

(2013) 04 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 20683 of 2012 and 2192 of 2013

Gaddam Laxmaiah and Others

APPELLANT

Vs

The Commissioner and Inspector General, Registration and
Stamps Department and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Contract Act, 1872 — Section 202, 72
Registration Act, 1908 — Section 17, 23, 24, 25, 26
Stamp Act, 1899 — Section 2(10)
Transfer of Property Act, 1882 — Section 5, 54

Citation : (2013) 6 ALD 49 : (2013) 5 ALT 477 : (2013) ALT(Rev) 405

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Srinivas Polavarapu, for the Appellant; Avinash Desai for respondent
Nos. 3 to 5, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—These Writ Petitions raise questions as to whether unilateral cancellation of Development Agreement-cum-General Power of Attorney (GPA) and registration thereof under the Registration Act, 1908 (for short "the Registration Act") are permissible in law. The brief facts leading to the filing of this Writ Petition are stated hereunder:

The petitioners are owners of 11088 sq. yards of land in Sy. Nos. 1 to 4 of Seetharampur village, Thokatta, Secunderabad Cantonment. They entered into two Development Agreements-cum-GPAs dated 21-2-2005 and 23-11-2005 with respondent No. 3. Respondent Nos. 4 and 5 are the partners of respondent No. 3-firm. Under the said two documents, the petitioners entrusted the development of the extents admeasuring 2741 and 2128 sq. yards, respectively, and respondent No. 3 has undertaken to construct independent deluxe duplex type of houses by investing its monies and in consideration thereof the petitioners agreed to share the constructed area in the ratio of 46%: 54% between them respectively. The petitioners have also nominated respondent Nos. 4 and 5 as their GPAs to

facilitate respondent No. 3 to deal with its share of 54% of the constructed houses. The petitioners alleged that subsequent to the execution of the two documents referred to above, respondent Nos. 4 and 5 have acted against the interests of the petitioners, forcing them to execute documents for cancelling the two registered documents. By separate, but identical orders passed on 23-6-2012, respondent No. 2 has refused to register the said two documents. Questioning the same, the petitioners filed the present Writ Petitions. As the reasons for refusal to register the documents in both the cases are identical, it is sufficient if the refusal order in one case is reproduced, which is as under:

This document styled as G.P.A. previously registered as Development Agreement-cum-GPA was kept pending for scrutiny after admission of execution by the executants.

As per C and IG (R and S), A.P., Hyderabad, vide Circular Memo No. G1/Can/4028/2010, dated 31-3-2010 G.P.A. refusal regn. Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in absence of an express contract. Hence section 202 of Indian Contract Act 1972 prevents termination of G.P.A. which involves the interest of the Agent. No Registering officer shall register a deed of Revocation/Cancellation of General Power of Attorney coupled with previously registered documents of Agreements of sale to safeguard the interest of the agent/vendee. In case if any such deeds of Revocation/Cancellation of General Power of Attorney combined with Agreement of sale/Development agreement is presented for Registration the registering officers are directed to refuse the document for Registration.

2. Even though appeals lie to the District Registrar against the refusal orders u/s 72 of the Act, as the refusal is based on the Circular issued by the superior authority, namely, Commissioner of Inspector General (Registration and Stamps), A.P., Hyderabad, the petitioners filed these Writ Petitions questioning the refusal orders as well as the Circular Memo dated 31-3-2012 which formed the basis for refusal of registration.

3. At the hearing, Sri Srinivas Polavarapu, learned counsel for the petitioners, submitted that the impugned orders of refusal are unsustainable in law as the reasons on which the documents were refused to be registered are not envisaged by the provisions of the Registration Act. The learned counsel further submitted that the reasoning of respondent No. 2 that the Development Agreements have created interest and therefore the same cannot be cancelled unilaterally, suffers from a patent error as the documents in question comprise two parts, namely, G.P.A. part and the Development Agreement part, which by themselves do not create any interest in respondent Nos. 3 to 5, that what is sought to be cancelled is the G.P.A. part of the documents and that therefore Section 202 of the Indian Contract Act, 1872 (for short "the Contract Act") has no application. The learned Counsel further argued that the Registration Act does not bar registration of deeds unilaterally cancelling the earlier registered deeds except in cases of deeds

of conveyance on sale and that the two documents with regard to which the petitioners executed the cancellation deeds, do not answer the description of "conveyance on sale".

4. The learned counsel representing Sri S. Niranjan Reddy, learned counsel for respondent Nos. 3 to 5, while opposing the above contentions, submitted that the issue raised in these Writ Petitions is no longer res integra in view of the Judgment of the learned single Judge of this Court in M/s. Vasudeva Realtors Pvt. Ltd. Vs. The Govt. of A.P. and Others . The learned counsel submitted that in the said Judgment, the learned Judge considered the documents which are identical to that in the present Writ Petitions and held that such documents shall be treated as conveyances on sale under Rule 26(i)(k)(i) of the A.P. Rules under the Registration Act.

5. I have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

6. The transfer of property from one person to another is governed by different statutory enactments. While the Indian Contract Act, 1872, the Specific Relief Act, 1963 and the Transfer of Property Act, 1882 (for short "the Transfer of Property Act") are substantive laws governing transfer of property, the Indian Evidence Act, 1872, the Registration Act, 1908 and the Indian Stamp Act, 1899 (for short "the Stamp Act"), are the procedural or adjutant laws which also govern the transactions involving transfer of immovable property. Section 17 of the Registration Act specifies deeds of conveyances which are compulsorily registrable. Section 49 thereof mandates that no document which requires registration u/s 17 or by any provisions of the Transfer of Property Act, shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Section 5 of the Transfer of Property Act defined "transfer of property" as an act by which a living person conveys property in present or in future, to one or more living persons, or to himself and one or more living persons, and to "transfer property" is to perform such act. Different modes of transfer of property have been envisaged by the Transfer of Property Act, such as, sale, lease, mortgage and gifts. Section 54 thereof, which defined "sale", however, made it very clear that a contract for the sale of immovable property does not by itself create any interest or charge on such property.

7. Section 2(10) of the Stamp Act defined "conveyance" as under:

"Conveyance" includes any instrument by which property whether movable or immovable is transferred on sale from one person to another.

8. Part VI of the Registration Act deals with Presentation of documents for registration. Part XI of the Registration Act envisaged Duties and Powers of the Registering officers. u/s 34, subject to the provisions contained in Part VI and Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered

unless the person executing such document, or their representatives, assigns or agents authorized, appear before the Registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26. u/s 35, if all the persons executing the document appear personally before the Registering officer and are personally known to him, or if he is otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or, if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the Registering officer shall register the document as envisaged in Sections 58 to 61. However, under sub-section (3)(a) of Section 35, the Registering Officer, inter alia, shall refuse to register the document if any person by whom the document purports to be executed, denies its execution. u/s 71, every Sub-Registrar refusing to register a document except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in Book No. 2 and endorse the words "registration refused" on the document. u/s 72, an aggrieved person can file an appeal before the Registrar against such orders of the Registering officer.

9. On a consideration of the above discussed provisions of the Transfer of Property Act, Registration Act and the Stamp Act, it is evident that transfer of property necessarily involves conveyance and such conveyance requires payment of stamp duty and some of the deeds of conveyance require compulsory registration. Dealing with the object of the Registration Act, the Supreme Court in *Suraj Lamp and Industries (P) Ltd. thru. DIR Vs. State of Haryana and Another*, held, at paras 15 to 18, as under:

The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.

Section 49 of the Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affecting such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.

Registration provides safety and security to transactions relating to immovable

property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the persons(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly confined.

9. In *Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another*, the Supreme Court while dealing with the legal nature of the General Power of Attorney held that the power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property; that the power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him and that even an irrevocable attorney does not have the effect of transferring title in respect of the property to the grantee.

10. The question whether a document purporting to cancel a registered sale deed can be unilaterally registered by the vendor, was referred to a Full Bench of this Court in *Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others*, . By a majority of 2: 1, the question was answered in the affirmative and the majority has taken the view that as there is no power under the Registration Act for registration of the document, the only remedy available to the aggrieved party is to file a civil suit for appropriate relief. However, this view was not approved by the Apex Court in *Thota Ganga Laxmi and Another Vs. Government of Andhra Pradesh and Others* wherein the Apex Court while reversing an order of this Court passed following the Judgment in *Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others*, held that once a property is transferred by a registered sale deed, the title passes to the buyer and he becomes the owner of the property; that if the vendor wants to subsequently get the sale deed cancelled, he has to only file a civil suit for cancellation; and that by no stretch of imagination, can a cancellation deed be executed or registered for the said purpose.

11. It is apt to note that before the Judgment in *Thota Ganga Laxmi and Another Vs. Government of Andhra Pradesh and Others* was rendered by the Supreme

Court, the State Government of Andhra Pradesh has amended Rule 26(i) of the A.P. Rules under the Registration Act by adding sub-rule (k)(i), which reads as follows:

The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment or properties not registerable by any provision of law.

12. Indeed, this rule was also considered by the Supreme Court in *Thota Ganga Laxmi and Another Vs. Government of Andhra Pradesh and Others* .

13. If the present cases had related to registration of deeds of cancellation of sale deeds, there would have been no need for further discussion and the cases would have been straightaway dismissed confirming the orders of respondent No. 2 refusing to register the documents. But however, they relate to cancelling the purported Development Agreements-cum-GPAs. While dealing with a case relating to refusal to register an agreement of sale-cum-GPA, a learned single Judge of this Court in *Mr. Mir Khader Ali Khan and others Vs. The District Registrar, Ranga Reddy and Appellate Authority, R.R. District and another*, has drawn a distinction between registration of deeds cancelling transactions of transfer of title and those cancelling the powers of attorney and held that in the light of the amendment to Rule 26(i)(k)(i), while the deeds unilaterally executed purporting to cancel registered transactions of transfer of title cannot be registered, however, held that as the execution of power of attorney in respect of a property would not lead to a transaction of transfer of title in respect of the property, it is always the prerogative of the principal to withdraw the authorization; that an agent cannot derive any independent rights under such agreements and that the same can be unilaterally cancelled and such documents registered.

14. In *T. Vishwanadham and Others Vs. Commissioner (Registrations and Stamps) and Others*, , the learned Judge held that even if a G.P.A. coupled with interest which cannot be unilaterally cancelled is executed and registered, the aggrieved person has to avail appropriate remedy and that registration of such a

document is not in violation of Rule 26(i)(k) of the Rules.

15. A few months after disposal of Mr. Mir Khader Ali Khan and others Vs. The District Registrar, Ranga Reddy and Appellate Authority, R.R. District and another, , the case in M/s. Vasudeva Realtors Pvt. Ltd. Vs. The Govt. of A.P. and Others came to be disposed of by the same learned Judge. The said case presented similar facts except to the extent that the Sub-Registrar has registered the cancellation deed in that case and the Developer-GPA approached this Court feeling aggrieved by such registration. While dealing with Rule 26(i)(k)(i) of the Rules, the learned Judge held that while a cursory reading of the said Rule gives an impression that the same covers deeds of cancellation of sale deeds only, the use of expression "conveyance" in the circumstances that warranted making of the said rule would lead to a conclusion that it applies not only to cancellation of the sale deeds pure and simple, but also to the transactions having the ingredients and characteristics of a sale. The learned Judge has applied the test as to whether the document which is sought to be cancelled conferred any final rights in respect of the property and that if the answer is "yes" the registration of such document would be prohibited by the same analogy of Rule 26(i)(k)(i).

16. With due respect to the learned Judge, I am unable to convince myself to concur with the said view. As noted hereinbefore, the Registration Act being one of the procedural or adjutant laws governing the transfer/conveyance of properties, its predominant object is to provide orderliness, discipline and public notice in regard to transactions relating to immovable properties and protection from fraud and forgery of documents of transfer. As held by the Supreme Court in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, , mere registration of a document will not by itself take away the rights of the parties which otherwise cannot be taken away under substantive laws governing the transaction in question.

17. In the instant case, if the Development Agreements-cum-GPAs have created any rights in respondent No. 3, mere registration of their cancellation would not nullify the same. The only advantage that the petitioners may gain by registration of the documents proposed by them is that the bar u/s 49 of the Registration Act will not operate in respect of those documents. This being the true position in law, I do not see any reason to expand the scope of the provisions of Rule 26(i)(k) beyond the plain and unambiguous language of the said provision. The phraseology "previously registered deed of conveyance on sale" employed in the said sub-rule is worth noticeable. While all sales of immovable properties constitute conveyances, the converse is not true. There may be transactions such as gifts, mortgages, leases etc., which fall under the definition "conveyance". While every conveyance passes title to the person in whose favour the conveyance deed is executed, the rule making authority consciously limited the operation of sub-rule (k)(i) of Rule 26(i) of the Rules only to the deeds of "conveyance on sale". If it really intended that this sub-rule must apply to all transactions involving conveyance, there was no reason for the rule

making authority to cut-down on the amplitude of the definition of the phrase "conveyance" by only referring to "conveyance on sale". It would have simply used the unqualified phrase "conveyance".

18. The golden rule of statutory interpretation is that when the words of a statute are clear, plain or unambiguous i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of the consequences. (See: AIR 1939 47 (Privy Council) , AIR 1945 48 (Privy Council) , Kanai Lal Sur Vs. Paramnidhi Sadhukhan, , State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, and Nelson Motis Vs. Union of India and another, . In Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , a Constitution Bench of the Supreme Court, while dealing with the doctrine of casus omissus held as under:

...It is well-settled principle of law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid, Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them (See: Lenigh Valley Coal Co. v. Yensavage (218 FR 547)).

19. In Union of India and another Vs. Deoki Nandan Aggarwal, , the Supreme Court held that the Court cannot add words to a statute or read words into it which are not there and that assuming that there is a defect or omission in the words used by the Legislature, the Court would not go to its aid to correct or make up the deficiency. The Apex Court held that the Courts shall decide what law is and not what it should be. I do not intend to multiply the authorities on this aspect.

20. In the face of the clear and unambiguous language of Rule 26(i)(k)(i) of the Rules, no documents other than deeds of conveyance on sale can be brought within its purview. Irrespective of the recitals of the documents in question, they are still in the nature of agreements, which by no means pass title in the property. Unless and until a Development Agreement matures into a deed of sale, title will not be created in the buyer in view of the statutory bar created by Section 54 of the Transfer of Property Act. The documents in question therefore are not embraced by the provisions of Rule 26(i)(k)(i) of the Rules. As this view of mine is in conflict with the Judgment in M/s. Vasudeva Realtors Pvt. Ltd. Vs. The Govt. of A.P. and Others , it is appropriate that this issue is settled by a Division Bench.

21. For the above mentioned reasons, the cases are referred to a Division Bench. The Registry shall accordingly do the needful.