

(2010) 08 AP CK 0074

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3337 of 2007

B. Bhaskar Reddy

APPELLANT

Vs

Bommireddy Pattabhi Rami Reddy (died) per LRs. and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Article 47A, 35

Citation : AIR 2011 AP 1 : (2011) 2 CivCC 769

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; M.V. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—This civil revision petition, under Article 227 of the Constitution of India, is directed against an order made in O.S. No. 10 of 2002 on the file of learned Senior Civil Judge, Kovvur, Nellore District dated 21.6.2007, whereunder, the objection taken by the Learned Counsel for the defendants that the agreement of sale sought to be marked requires to be impounded and unless and until it is impounded it cannot be marked and admitted in evidence, was upheld.

2. Petitioner is the plaintiff. Respondents are the defendants. Plaintiff laid suit in O.S. No. 10 of 2002 on the file of learned Senior Civil Judge, Kovvur for specific performance of agreement of sale and delivery of possession. When the agreement of sale dated 4.5.1998 was sought to be marked, Learned Counsel for the defendants objected for the same, stating that the said document is inadmissible in evidence and stamp duty and penalty are required to be paid. After hearing both the parties, Court below passed the following order on 21.6.2007:

The suit is coming for marking an agreement of sale and when the document was sought to be marked the Counsel for the defendant objected stating that the said

document is inadmissible in evidence and the stamp duty and penalty are to be paid. The Learned Counsel for the defendant relied upon a decision in *Rathnamala v. G. Rudramma* 1999 (6) ALD (DB). It was held in para No. 13:

Thus, it was a specific case wherein so many words the explanation takes in all the situations i.e. delivery of possession before the execution or at the time of execution or after the execution of an agreement and such agreements are deemed to be conveyance for the purpose of imposing stamp duty.

3. Further in a decision 2006 (2) ALD (NOC) 41 *Marthala Pedda Subbamma @ Venkatasubbamma and Anr.* it was held:

As can be seen from the recitals of the document in question, the entire sale consideration was paid and possession also was delivered and the property can be enjoyed with absolute rights and it was specified that the seller or the heirs will have no manner of right in the property, but, however, it was also specified in the document that the first respondent/plaintiff herein agreed to execute a registered sale deed as and when required. There cannot be any doubt or controversy that the document in question can be looked into for collateral purpose. In construing an instrument in order to decide whether it is an agreement to sell or a sale the cumulative effect of all the recitals contained therein and the relevant facts have to be taken into account. Their mere offer to execute and register a sale deed at a later date does not take away the effect of a clear recital transferring the title and interest of the vendor to the vendee or change the character of a document from a sale to an agreement to sell. The mere use of the word "agreement" is not conclusive also.

The rigor of payment of stamp duty and penalty cannot be escaped even if it is for collateral purpose. On a reading of the recitals of the document in question, it is clear that the vesting and divesting of absolute rights were in fact completed, but, however, the execution of a regular registered sale deed, on demand, alone had been left over between the parties. It may be that on the strength of such document, for the purpose of obtaining a regular registered sale deed, a suit for specific performance may be maintained, but, the same test cannot be extended for the purpose of determining whether the document in question is liable for stamp duty and penalty.

4. The Learned Counsel for the plaintiff relied upon a decision "*Penkey Surya Kantham v. Shaik Silar*" 2003 (2) LS 162. It was held at para 8:

It is manifest from the explanation to Article 47-A of Stamp Act that where delivery of possession of the property is effected under the agreement of sale or evidencing delivery of possession of the property agreed to be sold is chargeable as a sale under this article. In the instant case the entire sale consideration was paid and possession of the property was also delivered on the date of agreement. But the plaintiff contended that the possession was not delivered on the date of agreement and that the facts in the said decision are not applicable to the facts of this case.

The Learned Counsel for the defendant contended that the recital and the document are to be taken into consideration and not the pleadings in the plaint. When the decision in para No. 8 categorically shows that Article 47-A of the Stamp Act attracts that where delivery of possession of the property was effected under the agreement of sale or evidencing delivery of possession of the property agreed to be sold is chargeable as a sale.

The contention of the plaintiff that possession was not delivered cannot be taken into consideration. In order to evade the payment stamp duty and penalty plaintiff contended that Article 47-A of the Stamp Act is not attracted to the facts of this case. Further another decision 2006(2) ALD (NOC) 41 also applicable to the facts of this case because the recitals of the documents in question the entire sale consideration was paid and possession was also delivered and the property can be enjoyed with absolute rights and it was specified that the seller or the heirs will have no manner of right in the property, but however it was specified in the document that the 1st respondent/plaintiff herein agreed to execute a registered sale deed as and when required. It is therefore there is no substance in the contention of the Learned Counsel for the plaintiff and that the stamp duty and penalty has to be paid on the agreement of sale and unless and until the stamp duty and penalty is paid the document is inadmissible in evidence. It is therefore the plaintiff is directed to pay stamp duty and penalty.

5. Aggrieved thereby, the present C.R.P. is filed.

6. Learned Counsel for the petitioner-plaintiff strenuously contended that the Court below failed to appreciate the fact that the petitioner-plaintiff has specifically averred, in the plaint, that possession was not delivered under the agreement and, therefore, prayed also a decree for delivery of possession. Since there was specific pleading by the plaintiff that possession was not delivered and execution of agreement was denied in the written statement, the case is covered by the judgment reported in Penkey Suryakantham v. Shaik Sillar 2003 (2) LS 162 wherein it was held that if it is pleaded in the plaint that there was no delivery of possession and in the written statement the execution of agreement is denied, the case falls outside the scope of Article 47-A of the Indian Stamp Act. For the purpose of deciding as to whether under particular document stamp duty has to be paid treating it as a sale, as required under Article 47-A of Schedule I-A of the Act, the surrounding circumstances must be taken into consideration. A pedantic approach (thumb rule) cannot be made to say that once the document recites as to delivery of possession, whether possession was delivered or not, stamp duty requires to be paid as if it was a sale. Therefore, in the facts and circumstances of the case, it must be treated that the agreement in question is a simple agreement and the question of paying stamp duty does not arise.

7. Whereas, Learned Counsel for the respondents-defendants submitted that the agreement relied upon by the plaintiff dated 4.5.1998, seeking decree of specific performance of agreement and delivery of possession, itself recites that

possession was delivered to the plaintiff under the agreement. May be, defendants have filed written statement saying that the very document is fabricated one and the question of delivery of possession does not arise. The sine qua non in a case of this nature is "document executed" and no other circumstances can be taken into consideration for the purpose of deciding as to whether the document requires to be impounded and validated under Article 47-A of the Indian Stamp Act or not. Article 47-A of the Act attracts where delivery of property was effected under the agreement of sale or evidencing delivery of possession of the property agreed to be sold, is chargeable as sale. In this case, admittedly, there is a recital in the agreement of sale dated 4.5.1998 on the basis of which the suit is filed. Therefore, necessarily it has to be charged as a sale with the stamp duty and thus it requires impounding. Unless stamp duty and penalty if any are paid, it cannot be admissible in evidence. Further, the pleadings of the parties have no relevance whatsoever. The recital in the document as to delivery of possession itself is enough to invoke the provisions of Article 47-A of Schedule I-A of the Act. Therefore, Court below rightly directed plaintiff to pay stamp duty and penalty.

8. In support of his arguments, Learned Counsel for the respondents-defendants placed heavy reliance on the following judgments:

1) B. Ratnamala v. G. Rudramma 1999 (6) ALD 69 wherein this Court held:

While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place. As the incidence of duty is on the execution of the deed, regard must, therefore, be had only to the terms of the document. Thus the main question that falls for consideration is the interpretation of the expressions "followed by or evidencing delivery of possession". These expressions cannot be read in isolation and one has to find the true meaning by reading the entire Explanation and more so in conjunction with the earlier expression i.e., "agreement". Even if these two expressions are looked independently, it means an agreement to sell followed by delivery of possession and an agreement to sell evidencing delivery of possession. In the first case, i.e., "followed by delivery", possession cannot be disjuncted from the basic source i.e., agreement to sell. Therefore, the expression followed by delivery of possession should have a direct nexus to the agreement and should be read in juxtaposition to the word "agreement" and it cannot be independent or outside the agreement. Therefore, the delivery of possession should follow the agreement i.e., through the agreement. It takes in its sweep the recital in the agreement itself that delivery of possession is being handed over. It will also cover cases of delivery of possession contemporaneous with the execution of agreement, even if there is no specific recital in the agreement. In other words, the delivery of possession should be intimately and inextricably connected with the agreement. And in the second type, i.e., agreements evidencing delivery of

possession, if the document contains evidence of delivery of possession by a recital in that behalf, that is sufficient. Such delivery of possession can be prior to the date of agreement and need not be under the agreement. If the Agreement records the fact that the possession was delivered earlier and such recital serves as evidence of delivery of possession, though prior to the Agreement, it falls under the second limb. Therefore, on a proper interpretation of the said expressions, it would follow that an agreement containing specific recital of delivery of possession or indicating delivery of possession even in the past is liable for stamp duty as a "sale" under the said Explanation. In the case on hand, there is a variation in the expressions used viz., "followed by" and "evidencing delivery of possession". As discussed above, the expression "followed by" should be read in conjunction with the earlier expression "agreement" and in the latter case, any agreement recording delivery of possession should invite the stamp duty as a sale deed, even though the possession had been delivered in the past. The expression "evidencing delivery of possession" applies to the situation with which we are concerned in the present case.

2) Chintam Kantam Vs. Dhulipudi Venkateswara Rao and Others, wherein this Court held:

While deciding the question relating to the payment of stamp duty and penalty on a particular document, the recitals of the document may have to be looked into and not the pleadings of the respective parties. The pleadings of the parties may be in deviation of the document in question. The levy of the stamp duty and penalty is always in relation to the document which is to be marked before the Court and such levy cannot depend upon the pleadings of the parties. At any rate, in view of the decision of the Apex Court referred in Veena Hasmukh Jain's case (supra) and the decision of the Division Bench of this Court referred in B. Rathamala's case (supra) I am of the considered opinion that the learned Principal Senior Civil Judge, Kakinada had definitely committed an illegality in placing reliance on the decision of a learned Single Judge of this Court referred in Penkey Suryakantham's case (supra). Hence, I have no hesitation in holding that the impugned order suffers from legal infirmity and is liable to be set aside.

9. I have given my earnest consideration to the respective submissions made by the Learned Counsel on either side and perused the impugned order and other material made available on record.

10. The facts which are not in dispute are, that the suit was laid for specific performance of agreement of sale and delivery of possession on the basis of agreement of sale dated 4.5.1998, wherein there is a recital as to delivery of possession. However, it was the pleading of the plaintiff that though there is such a recital as to delivery of possession, since possession was not delivered, they have issued legal notice asking the defendants to deliver possession of the property under agreement dated 4.5.1998, for which a reply was given by the defendants saying that defendant No. 1 never executed any sale deed, therefore, the question of delivery of possession does not arise. Thereafter, this suit has

been filed seeking specific performance of agreement of sale and delivery of possession.

11. When the document - agreement dated 4.5.1998 was sought to be marked, defendants have taken objection saying that the said document cannot be marked and it is not admissible in evidence since entire stamp duty as required under Article 47-A of the Act was not paid, treating it as a sale. The Court below, while accepting the proposition laid in Ratnamala's case (referred (2) supra), held that it is the recitals in the "document executed" which requires to be considered and not any other situations and contingencies. Therefore, it requires to be seen whether the surrounding circumstances after execution of the document can be taken into consideration or the "document executed" is to be taken into consideration, for strict sense of interpretation of explanation to Article 47-A of the Indian Stamp Act?

12. Penkey Suryakantham's case (referred (1) supra), which is relied upon by the Learned Counsel for the petitioner, is a case for specific performance of agreement of sale, wherein, defendant disputed agreement stating that husband of plaintiff took suit land on lease and with a view to knock away property plaintiff fabricated agreement. Trial Court passed order holding that agreement comes within ambit of Explanation I to Article 47-A and cannot be admitted in evidence till deficit stamp duty and penalty are paid. The plaint pleadings were that plaintiff came into possession of land as a tenant and not as agreement holder. Defendant in his written statement disputed the agreement of sale stating that plaintiff is cultivating tenant and inducted into possession. Thus, it was found that admittedly possession was not delivered to plaintiff under the agreement of sale, therefore, the agreement stands outside the scope of explanation to Article 47-A and it is not required to be impounded. Whereas, in the case of Ratnamala (referred (2) supra), the main question that had fallen for consideration was as to the interpretation of expression "followed by or evidencing delivery of possession". It was held that this expression cannot be read in isolation and one has to find the true meaning by reading the entire explanation and more so in conjunction with the earlier expression "agreement". Even if these two expressions are looked independently, it means an agreement to sell followed by delivery of possession and an agreement to sell evidencing delivery of possession. In the first case i.e. "followed by delivery", possession cannot be disjuncted from the basic source i.e., agreement to sell. In the second type i.e. agreements evidencing delivery of possession, if document contains evidence of delivery of possession by a recital in that behalf, that is sufficient. Such delivery of possession can be prior to the date of agreement and need not be under the agreement. If the agreement records the fact that the possession was delivered earlier and such recital serves as evidence of delivery of possession, though prior to the agreement, it falls under the second limb. Therefore, on a proper interpretation of the said expressions, it would follow that an agreement containing specific recital of delivery of possession or evidencing delivery of possession, even in the past, is liable for stamp duty as a "sale"

under the said Explanation. In Chintam Kantam's case (referred (3) supra, while deciding the question relating to payment of stamp duty and penalty on a particular document, it was said that the recitals of the document may have to be looked into and not the pleadings of the respective parties. The pleadings of the parties may be in deviation of the document in question. The levy of the stamp duty and penalty is always in relation to the document which is to be marked before the Court and such levy cannot depend upon the pleadings of the parties. Explanation I of Article 47-A of the Indian Stamp Act and the proviso thereto, reads as follows:

An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "Sale" under this Article: Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in Clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed.

13. Thus, the very interpretation of the proviso - Explanation I of Article 47-A of Schedule 1-A of the Indian Stamp Act in Ratnamala's case ((2) supra), would indicate evidencing delivery of possession either prior to the document or under the document or on any future day. The evidence could be the very document wherein it recites delivery of possession or it records that possession was delivered in the past or possession delivered immediately after execution of the document. If this is taken into consideration, it cannot be said that the recitals of the document may have to be looked into in the pleadings of the respective parties.

14. In a given case there may not be a recital as to possession in the document but by another document the possession may have been delivered. In that situation, necessarily it has to be treated that it falls within the scope of Article 47-A. But, if the document executed is to be seen strictly, requisite stamp duty need not be paid treating it as a sale. In a given case, though there may be no recital in the document as to delivery of possession, in the pleadings it may have been averred that possession was delivered and the plaintiff is in possession of the property, which the defendant may accept or deny. This situation also is out of the scope of Article 47-A of the Act. Therefore, in my considered opinion, the language used in Explanation I to Article 47-A of Schedule 1-A of the Act i.e. "agreement" necessarily has to be viewed in variance, depending upon the facts and circumstances of each case. In Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others, the apex Court, while examining the provisions of Bombay Stamp Act and considering the document, whereunder the agreement entered into clearly provided for sale of immovable property and there was also a specific time within which possession had to be delivered and by reason of the fact that under the terms of the agreement there was an intention of sale and possession of the property has also been delivered, held that certainly it is open to the State to charge such an instrument at a particular rate which is akin to a

conveyance and that is exactly what has been done in that case. Since possession was delivered at a later point of time and when the date of agreement of sale was executed, of course, as per the terms of the agreement, it was treated as if it was a sale. This position further clarifies that it is not just "document executed" but the other circumstances also, including pleadings in a given case, which are required to be taken into consideration.

15. Coming to the case on hand, it is an admitted fact that though an agreement of sale was executed reciting as to delivery of possession, possession was not delivered and there was exchange of notices for delivery of possession under the agreement. Whereas, the defendants denied the very execution of the agreement and also stated that the question of delivery of possession does not arise since there was no agreement executed between the parties. In the plaint it was pleaded that though there is a recital in the agreement, possession was not delivered in spite of issuance of legal notice. In the written statement, defendants stated that they are in possession of the property. Under those circumstances I am of the considered opinion that an agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as sale and not otherwise and, in the case on hand, agreement of sale is not followed by or evidencing delivery of possession of the property agreed to be sold. The pleadings, nature of the documents and the recitals and the surrounding circumstances must be taken into consideration for the purpose of Explanation I to Article 47-A of Schedule I-A of the Indian Stamp Act, in the interest of justice. Therefore, agreement of sale in question does not fall within the scope of Explanation I to Article 47-A of Schedule 1-A of the Indian Stamp Act; thus, impounding of such document does not arise.

16. In a situation like this, the aid of purposive interpretation needs to be taken into consideration. The purpose to insist upon payment of proper stamp duty is to earn revenues to the State. If a person, being in physical possession and enjoyment of the property under the agreement of sale, wherein there is a recital as to delivery of possession or evidencing delivery of possession, avoids to pay proper stamp duty, such document is inadmissible u/s 35 of the Indian Stamp Act, 1899. In nutshell, wherever the agreement holder is not in possession of the property under agreement of sale, even though there is a recital in the agreement as to delivery of possession, he need not pay proper stamp duty as required. It shall be treated as a simple agreement of sale falling outside the scope of Explanation I to Article 47-A of Schedule I of the Indian Stamp Act. Various situations may arise for consideration on this aspect. The purpose of the Act is to see that a person, who is in physical possession and enjoyment shall not avoid to pay proper stamp duty as required under Explanation I to Article 47-A of the Stamp Act. Otherwise, the document shall not be admissible in evidence as required u/s 35 of the Stamp Act. For the above reasons, impugned order dated 14.6.2007 passed by the trial Court is liable to be set aside and is accordingly set aside and the document - agreement of sale - is ordered to be admitted in evidence.

17. The civil revision petition is allowed accordingly, however, in the facts and circumstances of the case, without any order as to costs.