

(2009) 07 AP CK 0079
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4222 of 2008

L.G. Polymers India Private Limited

APPELLANT

Vs

District Registrar-cum-Collector under Section 47-A of
Stamps Act

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 27
Stamp Act, 1899 — Section 47A

Citation : AIR 2010 AP 11 : (2009) 6 ALD 442 : (2009) 6 ALT 262

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; G.P. for School Education,
for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner presented a sale deed dated 10-07-1987, for registration before the Sub-Registrar, Gopalapatnam, Visakhapatnam District. Stamp duty of Rs. 2,60,00,200/- and registration fee of Rs. 10,50,250/- was paid by taking the value of the property at Rs. 21 crores. The Sub-Registrar took the view that the market value of the property is Rs. 95,86,01,000/-, and on that basis, came to the conclusion that the stamp duty and registration fee would be Rs. 12,25,32,860/-, and Rs. 47,93,255/-, respectively. When the petitioner did not pay the differential amount, the registration of the document was kept pending, and the matter was referred to the Collector, the respondent herein, u/s 47-A of the Indian Stamp Act (for short "the Act").

2. Through order dated 25-07-2007, the respondent decided that the petitioner is liable to pay a sum of Rs. 10,23,60,935/- towards deficit stamp duty and registration charges. Aggrieved thereby, the petitioner filed C.M.A. No. 13 of 2007 before the Court of Principal Senior Civil Judge, Visakhapatnam (for short "the Court").

3. The petitioner intended to adduce evidence before the Court. Accordingly, it filed an affidavit dated 07-07-2008, in lieu of chief-examination. The Court passed a detailed order dated 18-08-2008, holding that the petitioner is not entitled to adduce evidence, for the first time in the appeal. The same is challenged in this C.R.P.

4. Sri Vedula Venkataramana, learned Counsel for the petitioner, submits that an appeal u/s 47-A of the Act before a Civil Court virtually partakes the character of original proceedings, inasmuch as the determination earlier thereto, was not by a judicial authority. He contends that, while acting u/s 47-A, the respondent is indeed a party to the entire dispute, and the adjudication, in its true sense, takes place only in an appeal filed before the Civil Court. Learned Counsel submits that the Court was not justified in assuming to itself, a situation, contemplated under Rule 27 of Order 41 C.P.C., to itself, when the petitioner intended to adduce evidence.

5. Learned Government Pleader for Arbitration, on the other hand, submits that an appeal u/s 47-A of the Act is comparable to the one, under Order 41 Rule 1 C.P.C., and evidence cannot be adduced for the first time in an appeal of this nature, except by complying with the provisions of Rule 27 of Order 41 C.P.C. He contends that no interference is warranted with the order under revision.

6. A serious dispute existed, as to the market value of the property, i.e., the subject-matter of sale deed dated 10-07-1997, presented by the petitioner for registration. As provided for under the Act, the Sub-Registrar referred the matter to the respondent u/s 47-A of the Act. The respondent upheld the market value assessed by the Sub-Registrar, may be with slight modification. Naturally, the petitioner felt aggrieved, and availed the remedy of appeal, u/s 47-A of the Act.

7. A perusal of the order dated 25-07-2007 passed by the respondent discloses that no evidence is recorded, much less any discussion was undertaken, on the basis of the contentions before it. It was almost ex parte in nature. The amount involved is phenomenal.

8. The petitioner wanted to adduce evidence, may be at the stage of appeal, and accordingly filed an affidavit, in lieu of chief-examination. Its effort appears to be, to place before the Court, certain material, which had bearing upon the market value of the property, at the relevant point of time. The Court, however, refused to permit the petitioner to adduce the evidence, only on the ground that the case before it is an appeal. An observation was made by the Court, to the effect that the petitioner did not adduce any evidence before the respondent, and it is not entitled to adduce evidence for the first time before it. Reference was made to certain precedents, which deal with the parameters of Rule 27 of Order 41 C.P.C.

9. The Court was mostly guided by the fact that the grant of permission to adduce evidence at the stage of appeal is discretionary, and it has got every right to deny that facility to the petitioner.

10. Two questions arise for consideration, in this revision, viz., (a) whether an appeal u/s 47-A of the Act, can be treated as the one, on par with appeals filed u/s 96 read with Order 41 Rule 1 C.P.C. and (b) whether the petitioner has made out a case for adducing additional evidence, even assuming that the proceedings before the Court are in the form of a regular appeal.

11. C.P.C. provides for hierarchy of remedies for adjudication of civil disputes. The entire ground work is done at the stage of suit. It is there, that the pleadings are delivered, oral and documentary evidence is adduced, and the record is made complete. Though an appeal is a continuation of suit, the scope of adjudication in it, is confined to the material, that became part of the record in the suit. The restriction placed on addition of fresh material at the stage of appeal, is on account of the fact that the correctness or otherwise of the judgment of the trial Court cannot be with reference to any material, to which, that Court did not have access.

12. However, administrative or quasi-judicial proceedings, such as references to Collector u/s 47-A of the Act, cannot be compared to suits. For all practical purposes, one of the parties to the dispute in an administrative or quasi judicial proceedings acts as an adjudicator. Though certain trappings of the Court exist in an adjudication of that nature, the forum cannot be equated to a Civil Court. The reason is that delivery of pleadings and recording of evidence happen to be the salient features of a suit, whereas in a reference made to the Collector u/s 47-A of the Act, there would not be an occasion for the parties to deliver pleadings, much less to adduce evidence. The registering authority would only make an order of reference and be done with it. It does not have to take part in the proceedings before the respondent. There would not be any occasion for cross-examination of witnesses or summoning of records or other similar steps. The character of such proceedings, for the most part of it would be inquisitorial. They become truly adversarial only when an appeal is preferred before a Civil Court.

13. For all practical purposes, the first adjudication before a court of law, in relation to disputes as to adequacy of stamp duty, would take place, only in an appeal arising out of an order passed by the respondent, under 47-A of the Act. Therefore, an appeal arising out of proceedings u/s 47-A of the Act, cannot be equated to, or compared with the one, that arises out of a civil suit.

14. Coming to the second question: Once it is observed that the an appeal u/s 47-A of the Act, before a civil Court, cannot be compared to a regular appeal u/s (sic. Order) 41, the rigor of Rule 27 of Order 41 C.P.C., cannot be applied, if an effort is made by an aggrieved party in the proceedings, to lead evidence. In a way, the order passed u/s 47-A has to be treated as the one, determining the market value and every opportunity must be given to the aggrieved party to assail the same. Gross injustice would be caused to the parties, if the Court confines its consideration to the contents of the order under appeal or the material referred to, in it. In such an event, the forum is prone to become another quasi-judicial agency, even while being a regular Court. Therefore, a

different approach than the one, in a regular appeal, is needed in such cases.

15. Assuming that the proceedings before the Court are in the form of a regular appeal, it is not as if it can shut the door for a party to adduce evidence, even by calling it as additional evidence. Rule 27 of Order 41 C.P.C. permits the parties to adduce additional evidence, in case they fulfil the requirements stipulated therein. No Appellate court can deny such a right to a party, even where the requirements under Rule 27 are fulfilled. In case it is not satisfied with the grounds pleaded it can express its view, leaving it open to the party to come forward with a prayer, duly complying with conditions.

16. In the instant case, the Court mostly guided by the fact that no oral evidence was adduced before the respondent, and in that view of the matter, the petitioner cannot be permitted to lead evidence. The relevant portion of the order reads as under:

...Generally, the aggrieved party will prefer an appeal against the judgment and decree of the lower court. The appellate court would consider the evidence adduced by both parties either oral and documentary evidence in order to remedying some inherent lacuna or defect, which was ensured accidentally either by negligence of an advocate or refusal by the trial court, the appellate court can entertain the application of the appellant for recording of the additional evidence for disposal of appeal. But in the instant case, there was no documentary or oral evidence adduced by the appellant before the District Collector-cum-Registrar. In such circumstances, the appellate court cannot attempt to record fresh evidence in appeal, where such admission is not for the purpose of remedying some inherent lacuna or defect, but for the purpose of providing corroboration for the oral testimony which had been disbelieved by the trial Judge, where the oral evidence is complete, and would if believed substantiate the case of a party, there is no question of any lacuna or inherent defect....

17. The observation made by the Court, would, in fact, beg the question. When the complaint of the petitioner is that it was not given opportunity to adduce evidence by the respondent, denial of opportunity to lead evidence by the Court on the ground that no evidence was adduced before the respondent, cannot be countenanced in law.

18. Hence, the C.R.P. is allowed, and the order under revision is set aside. The learned Principal Senior Civil Judge, Visakhapatnam, is directed to permit the petitioner to adduce evidence, which has any relevance to, or bearing upon the subject-matter of, the dispute and dispose of the appeal, within a period of three months from the date of receipt of a copy of this order.

19. There shall be no order as to costs.