
(2015) 06 KAR CK 0090

In the Karnataka High Court

Case No : Writ Petition No. 8673 of 2014 (GM-CPC)

B.C. Narayanaswamy and Others

APPELLANT

Vs

Makbulunnisa and Others

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Karnataka Stamp Act, 1957 — Section 33, 34, 5
Stamp Act, 1899 — Section 33, 35, 38

Citation : (2015) 4 AKR 566 : (2015) ILR Kar 4185

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : Vijay Krishna Bhat M., for the Appellant; B. Bopanna and H.K. Satheesh, for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—Heard the learned counsel appearing for the parties and the matter is taken up for final hearing with their consent. The order dated 26.10.2013 passed in O.S. No. 638/2007 by the learned Principal Senior Civil Judge, Bengaluru Rural District, is called in question. A suit has been filed by the plaintiffs-petitioners herein for the relief of specific performance of the contract on the basis of agreement of sale said to have been executed by the deceased father of the defendants-respondents herein on 25.4.2006 relating to 39 guntas of land in Sy. No. 12 of Ankonahalli village of Hosakote taluk. The defendants-respondents have filed a detailed written statement opposing the claim of the petitioners, on the basis of which issues have been framed and the case has been set out for plaintiffs' evidence. During the course of plaintiff's evidence, it appears that the learned counsel for the respondents has elicited some information from P.W. 1 that possession has been handed over. In examination-in-chief, P.W. 1 has deposed that possession of the schedule property had been handed over to them by the deceased father of the defendants on the date of agreement of sale. Taking this into consideration, learned Judge has impounded the document and has directed the plaintiffs to pay in all a sum of Rs. 1,65,000/-

which includes penalty at 10 times and one time duty.

2. The small question that arises before this Court is as to whether the subsequent deposition of the agreement holder would enable the Court to impound the document under sections 33 and 34 of the Karnataka Stamp Act, 1957.

3. Learned counsel for the petitioners Sri Vijay Krishna Bhat has vehemently argued that the agreement of sale dated 25.4.2006 which is sought to be got marked does not speak anything about the possession being handed over and therefore, the subsequent deposition of P.W. 1 that possession was handed over to the agreement holder by the deceased father of the defendants is of no consequence and would not enable the Court to invoke sections 33 and 34 of the Karnataka Stamp Act, 1959. He has relied upon the decision of the Hon''ble Apex Court reported in Omprakash Vs. Laxminarayan and Others, in the case of Omprakash v. Laxminarayan & others.

4. Perused the same. Sections 33 , 35 and 38 of the Stamp Act, 1899, as amended by the State of Madhya Pradesh, has been discussed at length. As could be seen from the facts of the said case, the agreement of sale relied upon by the plaintiffs therein had a specific clause that on receipt of a part of sale consideration as a token amount, possession should be handed over in favour of the plaintiffs - agreement holder on the very day of executing the agreement of sale. In the suit claiming relief of specific performance, the document was initially impounded. The order of impounding the said document for drafting on inadequate stamp paper was questioned before the Hon''ble High Court of Madhya Pradesh. During the course of argument, learned counsel appearing for the parties submitted that possession was not handed over under the agreement of sale. Accepting the oral submission made by the learned counsel appearing for the parties in W.P. No. 7237/2007, order of the Trial Court impounding the document was set-aside. Defendant No. 1 challenged the said order of the Hon''ble High Court before the Hon''ble Apex Court in SLP (C) No. 20721/2008.

5. Ultimately, the Hon''ble Supreme Court has held that the jurisdiction of the Court flows from sections 33 , 35 and 38 of the Stamp Act and the Court has to decide the question of admissibility of the agreement of sale in view of same being drafted on inadequate stamp paper. It is further made clear in paras 11 and 18 of the said decision whether possession infact was given or not in terms of the agreement of sale is a question of fact which requires adjudication. It is the recitals contained in the document that is basis of admissibility of the document. The Hon''ble Apex Court has ultimately allowed the petition and set aside the order of the Hon''ble High Court and has restored the order of the Trial Court in respect of impounding the document in question.

6. Infact in the present case, the document relied upon by the plaintiffs does not speak about possession being handed over to the agreement holder. Therefore, the admissibility of the document in question will have to be considered on the

basis of the very recitals found in the said document and not on the basis of the subsequent deposition of P.W. 1. What is held by the Hon"ble Apex Court is that the submission made by the learned counsel appearing for the parties before the High Court cannot be the basis to decide the admissibility of the document and on the other hand, the admissibility of the document depends on the recitals made in the document, more particularly in terms of sections 33 , 35 and 38 of the Stamp Act. Same analogy of the said decision is absolutely applicable to the facts of the present case also.

7. Article 5(e) of the Karnataka Stamp Act which has come into effect from 1995 speaks about stamp duty payable on an agreement of sale under which possession is handed over as conveyance on the market value of the property. This aspect of the matter has also been dealt with by this Court in the case of N. Srinivasa Vs. Srimurulesh, . As could be seen from the facts in the case of Srinivasa, recital of the agreement depicted that possession would be delivered after five months from the date of agreement of sale. Therefore, handing over possession five months after executing agreement of sale would not enable the Court to impound the document under sections 33 and 34 of the Karnataka Stamp Act, 1957 read with section 5 of the Karnataka Stamp Act. In the light of the above two decisions, the impugned order is not at all sustainable and liable to be set aside. Accordingly, the following order is passed:

Petition is allowed. Impugned order set-aside. Trial Court is directed to mark the said document. Whether possession was handed over or not could be considered by framing appropriate issues, provided material pleadings are found to that effect.