(2006) 10 AP CK 0005

In the Andhra Pradesh High Court

Case No : CRP No. 2123 of 2006

Lakkaraju Radha Krishna APPELLANT

Vs

Pyarle Sri Rama Sarma and Others RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Registration Act, 1908 — Section 49
Stamp Act, 1899 — Section 35, 36

Citation : (2007) 1 ALD 67 : (2007) 1 ALT 460

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Ramakrishna, for the Appellant; M. Sudheer Kumar, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Respondents 1 and 2 filed O.S. No. 34 of 2003 in the Court of III Additional District Judge, Guntur, against respondents 3 to 5 and the petitioner herein, for the relief of specific performance of an agreement of sale dated 5-5-2003 in respect of the land in R.S. Nos. 971/1 and 971/2 of Vengalanagar, Bapatla. The petitioner herein, figured as defendant No. 4 in the suit. The trial of the suit is in progress. On behalf of the petitioner, a document dated 5-5-2003 was sought to be relied upon. Initially, it was received in evidence, as Ex.B-8, subject to the objection raised by the respondents 1 and 2 (for short ''the respondents'', since it is endorsed that the other respondents are not necessary). Respondents filed a revision before this Court against the said endorsement. The revision was allowed and the question, relating to the admissibility of the document, was directed to be decided, before the document was received in evidence. It was in this context, that the petitioner on the one hand, and the respondents, on the other hand, have put forward their contentions, on the admissibility of the document. Through a reasoned order, dated 23-1-2006, the trial Court held that the document is inadmissible. The same is challenged in this C.R.P.

2. Sri A. Ramakrishna, learned Counsel for the petitioner submits that the document in question is a certified copy obtained from another Court, and the objection, as to absence or inadequacy of stamp duty; cannot be raised. He contends that the petitioner is not a party to the transaction, under the document in question, nor does he propose to enforce any rights and obligations under it, and in that view of the matter, it ought to have been received in evidence.

3. Sri M. Sudhir Kumar, learned Counsel for the respondents, on the other hand, submits that the prohibition contained u/s 35 of the Indian Stamp Act (for short ''the Act) is absolute, and unstamped document cannot be received in evidence, for any purpose, whatever. Placing reliance upon several judgments, touching on the subject, he contends that even a secondary evidence, of an instrument, which was required to be stamped, is inadmissible, unless it is properly stamped. He submits that the purpose, for which the document is sought to be relied upon, becomes irrelevant, in the context of Section 35, unlike the facility created for admission of unregistered documents, for collateral purposes.

4. The short question, that arises for consideration in this revision, is, as to whether the certified copy of a lease deed, filed in a different set of proceedings, to which the petitioner is not a party, is inadmissible in evidence, on the ground that it is not properly stamped and registered.

5. The admitted facts are that the document in question is an agreement of lease, and the petitioner is not a party to it. It is also not disputed that the document was neither stamped nor registered. The document is said to have been filed in LGC No. 93 of 2003, by the alleged lessees it, and the petitioner obtained a certified copy thereof.

6. Before undertaking discussion of the matter, with reference to the relevant provisions and decided cases, it is necessary to refer to the context, in which the document was sought to be relied upon.

7. Respondents filed the suit for the relief of specific performance of an agreement of sale, and for delivery of possession of the suit schedule property. The petitioner alleged that, on the one hand, a suit is filed for specific performance of contract and recovery of possession, and on the other hand, the respondents have inducted the third party into possession, under the document in question, by incorporating a recital to the effect that the possession of the property was delivered to them. He wanted to impress upon the trial Court, about the inconsistency of the stands, on the part of the respondents.

8. The bar contained in Section 35 of the Act, as to admissibility of documents, which are not duly stamped; is almost absolute. The bar operates in two ways i.e., such document cannot be received in evidence, and it cannot be acted upon, for the purpose of registration and authentication etc. It is also fairly settled that, when a document cannot be received in evidence, on the ground that it is not duly stamped, the secondary evidence thereof, is equally inadmissible in

evidence. A Division Bench of this Court held so, in clear terms, in E. Venkat Reddy and Another Vs. E. Yadgir Reddy and Others, . Further, in Sanjeeva Reddi Vs. Johanputra Reddi, , it was held that even for collateral purposes, an unstamped or insufficiently stamped document cannot be received in evidence. To this extent, the submission made by the learned Counsel for the respondents deserve to be accepted.

9. Certified copies of documents, which were received in evidence, in another set of proceedings, stand on a different footing. Section 35 of the Act applies not only to Courts, but to any person, or authority, conferred with the power, to receive in evidence. If an unstamped or insufficiently stamped document is received in a particular set of proceedings, before an adjudicatory authority, its admissibility cannot be questioned, at a later point of time. Section 36 of the Act is very clear on this aspect and mandates that once an instrument is admitted in evidence, its admissibility cannot call to be questioned, at any subsequent stage. A certified copy of such document obtained from a forum, cannot be subjected to the test of Section 35, once again, when if it is presented before a different forum. The reason is that, the same document cannot be subjected to scrutiny, on more occasions than one, on the same parameters, prescribed u/s 35, which are universal in their application. Take for instance, a case, where a document is admitted into evidence, by a Court or forum, on being satisfied that it is properly stamped, or the deficiency was taken care of, in the process of impounding. It is too, well known, that stamp duty is payable on the document, and not on the transaction. See State of Rajasthan Vs. Bhilwara Spinners Ltd. and Others, . If the same document is to be used in another set of proceedings, obviously a certified copy has to be obtained, and it cannot be said that it was the intention of the Parliament to collect stamp duty on every certified copy of a document, which has already been received in evidence. In the instant case, the document in question was filed by the parties to LGC No. 93 of 2003, to which, the petitioner is a party. The Court deciding the LGC, is conferred with the power, to receive in evidence, and the document can be said to have passed the test u/s 35, before it was received in evidence. This aspect of the matter, however, was not dealt with, by the trial Court, obviously because it was not projected.

10. Proviso to Section 49 of the Registration Act permits of an unregistered document to be received in evidence, for collateral purposes. Such a facility is not created under the Stamp Act, and it was held in number of cases that an unstamped or insufficiently stamped document or instrument, cannot be received in evidence, even for collateral purposes. However, while interpreting the expression "for any purpose", a subtle distinction, needs to be kept in mind, between "collateral purposes", on the one hand, and "collateral matter", on the other hand. The former is a purpose, related to the main transaction, covered by the document itself, but is, other than the one, which is sought to be brought about, by it. For example, in a sale transaction, delivery of possession is one of the important aspects. In a sale deed, the principal purpose is, to convey the property, by way of sale and other factors, such as delivery of possession,

payment of consideration; are collateral to it. The very expression "collateral" connotes that it exists by the side of the main entity. Such purposes are never independent of the main transaction. If a document is inadmissible, even for collateral purposes, it connotes that the document cannot be received in evidence, not only in the context of the principal transaction, which it evidences, but also the collateral purposes, attached to the transaction.

11. "Collateral matter", on the other hand, is something, which is totally divorced, and different from the transaction, evidenced by a document. The document may contain certain recitals, which are totally unrelated to the transaction, which it intends to bring about. For example, the age of the vendor, as on the date of the execution of the document, is shown at a particular figure. The recital in that regard cannot be said to be collateral to the transaction, by any stretch of imagination. If a dispute arises in a different set of proceedings, as to the age of the said vendor, reliance upon the said document for the limited purpose of enlightening the Court, on the said aspect; cannot attract the prohibition contained u/s 35. The reason is that, the purpose for which reliance is placed on the document is related neither to the main transaction, nor to collateral purposes, and its utility is pressed into service in a collateral matter. A Division Bench of Allahabad High Court in Mt. Bibbo Vs. Rai Saheb Gokaran Singh , analyzed Section 35 of the Act, before and after its amendment. After referring to the requirement u/s 35, the Court observed as under:

If however, there are any recitals in a document, as such are not chargeable with duty, then it may be possible to use such recitals as evidence, for entirely different and independent matter.

A distinction was maintained between collateral purposes and collateral matter. Endorsements of payment, on insufficiently stamped promissory notes, were held to be admissible, for the purpose of proving acknowledgement (See 1960 (1) MLT 319 and Meenammal Vs. S.N. Oavai Reddiar and Another,). Therefore, the test is, as to whether the person, who is relying upon an unstamped or insufficiently stamped document, intends to prove the transaction covered by the document, or any purpose collateral to it, or relies on it, in a totally different, but collateral matter. In the former case, it is inadmissible, and in the latter, it can be received in evidence.

12. Reverting to the facts of the case, the document in question is a lease agreement, or lease deed, whichever one may choose to call it. The principal object is, to bring about a transaction of lease, and its collateral purposes would include the duration of lease, amount of rent, delivery of possession etc. If there exists a recital, as to the manner, in which the lessor had acquired the possession, it cannot be treated as collateral to it. Even if the document is insufficiently stamped, it can be pressed into service, by a person, who is not a party to it, but, only for a purpose, which is totally unrelated to the transaction. Viewed from this context, the purpose for which the petitioner intended to rely on the document, is totally unrelated to the transaction, brought about the

document in question. The principles, that can be culled out from the precedents referred to above, get attracted to the facts of the case.

13. Accordingly, the C.R.P. is allowed, and the order under revision is set aside. Consequently, the document in question, shall be received in evidence, for the limited purpose of making reference to the recital, as to the nature of possession claimed by the respondents herein, vis-a-vis the suit schedule property.

14. This Court places on record, the valuable assistance rendered by the learned Counsel for the parties.

15. There shall be no order as to costs.

