(2012) 02 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No : 14963 of 2009

G. Dayanand — APPELLANT

Vs

The District Registrar, Hyderabad District — RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 54, 57

Citation : AIR 2012 AP 129 : (2012) 5 ALT 603 : (2012) 3 ALT 752

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Damodar Mundra, for the Appellant;

Final Decision : Allowed

Judgement

L. Narasimha Reddy

1. The mother of the petitioner owned property, bearing Nos. 9-4-65 to 68/9-4-64/12 to 25 and 9-4-117, with cellar, ground and first floors, constructed over 513 sq. yards at Tolichowki, Hyderabad. It is stated that after the death of the mother of the petitioner, himself and his two brothers - G. Subhash and G. Satyanarayana, succeeded to it. The two brothers of the petitioner also died and the property is now owned jointly by the petitioner and the legal representatives of his brothers. The petitioner submits that recently the widow of one of his brothers, by name, G. Rajasree, expressed her willingness to release 1/3rd share, in the property, in case she is paid Rs. 20 lakhs. The petitioner is said to have agreed for that, and accordingly, a release deed was executed by the said Rajasree, in favour of the petitioner. The document was presented before the Sub-Registrar, S.R.O., Golconda, the 2nd respondent herein, on 18-01-2008, for registration. Stamp duty of 1% was paid. The 2nd respondent, however, took the view that 3% of stamp duty is payable. Accordingly he kept the document pending registration. On 15-03-2008 he issued a notice requiring the petitioner to pay the deficit stamp duty of Rs. 3,25,678/- treating the document as a sale deed. On the request made by the petitioner, the matter was referred to the 1st

respondent. Through a final order dated 07-07-2009, the 1st respondent took the view that the stamp duty is payable, as provided for under Article 47-A of Schedule 1-A to the Indian Stamp Act, 1899 (for short ''the Act''), thereby reiterating the view taken by the 2nd respondent. The petitioner challenges the same.

2. The petitioner states that the transaction that has taken place through the document in question is the one of release of the joint ownership of one co-owner in favour of another co-owner, and that no element of sale is involved. He contends that mere payment of consideration for such release, does not amount to sale.

3. On behalf of the respondents, a counter-affidavit is filed. It is stated that the deed presented by the petitioner evidences transaction of sale of share of the executant for valuable consideration of Rs. 20,00,000/- and accordingly, deserves to be treated as a sale deed. It is further stated that the so-called release is not in favour of the rest of the co-owners, but is in favour of only one of the co-owners, and in that view of the matter, the stamp duty payable on the document is a sale deed.

4. Sri Damodar Mundra, learned counsel for the petitioner, submits that both the parties to the document are co-owners and the mere fact that one of the co-owners get herself released from the rights and obligations vis-?-vis the property, does not amount to transaction of sale. He contends that it is only when a person holding absolute title vis-?-vis an item of immovable property executes a sale deed in favour of another person who is a stranger to the property, that a transaction of sale comes into existence. Learned counsel submits that till partition is affected, each co-owner of the property holds rights, in respect of every part of it and the question of one co-owner purchasing the same property from another co-owner, does not arise.

5. Learned Government Pleader for Revenue submits that though the petitioner is a co-owner of the property, the fact that he is acquiring rights vis-?-vis the same by paying consideration would certainly attract Article 47-A of the Act. He places reliance upon a judgment rendered by a Division Bench of this. Court in Board of Revenue, Hyderabad v. Valivety Rama Krishnaiah AIR 1973 AP 275 (SB). It is further pleaded that even when undivided share is transferred for consideration, the transaction would be nothing but one, of sale.

6. The petitioner had two brothers, by name Subhash and another. All of them inherited the premises mentioned above that was owned by their mother. Even before partition has taken place, the two brothers of the petitioner died. The widow of one of the brothers intended to part with the share that accrued to her husband, may be by receiving consideration. The petitioner came forward to take the same, on payment of consideration of Rs. 20 lakhs. A document named as ''release deed'' was executed and it was presented for registration. The respondents took the view that the transaction evidenced by the document is

sale and insisted on payment of stamp duty, registration charges on that basis.

7. Therefore, it becomes necessary to take note of the distinction between the transactions of ''sale'' and ''release''.

8. It is too well-known that ''sale'' as defined u/s 54 of the Transfer of Property Act (for short ''the TP Act''), takes place, when a person holding title in an item of immovable property, conveys his title to another, for consideration. It is also permissible for a co-owner of an item of immovable property, to transfer the same for consideration in favour of third party. In such a case also, the transaction would be the one of sale. Delivery of the possession of tangible property, is an essential part of the transaction.

9. The word ''release'' is not defined either under the TP Act or under any other enactment, including the Stamp Act. However, its connotation is that, one of the owners of an item of property, releases himself of the legal rights and obligations in favour of the rest of the co-owners, or some of them, such release can be with or without any consideration. Though a sale and release resemble each other in the context of loss of title of the transferor or rights in favour of others, what differentiates the one for the other is that, the transferee under a sale is an altogether stranger, whereas in the case of release, he happens to be an existing co-owner. It would be a fresh and new acquisition of property by a purchaser under a sale, whereas in the case of release it would only result in the change of the extent of shares, held by the co-owners or joint owners.

10. Another aspect is that delivery of possession, which is sine qua non in a sale, does not take place in the case of release, since each co-owner is in possession of every bit of the entire property.

11. To a large extent, release resembles the one of partition, wherein the shares of the existing co-owners or joint owners are determined with an element of clarity, notwithstanding the fact that the release by itself may not bring about partition. If one takes into account the fact that one of the steps in the partition is determination of the shares of respective parties, an act of release would promote such a step.

12. On a reference made u/s 57 of the Act, the Division Bench determined the basic characteristics of ''release'' in Valivety Rama Krishnaiah''s case (supra). On a perusal of the same, it becomes clear that even if the release of the share in a property by a co-owner is for consideration, its character does not change. Similarly, it is not necessary that the release must be in favour of rest of the co-owners. As long as the undivided share in a property is not in favour of a stranger, but is in favour of another co-owner, it would remain the one of "release'' and not a ''sale''.

13. Hence, the writ petition is allowed and the impugned order is set aside.

14. The miscellaneous petition filed in this writ petition also stands disposed of. There shall be no order as to costs.