(2011) 02 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1756 of 2010

R. Venkatram Reddy and R. Amarkanth Reddy — APPELLANT

Vs

Jetamoni Gouramma — RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151
Stamp Act, 1899 — Article 47A

Citation : AIR 2011 AP 94 : (2011) 114 RD 70

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : G. Madhusudan Reddy, for the Appellant; N. Ashok Kumar, for the Respondent

Judgement

B. Seshasayana Reddy, J.—This revision is directed against the order dated 17.02.2010 passed in I.A. No. 553 of 2009 in O.S. No. 91 of 2007 on the file of the Senior Civil Judge at Nagarkurnool, whereby and whereunder, the learned Senior Civil Judge dismissed the , petition filed by the Petitioners under Article 47A of the Stamp Act read with Section 151 Code of Civil Procedure.

2. The Respondent is the Plaintiff and whereas the Petitioners are the Defendants in O.S. No. 91 of 2007 on the file of the Senior Civil Judge, at Nagarkurnool. The Plaintiff filed the suit for specific performance of contract of sale. According to the Plaintiff, the 1st Defendant as Kartha and Manager of the Joint family offered for sale of land known as KHASI REDDY WANI KUNTA to an extent of Ac.7-22 gutas situated at Tandoor village and Mandal, Mahabubnagar District. The Plaintiff agreed to purchase land and paid Rs. 50,000/- on 29.11.2004 and Rs. 1,00,000/- on 12.3.2005 and Rs. 1,49,000/- on 7.6.2005. Thus, she paid total consideration of Rs. 2,99,000/- and the balance to be paid is Rs. 2,67,250/-. Despite his readiness and willingness for payment of the remaining sale consideration, the Defendants evaded to receive balance sale consideration and execute the registered sale deed. Hence, he filed suit for specific performance of

contract of sale. The Defendants filed written statement disputing the very contract of sale. The Plaintiff while being examined as Pw.1 marked the receipt-cum-agreement of sale dated 29.11.2004 as Ex.A-1. Thereafter, the Defendants filed I.A. No. 553 of 2009 under Article 47A Explanation-1 of Stamp Act read with Section 151 CPC with the following relief:

For all the reasons stated in the accompanying affidavit it is prayed that the Hon''ble Court be pleased to determine the admissibility of suit document dated 29-11-2004, the receipt-cum-agreement under Article 47A, Explanation-1 of Stamp Act and to pass order or orders as the Hon''ble court deems fit in the circumstances of the case .

3. Sri C. Narasimha Rao, junior counsel for the Petitioners-Defendants has sworn to the affidavit filed in support of the petition. It is stated in the affidavit that possession has been claimed by the Plaintiff pursuant to the Receipt-cum-Agreement of sale dated 29.11.2004, stamp duty and penalty is required to * be collected treating delivery of possession of the land is pursuant to receipt-cum-agreement of sale dated 29.11.2004 as provided under Explanation-1 appended to Article 47-A of Stamp Act. The Plaintiff filed counter resisting the application. It is asserted in the counter that there was no delivery of possession of the land subsequent to the receipt-cum-agreement of sale and therefore, explanation appended to Article 47 A of Schedule 1 A of Stamp Act cannot be pressed into service. For better appreciation, I may refer paras 6 to 8 of the counter affidavit filed by the Plaintiff resisting the petition.

That, on the date of entering into sale of land in regard to "Kasireddy vani Kunta" comprising the Sy. Nos. 11 and 16, there was mutual understanding that the area of 7 acres 22 guntas was to be worked out by survey. The Petitioner No. 1 herein has permitted me to enter into lands bearing "Sy. Nos. 1 and 16 for survey of the area of land in Sy. Nos. 11 and 16 extent 7 acres 22 guntas, accurately. As per the understanding between the parties, I have got surveyed the area of land under sale in Sy. Nos. 11 and 16. After misunderstandings between the parties, the land under sale has remained in the control and protection of mine.

7. That, subsequent to the agreement there is no delivery of the possession of the land to me in written by the Petitioners and even there is no taking of the possession for land under sale subsequent to the agreement.

8. That, it is submitted that as per the explanation 1 to the Article 47A of the Schedule 1-A, there is no delivery of possession pursuant to the agreement of sale and subsequently. The Petitioners have given the possession of the entire area of Sy. Nos. 11 and 16 for specific purpose of survey. The Court collected the correct stamp duty on the suit document. The explanation 1 to the Article 47 A of the Schedule 1-A is not applicable.

4. The learned Senior Civil Judge, on considering the material brought on record and on hearing the counsel appearing for the parties, came to the conclusion

that the stamp duty already collected is proper and that Ex.A-1 receipt-cum-agreement of sale does not come within the purview of Explanation-1 to Article 47-A of Schedule 1 A of the Stamp Act, and thereby, proceeded to dismiss the application filed - by the Defendants, by order dated 17.02.2010. The said order is assailed in this revision.

5. Heard learned Counsel appearing for the parties.

6. Learned Counsel appearing for the Petitioners-Defendants submits that since Ex.A-1 receipt-cum-agreement of sale has been followed by delivery of possession, Ex.A-1 receipt-cum-agreement of sale is to be treated as sale and stamp duty and penalty is to be collected accordingly. The learned Counsel by referring the plaint averments wherein the Respondent-Plaintiff pleaded delivery of possession pursuant to Ex.A-1 receipt-cum-agreement of sale contended that Ex.A-1 agreement of sale comes within the ambit of Explanation-1 appended to Article 47 A of Schedule 1 A of the Stamp Act. In support of his submission, reliance has been placed on the decision" of this Court in Sri Tirumala Housing (P) Ltd. v. GPR Housing (P) Ltd. 2006(5) ALT 532. In the cited case, a learned Single Judge of this Court has held that agreement of sale followed by delivery of possession is made chargeable as sale under Article 47-A of Schedule 1-A of the Stamp Act. Para (5) of the cited judgment needs to be noted and it is thus:

(5.) In this case, as per Clauses (1), (2) and other clauses of agreement of sale, the purchaser was enabled to get layout approved by Town Planning authorities, to advertise the sale of plots and book the sales to prospective purchasers, receive the consideration, by passing necessary receipts and deal with the property with necessary control over the land. Further in Para 4 of the plaint, the Petitioner averred that in pursuance of the agreement of sale, the Defendant permitted the Plaintiff to enter into the suit schedule property to develop the same by obtaining sanction plan. This itself would show that possession was delivered to the Petitioner following which the layout was prepared and the land was also sold to many third parties to an extent of about Acs. 116.00. Therefore, as rightly found by the trial Court, the agreement in question is chargeable as conveyance under Article 47-A of Schedule I-A of Stamp Act.

7. Learned Counsel appearing for the Respondent-Plaintiff submits that possession is not delivered pursuant to the receipt-cum-agreement of sale. What is stated in the plaint is that the Defendants have handed over possession of the lands under sale in Sy. Nos. 11 and 16 to the Plaintiff for survey and demarcation and therefore, Ex.A-1 agreement of sale cannot be construed as sale deed and accordingly, the order impugned in the revision is not liable to be interfered with. In support of his submission, reliance has been placed on the decisions of this Court in Cheryala Srinivas Vs. Moola Sujatha and Others, , Sri Lakshmi Housing Enterprises, Hyderabad v. Haji Begum 2010 (5) ALD 819 and S. Vijayalakshmi Vs. Boyapali Santhamma and Another, In Sri Lakshmi Housing Enterprises case (3rd supra), a learned Single Judge of this Court held that when the agreement of sale does not contain recital to the effect that possession was delivered, it is

not liable to be stamped as sale deed. Learned Single Judge referred the earlier decision in Housing (P) Ltd. Case (1 supra) and distinguished the same on facts. Para (5) of the cited judgment needs to be noted and it is thus:

(5.) Learned Counsel for the Respondents places reliance upon the judgment of this Court in Sri Tirumala Housing (P) Ltd. Vs. GPR Housing (P) Ltd., In that case, permission accorded to the purchaser to get the lay out approved to advertise the sale of plots and to book the sales to prospective purchases by receiving consideration etc. was treated as symbolic possession to attract Article 47-A. The recitals in the instant case are at variance. In Cheryala Srinivas Vs. Moola Sujatha and Others, this Court held that it is only when the purchaser under an agreement of sale gets actual and legal possession of the property under the agreement of sale, that he can be required to pay the stamp duty

8. I have gone through the plaint averments. The Respondent-Plaintiff pleaded in the plaint that Defendants handed over possession for survey and demarcation. Therefore, it can be construed that possession is not absolute and it is only for limited purpose. The possession mentioned in Explanation-1 must be effective, actual and the one recognised in law. Unless the party under the agreement has the benefit of possession of the property, without any dispute, or challenge, from a party to the agreement, he cannot be mulcted with the liability to pay the stamp duty, as though it is a sale deed, vide decision of this Court in Cheryala Srinivas v. Moola Sujatha (2nd supra). The issue involved in this revision is squarely covered by the judgment of this Court in S. Vijayalakshmi v. Boyapali Shanthamma (4 supra), wherein it has been held that mere placing of land in the hands of purchaser under the agreement for dividing it into plots and to lay roads does not constitute handing over possession of the land and therefore, it does not require stamp duty as sale deed.

9. In view of the settled proposition of law, the order impugned in the revision does not warrant interference and accordingly, the Civil Revision Petition is dismissed. No costs.

