(2012) 03 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 12472 , 12630 and 12650 of 2011 WP No. 12472 of 2011

Philomena Education foundation of India	APPELLANT
Vs	
The Chief Controlling Revenue Authority, commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, The District Registrar, Hyderabad South, Registration and Stamps Department, Erragadda, Hyderabad. And The Sub-Registrar, Registration and Stamps Department, Sanjeeva Reddy Nagar, Hyderabad	RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:
Stamp Act, 1899 — Section 56

Citation : (2012) 4 ALD 420 : (2012) 4 ALT 198

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant;

Judgement

L. Narasimha Reddy, J.—These three writ petitions are by the same petitioner and arise under identical circumstances. Hence, they are disposed of through a common order. The petitioner purchased an extent of 955 sq. yards of land situated in premises bearing No. 6-3-1089, Somajiguda, Hyderabad, through a sale deed dated 12-04-1992 from Mrs. Zehra Begum. Two more bits in the neighbourhood, admeasuring 595 sq. yards are purchased by the petitioner through sale deeds dated 25-04-1997 from Syed Ahmed Hassan. It is stated that the area covered by the three sale deeds was uneven and full of boulders, and when areas covered by the three sale deeds were measured, after clearing the boulders and levelling the land, it emerged that the extents are more. Therefore, the petitioner got executed the deeds of rectification dated 03-02-2009, in relation to the three sale deeds and presented the same for registration before the Sub-Registrar, Sanjeeva Reddy Nagar, the 3rd respondent in all the writ petitions. Stamp duty was paid for the difference of the area, at the rate, that prevailed on the date of registration of the original sale deed. The 3rd respondent entertained a doubt, as to the classification of the documents. He felt that the documents dated 03-02-2009 in favour of the petitioner have the effect of conveying independent title in respect of the area, that was found to be, over and above, what was sold under the original sale deeds, and in that view of the matter, they deserve to be treated as sale deeds. He insists that the stamp duty and registration charges must be paid on the basis of the market value, that prevailed on the date of the execution of the deed of rectification.

2. Since the petitioner did not agree to pay any further stamp duty, the 3rd respondent referred the matter to the District Registrar, Hyderabad South, the 2nd respondent herein, for instructions as to the classification of the documents. The 2nd respondent issued notice to the petitioner and passed separate orders dated 24-05-2010, holding that the deficit of stamp duty and registration charges, together with penalty must be paid. Appeals u/s 56 of the India Stamp Act, 1899, were filed by the petitioner before the 1st respondent. The appeals were rejected, through orders dated 31-03-2011. Hence these three writ petitions.

3. The petitioner contends that the properties conveyed through the three sale deeds executed in the years 1992 and 1997 are covered by the boundaries mentioned therein, and the deeds of rectification had to be presented only to correct the extent, within the same boundaries. It is urged that the view taken by the respondents, that an independent sale has taken place; cannot be sustained in law.

4. On behalf of the respondents, counter-affidavits are filed. According to them, the area that is sought to be added by way of rectification is more than the one, covered by the original sale deeds, and in that view of the matter, it cannot be said that the documents are deeds of rectification. It is also pleaded that when the petitioner is going to secure title as regards the additional area mentioned in the deeds of rectification, stamp duty and registration charges are payable according to the prevailing market value.

5. Sri B. Adinarayana Rao, learned counsel for the petitioner submits that whenever any variation Is noticed between the extent, on the one hand, and boundaries, on the other hand, it is the latter, that would prevail, and that, if the said principle is applied, it cannot be said that there was any independent transaction between the parties to the deeds of rectification. He contends that the petitioner became the owner of the land mentioned in the respective sale deeds, with reference to boundaries, and that no title accrue to it, through the deeds of rectification in respect of any additional or different extent of land. Learned counsel submits that recognising the obligation to pay the stamp duty and registration charges on the differential area, it had paid the same, and that there was no justification for the respondents in insisting on payment of the same at the prevailing rates.

6. Learned Government Pleader for Revenue., on the other hand, submits that the very purpose of executing the deeds of rectification was, to confer title upon the petitioner as regards the extent mentioned in the documents, and for all practical purposes, they are nothing, but the sale deeds. He contends that even if the land conveyed through the deeds of rectification is within the boundaries mentioned in the earlier sale deeds, fresh transactions take place, with the execution of the documents.

7. The petitioner purchased one item of property admeasuring 955 sq. yards, through sale deed dated 12-04-1992, and two items of property, admeasuring 595 sq. yards, each, through two sale deeds dated 24-05-1997. Stating that on measurement of the plots, after clearance of the boulders, the actual area was found to be more, three deeds of rectification were presented. The petitioner paid stamp duty for the additional areas, at the rate, that was prevailing, when the original sale deeds were executed. All of them were assigned P-numbers, and were kept pending. The controversy was, as to whether the petitioner is under the obligation to pay the stamp duty and registration charges at the rate, that prevailed on the date of presentation of the deeds of rectification.

8. It is no doubt true that the increase in the areas is phenomenal, and in two cases, they are double the original area mentioned in the sale deeds. It is well settled principle of law that the nomenclature of the document does not decide the character thereof. Much would depend upon the contents. In case a document, though named as, deed of rectification, but in effect it convey title in an item of property, by itself, deserves to be treated as a sale deed. Another principle, which needs to be taken note of, is that, in any transaction pertaining to immovable property, in the event of there being any difference or conflict between the boundaries, on the one hand, and extent or description through survey number or house number, on the other hand, the former will prevail over the latter.

If, in the name of rectification, the executant of the document conveys title in favour of the transferee, the document would partake all the characteristics of a sale deed, and stamp duty and registration charges are to be paid, according to the prevailing rates. Where, however, the document purports to bring about rectification of the contents of an earlier sale deed, it cannot be treated as an independent deed of conveyance. If the rectification is in respect of any particulars, which do not have any effect upon the area, that was already sold, there would not be any occasion to require payment of stamp duty and registration charges, with reference to any particular value of the property. Such charges would be fixed under the relevant provisions of Schedule 1-A, and not advalorem. If, however, the document has the effect of adding area to the one, mentioned in the sale deed, the stamp duty and registration charges on such area must be paid.

9. The question as to whether an additional area within the original boundaries is sought to be added through deed of rectification or the area sought to be added

has independent boundaries, would have baring on the date, with reference to which, the stamp duty and registration charges must be paid on the deed of rectification. In case the boundaries remain the same, and just an additional area is mentioned in the deed of rectification, stamp duty and registration charges are liable to be paid at the rate, that prevailed on the date of the sale deed. The reason is that, the title to the entire property, within the boundaries mentioned in the sale deed was already conveyed with the execution of the sale deed. Just as the purchaser cannot complain at a later point of time, that the area mentioned in the sale deed, with reference to the boundaries was found to be less, much less he can insist on replenishment of such area or refund of the corresponding consideration, the transferor can not seek refund or return of the area, that is found to be excess, than what is mentioned in the sale deed, as long as the boundaries remain the same. Since the area mentioned in the sale deed is relevant, not only for the purpose of indicating the extent, but also for computation of stamp duty and registration charges; necessary correction and rectification, in this regard needs to be made, once the discrepancy as to the extent is noticed. Irrespective of the nature of understanding, or absence of any dispute between the parties, in this regard, the sale deed would be an evidence, only as regards the extent mentioned therein. Therefore, the necessity arises for execution of deed of rectification. In the process, the stamp duty and registration charges are to be paid on the difference of the extent, according to the rates that prevailed, when the sale deed was executed.

9. A different situation emerges, when the rectification is with reference to boundaries and in relation to an extent, over and above that was conveyed through the sale deed. If the excess area sought to be added through the deed of rectification is outside the boundaries, mentioned in the sale deed, the deed of rectification tends to bring about an independent sale transaction. The nomenclature of the document hardly matters. Since the title in respect of such an area comes to be conveyed for the first time, thorough the deed of rectification, it must be treated as a sale deed for such an extent, and stamp duty and registration charges must be paid, as per the rates, that are prevailing on the date of execution of the deed of rectification. Therefore, the view taken by the respondents cannot be countenanced.

10. The writ petitions are accordingly allowed, and the 3rd respondent is directed to process the documents, in case the stamp duty and registration charges, according to the rates that prevailed on the date of registration of the respective original sale deeds, are paid.

11. The Miscellaneous Petitions in these Writ Petitions also shall stand disposed of. There shall be no order as to costs.