Trial Court. The High Court interpreted the General Power of Attorney dated 2nd May, 1996 and construed it as having been given for consideration in furtherance of the agreement to sell dated 12th November, 1995.

The High Court noted that since the said General Power of Attorney refers to the agreement to sell dated 12th November, 1995, the terms and conditions specified in the latter document would get incorporated into the Power of Attorney, meaning thereby it was given for consideration, and therefore, it would attract stamp duty applicable to a deed of conveyance. It could not have been executed on the stamp paper of Rs.100/-. Hence, the document was inadmissible and could not be received as evidence. As regards the agreement to sell dated 9th July, 2003, the High Court opined that the same was required to be registered compulsorily and the Trial Court was not correct in making an observation that there was no need for registration thereof. The High Court, accordingly, allowed the civil revision petition and was pleased to set aside the order passed by the Trial Court and instead allowed the application filed by respondent Nos.1 & 2 (defendant Nos.3 & 4), by holding that the General Power of Attorney dated 2nd May, 1996 was given for consideration as it was in furtherance of the agreement of sale dated 12th November, 1995. Further, the sale agreement dated 9th July, 2003 was inadmissible as evidence for the purpose of part performance of contract in view of the statutory bar in terms of Section 17(1A) read with Section 49 of the 1908 Act.

7. We have heard Mr. B. Karunakaran, learned counsel appearing for the appellant and Mr. Jayant Bhushan, learned senior counsel appearing for the contesting respondents.

8. The limited issue, as considered by the Trial Court and High Court at the instance of respondent Nos.1 & 2 (defendant Nos.3 & 4), was about receiving the three documents produced by the appellant (plaintiff) as evidence. The Trial Court had examined the issue with reference to the provisions of the Registration Act only and had left open all other questions regarding the validity, genuineness and binding nature of the said documents, including whether the same were hit by the provisions of the 1899 Act and the 1882 Act. The Trial Court opined that those aspects could be decided on the basis of evidence, both oral and documentary, to be adduced by the parties.

9. In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9th July 2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from 24th September, 2001. Whereas, the suit agreement was executed subsequently on 9th July, 2003. Section 17 (1A) of the 1908 Act reads thus:

“17. Documents of which registration is compulsory □ (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely: □ XXX XXX XXX (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 Related 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.

XXX XXX XXX”

10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in

our opinion, is no more res integra. In S. Kaladevi Vs. V.R. Somasundaram and Ors.,¹ this Court has re-stated the legal position that 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 as 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. Section 49 of the 1908 Act reads thus:

“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 (2010) 5 SCC 401

(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:

Provided 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 a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

11. In the reported decision, this Court has adverted to the principles delineated in K.B. Saha and Sons Private Limited Vs. Development Consultant Limited,² and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the (2008) 8 SCC 564 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial

Court after the parties adduce oral and documentary evidence.

12. Reverting to the registered General Power of Attorney, the same has been executed by the original defendant No.1 □ predecessor in title of respondent Nos.1 & 2 (defendant Nos.3 & 4), in favour of respondent No.3 (defendant No.2). Being a registered document, in our opinion, the Trial Court was justified in observing that there is a legal, rebuttable presumption that the same has been duly stamped. As observed by the Trial Court, the question as to whether the document is hit by the provisions of the 1882 Act or the 1899 Act can be decided after the parties adduce oral and documentary evidence. The High Court, in our opinion, therefore, should have stopped at that instead of analysing the said instrument by invoking the principle of incorporation by reference to the agreement to sell dated 12 th November, 1995.

For, the appellant (plaintiff) is not a party to the said document. Indeed, the executor of the document – original defendant No.1 and the defendant No.2 in whose favour the same has been executed, are parties to the present suit. The principal document, namely, the agreement to sell dated 12 th November, 1995, as rightly noticed by the Courts below, was executed prior to coming into force of Section 17(1A) of the 1908 Act. That provision has been made applicable prospectively. Hence, the same was not required to be compulsorily registered at the time of its execution. Even if it was required to be registered, keeping in view the purport of Section 49 read with Section 17(1A) of the 1908 Act, the same could be received as evidence for a limited purpose, without having any effect for the purposes of Section 53A of 1882 Act.

13. As a result, the Trial Court was right in overturning the objection regarding marking and exhibiting these documents as urged by respondent Nos.1 & 2 (defendant Nos.3 & 4), while making it clear that the question regarding the genuineness, validity and binding nature of the documents, including as to whether it is hit by the provisions of 1882 Act or the 1899 Act, as the case may be, would be decided at the appropriate stage.

14. The High Court has adverted to the decision in Avinash Kumar Chauhan Vs. Vijay Krishna Mishra³, which, however, deals with the power of the Court to impound insufficiently stamped instruments in exercise of its power under Section 35 of the 1899 Act. That issue will have to be considered by the Trial Court at the appropriate stage which has already been kept open.

15. Accordingly, this appeal ought to succeed by restoring the order of the Trial Court dated 1st June, 2016 in the above

terms. The Trial Court shall decide all other issues concerning the validity, genuineness, applicability and binding nature of the documents including whether it is hit by the provisions of the 1882 Act or the 1899 Act on its own merits and (2009) 2 SCC 532 uninfluenced by the observations made by it or by the High Court.

16. The appeal is allowed in the above terms. There shall be no order as to costs.

17. As the suit is pending since 2010, we direct the Trial Court to dispose of the same as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this judgment.

.....CJI.

(Dipak Misra)J.
(Dr. D.Y. Chandrachud) New Delhi;

(A.M. Khanwilkar)J.

July 04, 2018.