(2007) 04 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7711 of 2007

Nukala Sailaja Devi and Others APPELLANT

Vs

District Registrar and Others RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Stamp Act, 1899 — Article 47A

Citation : (2007) 6 ALD 464 : (2007) 6 ALT 368 : (2007) 103 RD 507

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Kiran Palakurthi, for the Appellant; G.P. for Revenue for Respondent Nos. 1, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The third respondent filed O.S. No. 13 of 2006 in the Court of I Additional District Judge, Nalgonda, against the petitioners, for the relief of specific performance of an agreement of sale, dated 21 -10-2005. At the instance of the trial Court, the agreement of sale was sent to the Revenue Divisional Officer, Nalgonda, second respondent herein, for impounding. An order, dated 31-8-2006, was passed by the second respondent, levying 1% stamp duty and penalty of ten times.

2. The petitioners filed W.P. No. 21518 of 2006 before this Court, against the order passed by the second respondent. According to him, the second respondent did not have the jurisdiction to discharge the functions under the Indian Stamp Act, 1899 (for short ''the Act''), particularly in the context of impounding the insufficiently stamped documents. Following the judgment, dated 13-9-2006, rendered by this Court in G. Ramesh v. The Revenue Divisional Officer, Nalgonda in W.P. Nos. 17945 & 17951 of 2006, this Court allowed W.P. No. 21518 of 2006, through its order, dated 23-10-2006 and directed the trial Court to send the document to the District Registrar, Nalgonda, first respondent herein, for necessary steps, under the Act. The trial Court forwarded the

document to the first respondent, who, in turn, passed an order, dated 26-3-2007, levying the stamp duty of Rs. 27,500/- and ten times penalty, being Rs. 2,75,000/-. The same is challenged in this Writ Petition.

3. Sri Kiran Palakurthi, the learned Counsel for the petitioners submits that under Article 47-A of Schedule 1-A to the Act, wherever possession is delivered through an agreement of sale, the stamp duty is leviable as though it is a sale deed and that the order passed by the first respondent does not accord with the same. He places reliance upon the judgment of this Court in Sri Tirumala Housing (P) Ltd. Vs. GPR Housing (P) Ltd., .

4. Learned Government for Revenue, on the other hand, submits that the petitioners cannot have any genuine grievance, particularly when the dispute is between the third respondent and the Revenue, in relation to the collection of deficit stamp duty. He contends that the question as to whether the document, in question, is a sale deed, needs to be considered by the trial Court, at the relevant point of time.

5. The trial in the suit filed by the petitioners (3rd respondent) is yet to commence. The petitioners filed written statement, disputing the very execution of the agreement of sale. The trial Court sent the document for impounding, under the relevant provisions of the Act, initially to the second respondent and thereafter, to the first respondent, on the directions issued by this Court in W.P. No. 21518 of 2006. The petitioners cannot be said to have suffered any detriment, on account of the impugned order. Basically, it is a matter between the Revenue Department and the person, who claims rights under the document. When the petitioners are disputing the very execution of the document, it is ununderstandable as to how they can insist on payment of additional stamp duty at a higher percentage.

6. It is to be noted that the basic purpose of getting a document registered or to engraft it on a stamp paper is to provide evidence of execution. If a party to a document insists that it is to be classified into a particular category and stamp duty, at a specified percentage, is to be paid, it means that indirectly he admits the execution of the same, and he cannot retreat from such admission, at a later stage. If the petitioners are insisting on payment of the stamp duty on the document, as though, it is a sale deed, it is to be presumed that they are admitting the execution thereof. The reason is that the question of payment of stamp duty on a document, which, according to a particular party, is not executed, does not arise. Therefore, whatever may be the permissibility of determining the stamp duty, payable on a document by the Court, on its own accord, or at the instance of the Revenue Department, a party who, disputes the very execution, cannot have any say in the matter. Such a course would run contrary to the very basic tenets of Law of Evidence.

7. In Sri Tirumaia Housing (P) Ltd. ''s case (supra), the issue arose in the light of the view expressed by the trial court itself, as to the nature of the document. The

subject matter of the said judgment arose out of an order passed by the trial Court, on a consideration of the entire matter. Such is not the case here. It is needless to observe that the trial Court shall proceed with the matter on its own merits. This Court does not find any basis to interfere with the impugned order.

8. The Writ Petition is, accordingly dismissed. There shall be no order as to costs.