

M/S Sree Gururaja Enterprises Pvt Ltd vs The State Of Karnataka on 5 June, 2012

Author: Ajit J Gunjal

Bench: Ajit J Gunjal

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED: THIS THE 5th DAY OF JUNE, 2012

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

WRIT PETITION Nos. 31646-31647/2011 (GM-ST/RN)

BETWEEN:

M/s. Sree Gururaja Enterprises Pvt. Ltd.,
Having its Registered Office at No. 173/174,
Subhedhar Chatram Road,
Sheshadripuram,
Bangalore, represented by its Director.

... PETITIONER

(By Sri P.S. Rajagopal, Senior Counsel for
Sri Madhukar M. Deshpande)

AND:

1. The State of Karnataka,
Represented by its Secretary to Government,
Revenue Department (Stamps & Registration),
M.S. Building, Bangalore-560 001.
2. The Deputy Registrar (Stamps)
And District Registrar,
Gandhinagar Registration District,
No.4, Doddabyrappa Street,
Palace Guttahalli,
Bangalore-560 003.

3. M/s. Cimec Enterprises,
Engineers and contractors,
No.34, 3rd Main, 7th Cross,
BEML I Stage, Basaveshwaranagar,
Bangalore-560 079,

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Represented by its Managing Partner,
Sri B.N. Nagaraju.

4. M.N. Narasimhamurthy Nayak,
Director, M/s. Sree Gururaja
Enterprises Pvt. Ltd. No. 173/174,
Subhedhar Chatram Road,
Sheshadripuram,
Bangalore.

5. J.R. Srinivas,
Major, Director,
M/s. Sree Gururaja Enterprises
Pvt. Ltd. Residing at No.3,
5th Cross, Sudarshan Nilaya,
Cubbonpet,
Bangalore-560 006.

... RESPONDENTS

(By Sri K. Krishna, AGA., for R-1 and 2,
Sri S. Subramanya, Adv., for M/s. Upasana
Associates for R-3;
Sri S. Vivekananda, Adv., for Sri V.G.B. Associates
for R-4;
Sri C.M. Poonacha, Adv., for Lex Plexus for C/R-5)

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These Writ Petitions are filed under Articles 226
and 227 of the Constitution of India praying to issue a
writ of certiorari calling for the records pertaining to the
order bearing NO. DR/GNR/Adj/14/09-10 dated
16.10.2009 (Annexure-B) passed by the 2nd respondent
and quash the same and consequently set aside the
order dated 27.7.2011 passed in O.S.NO. 3290/2009 by
the XXX Addl. City Civil Court, Bangalore (Annexure-C)
and grant all consequential benefits including setting
aside the proceedings in the suit in O.S.No. 3290/2009
subsequent to the order dated 27.7.2011.

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These Writ Petitions coming on for Dictating

Orders this day, the Court made the following:

ORDER

The petitioner is questioning the order passed by the 2nd respondent pursuant to which he has determined the stamp duty as well as the penalty payable. The petitioner is also questioning the order passed by the learned Trial Judge on an objection raised by him regarding marking of a document which is stated to be Memorandum of Understanding between the 2nd and 3rd defendants. The learned Trial Judge was of the view that the document in question could be marked for collateral purposes.

2. During the course of the judgment, the parties would be referred to as per their ranking in the trial Court.

3. The facts leading to the filing of these writ petitions can be summarised as follows:

The 3rd defendant entered into a Memorandum of Understanding on 24.5.2008 with defendant No.2. A copy of the Memorandum of Understanding is at Annexure-A. According to the 1st defendant, who is the petitioner, the said Memorandum of Understanding is an incompetent document which was required to be registered but not registered and the requisite stamp duty was also not paid. The plaintiff/respondent No.3 filed a suit in O.S.No. 3290/2009 seeking injunction as well as other reliefs. The reliefs sought for by the plaintiff in the said suit are as follows:

i) Directing the defendants to pay a sum of Rs.1,40,00,000/- (Rupees one crore and forty lakhs only) along with the interest @ 18% per annum from the date of institution of the suit till its payment.

ii) Declare that the order of the Company Law Board, Chennai in Company Application No. 13/2009 at Document-3 is not binding on the plaintiff.

iii) Direct the defendants issue appropriate documents after paying applicable service tax and educational cess to the concerned authorities.

iv) Permanently injunct the defendants and their henchmen from interfering with the possession of the Schedule Property by the plaintiff, except in accordance with law."

4. The perusal of the pleadings would indicate that the defendant No.1 is a registered partnership firm and it is engaged in the business of hotel. The defendants have availed the services of the plaintiff's in renovation of the North Block of the building constructed on the schedule properties consisting of 60 rooms of Hotel Samrat Residency situated at Subedhar Chatram Road, Bangalore. The plaintiff had submitted a quotation on 1.7.2008 for a sum of ` 1,72,00,000/- for renovating the

schedule property. After negotiation, the plaintiff agreed to do the work for a sum of ` 1,60,00,000/- and accordingly, the plaintiff was put in possession for renovation of such work. The case of the plaintiff is that a sum of ` 20,00,000/- was paid and the defendants assured the payment of the balance amount before resuming the possession of the schedule property from the plaintiff. Nevertheless, the defendants did not come forward to pay the amount. It is also not in dispute that a Memorandum of Understanding was entered into between the 2nd defendant as well as the 3rd defendant with respect to the schedule property. Pursuant to the Memorandum of Understanding, certain shares of defendant No.2 were transferred to defendant No.3, which were valued accordingly as per the Memorandum of Understanding. Incidentally, there is also a reference in the Memorandum of Understanding as to the share of the property with reference to the transfer of shares. The said document was sought to be marked during the course of the trial by the 3rd defendant. The said marking of the document was seriously objected by the 1st defendant indicating that the said document requires registration under Section 17 of the Registration Act and since it assumes the character of conveyance, the requisite stamp duty was not paid. Hence, the said document is inadmissible evidence.

5. The learned Trial Judge heard on this objection and has opined that the document in question is nothing but a transfer of share and does not confer title in respect of the immovable property more so having regard to the order passed by the 2nd respondent in a proceeding before the Deputy Registrar initiated by the 3rd defendant. It was also contended that the learned Trial Judge has recorded a finding that the marking of the document is only for collateral purpose in as much as only to ascertain whether pursuant to the understanding between the plaintiff and the 1st defendant, the plaintiff was put in possession for carrying out the renovation as well as the construction work.

6. Mr. P.S. Rajagopal, learned Senior Counsel appearing for the 1st defendant, vehemently contends that a perusal and reading of the document would clearly indicate that it is required to be classified as conveyance in as much as the very recitals would indicate that the title of the immovable property is transferred to the 3rd respondent. He further submits that unless the document in question is registered and requisite stamp duty is not paid, it is not admissible in evidence more so having regard to the fact it would convey title in favour of the 3rd defendant in respect of the suit schedule property. He also referred to the definitions of 'conveyance' under Section 2(1)(d) and Section 34 of the Karnataka Stamp Act as well as Sections 17 and 49 of the Registration Act.

7. Mr. Subramanya, learned Counsel appearing for the plaintiff, supports the impugned order. He submits that the very relief sought for by the plaintiff is for recovery of money for the work executed by him. He submits that if there is any dispute inter se between the 1st defendant and the 3rd defendant, that issue cannot be resolved in a suit filed by the plaintiff. He further submits that the document was sought to be marked during the course of the trial only to establish the fact that he was put in possession for carrying out certain works.

8. Mr. Poonacha, learned Counsel appearing for defendant No.3 supports the impugned order and submits that the dispute with reference to the Memorandum of Understanding and transfer of shares and the amount expended by the 3rd defendant is the subject matter of a suit in O.S.No. 6739/2009, which is pending on the file of the City Civil Judge, Bangalore. He submits that the

document was pressed into service only to establish and was sought to be marked during the course of the trial only to ascertain whether the plaintiff was put in possession for carrying out the construction/renovation work. Another contention raised by him is that the 1st defendant has no locus standi to question the order passed by the learned trial Judge in as much as he is neither beneficiary nor otherwise of the order passed by the learned trial Judge in as much as the parties to the document are defendant Nos. 2 and 3.

9. The learned Counsel for defendant No.2 submits that indeed the subject matter of the Memorandum of Understanding is pending adjudication in a suit filed by the 3rd defendant. Indeed he was not candid as to the execution of the agreement or otherwise in as much as he submitted that the defence taken by him is required to be proved in the suit filed by the 3rd defendant.

10. Mr. K. Krishna, learned Additional Government Advocate appearing for the State, submits that pursuant to the Memorandum of Understanding, the title has not passed on to defendant No.3 in respect of the immovable property in as much as there is a recital in the Memorandum of Understanding itself that, if the title of the immovable property is to be transferred, then a separate conveyance deed will be executed by the 2nd defendant. Thus he justifies the order passed by the 2nd respondent levying the stamp duty as well as the penalty.

11. I have given my anxious considerations to the submission made by the learned Counsel for the parties.

12. Before considering the rival contentions, the definition of 'conveyance' is required to be looked into. 'Conveyance' is defined under Section 2(1) (d) of the Karnataka Stamp Act, 1957 which reads as under:

"Section 2(1) (d) : "Conveyance"
includes:-
(i) a conveyance on sale;
(ii) every instrument;

(iii) every decree or final order of any Civil Court;

(iv) every order made by the High Court under Section 394 of the Companies Act, 1956 in respect of amalgamation of companies, by which property, whether moveable or immovable or any estate is transferred to, or vested in, any other person, and which is not otherwise specifically provided for by the schedule."

13. A perusal of the definition of 'conveyance' indicates that there must be a sale deed as would necessarily purporting of transferring a title in a immovable property in favour of the other party. Every instrument therein would relate to conveyance on a sale or every decree or final order of any Civil Court or every order made by the High Court under Section 394 of the Companies Act, 1956 in respect of amalgamation of companies.

14. In the case on hand, the document in question is styled as Memorandum of Understanding. It is to be noticed that initially the venture was started by the father of the 3rd defendant as well as one Mr. Maruthi L. Shanbhog as a partnership firm. It appears on a request made by the partners as well as other interested persons to the Company Law Board, Chennai, it was converted into a Private Limited Company assigning shares to the shareholders. It appears certain transaction has taken place between the 2nd and 3rd defendant with respect to transferring of certain shares. Indeed there is a reference in the Memorandum of Understanding in respect of the immovable property. But however, what is significant is what is being transferred is the interest in the immovable property equivalent to shares which are transferred in favour of the 3rd defendant. Indeed that cannot be accepted as conveyance conferring title. Indeed it is also to be noticed that the Memorandum of Understanding itself envisages that a proper document conveying the title will be executed. It is useful to refer to the said Memorandum of Understanding with reference to the said recitals:

"The FIRST PARTY has to get the said portion transferred in their name through proper Sale deed."

Thus having regard to the said recital in the Memorandum of Understanding, I am of the view, that the title in respect to the immovable property is not transferred in favour of the 3rd defendant. Indeed title would be transferred after the sale deed is executed by the 2nd defendant in favour of the 3rd defendant.

15. Indeed the relevancy of the document with reference to the averments as well as the relief sought for in the suit can be ascertained from the issues, which are framed.

16. The first of the issue is with reference to the entrustment of the renovation work of the schedule property to the plaintiff for a sum of ` 1,60,00,000/- and further whether the plaintiff is entitled to a decree for a sum of ` 1,40,00,000/- as sought. I am of the view, that the document in question is required to be looked into and marked during the course of the trial only for the purpose of ascertaining whether the plaintiff was put in possession of the schedule property for renovation of work, which can be construed as marking of a document for collateral purpose. The Apex Court in the case of K.B. SAHA & SONS (P) LTD. -vs- DEVELOPMENT CONSULTANT LTD. [(2008) 8 SCC 564] with reference to as to what is collateral purpose has observed thus:

"34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that it, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

17. The 3rd defendant is getting the document marked only to ascertain whether the plaintiff was put in possession. It is also to be noticed that the learned Trial Judge as to the question whether there is collusion between the plaintiff and the defendants has kept it open to be decided during the course of the trial. Undoubtedly, if the learned Trial Judge had decided on the recitals that the said document is collusive in nature, then the question would be whether the plaintiff would be entitled for a decree as sought for. But however, it cannot be said that the said order passed by the learned Trial Judge warrants interference.

18. This Court in the case of K. AMARNATH -vs- SMT. PUTTAMMA [ILR 1999 KAR. 4634] has dealt extensively with reference to the marking of a document during the course of trial, with reference to the provisions of the Code of Civil Procedure as well as the Stamp Act. In para-11, this Court has summed up after considering the provisions of Section 33, 34, 35, 37 and 41 of the Karnataka Stamp Act, 1957 as thus:

"11. A combined reading of Sections 33, 34, 35, 37 and 41 of the Karnataka Stamp Act requires the following procedure to be adopted by a Court while considering the question of admissibility of a document with reference to the Stamp Act; (a) When a document comes up before the Court, it has to examine and determine whether it is property stamped. When the other side objects to it, the Court should consider such objection and hear both sides; (b) After hearing, if the Court comes to the conclusion that the document has been duly stamped, it shall proceed to admit the document into evidence; (c) on the other hand, if the Court comes to the conclusion that the document is not stamped or insufficiently stamped, it shall pass an order holding that the document is not duly stamped and determine the stamp duty/deficit stamp duty and penalty to be paid and fix a date to enable the party who produces the document to pay the Stamp duty/deficit Stamp duty plus penalty; (d) If the party pays the duty and penalty the Court shall certify that proper amount of duty and penalty has been levied and record the name and address of the person paying the said duty and penalty and then admit the document in evidence as provided under Section 41(2); and the Court shall send an authenticated copy of the instrument to the District Registrar together with a Certificate and the amount collected as duty and penalty, as provided under Section 37(1); (e) If the party does not pay the duty and penalty, the Court will have to pass an order impounding the document and send the instrument in original, to the District Registrar for being dealt in accordance with law as per Section 37(2) of the Karnataka Stamp Act."

19. This takes us to the order passed by the 2nd respondent with reference to the document in question. Apparently, the 2nd respondent was of the view that having regard to the recitals stated what is sought to be transferred pursuant to the said document is only the shares held by the 2nd defendant and not the title in immovable itself. In fact, he also has recorded a finding that the said Memorandum of Understanding is to be construed and treated as a Share Transfer Agreement nothing more and nothing less.

20. Indeed having regard to the finding recorded by the 2nd respondent, I am of the view, that the said order cannot be found fault with. Having said so, I am of the view, that the order passed by the learned trial Judge as well as the 2nd respondent cannot be found fault with.

21. Even otherwise it is to be noticed that Section 17 Sub-section (2) of the Registration Act would refer to the inclusion of Clauses (b) and (c) of Sub-section (1) with reference to any instrument relating to shares in the Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property. That is another reason as to why, in my view, that the document is required to be looked into by the learned Trial Judge only for the collateral purpose. Having said so, there is no merit in the writ petitions. Petitions stand dismissed.

SD/-

Judge Nsu/-