(2010) 08 AP CK 0142

In the Andhra Pradesh High Court

Case No : C.R.P. No. 2559 of 2010

Sri Lakshmi Housing Enterprises — APPELLANT

Vs

Haji Begum and Others — RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:
Stamp Act, 1899 — Section 38(1)

Citation : (2010) 6 ALT 24

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.A.K. Mukheed, for the Appellant; M. Bala Naga Srinivas, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The Petitioner filed O.S. No. 622 of 2006 in the Court of V. Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District for the relief of specific performance of an agreement of sale dated 14.03.1992 in respect of the suit schedule property and for the relief of perpetual injunction. The trial of the suit commenced and he sought to file the original of the agreement into the Court. An objection was raised by the Respondents as to the admissibility of the document, on the ground that it was not properly stamped. According to the Respondents, the agreement is required to be stamped as per Article 47A of Schedule 1A to the Indian Stamp Act. The Petitioner pleaded that there is no recital as to delivery of possession in the agreement and as such, it is not at all liable to be stamped. The trial Court did not agree with the Petitioner and through its order, dated 18.04.2010, it directed the Petitioner to pay the required stamp duty and penalty as provided for under the Indian Stamp Act or to get it impounded u/s 38(1) of the Indian Stamp Act. The same is challenged in this revision.

2. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents.

3. It is no doubt true that Article 47A of Schedule 1-A to the Registration Act mandates that wherever an agreement of sale contains a recital to the effect that the possession of the property is delivered, it shall be stamped as though it is a sale deed. The stamp duty so paid shall be taken into account, at the time of execution of the sale deed. The whole controversy turns around the recitals in the agreement of sale. It contains various clauses and prominent among them are that a sum of Rs. 60,000/- is paid as advance and the land is to be measured within one week from the date of agreement; and the balance of consideration shall be paid in 15 bi-monthly instalments. It was also mentioned that the parties shall cooperate for obtaining lay out in respect of the land. There is no recital to the effect that the possession of the property was delivered.

4. In his plaint, the Petitioner stated that after the agreement was entered into, he paid the balance of sale consideration to the Respondents and possession was delivered thereafter. The possession so delivered cannot be related to the agreement of sale. It is only when the possession has accrued to the Petitioner through the agreement that he can be required to pay the stamp duty. The mere fact that the possession has been delivered, at a later point of time, does not make the document liable to be stamped as though it is a sale deed.

5. Learned Counsel for the Respondents places reliance upon the judgment of this Court in Sri Tirumala Housing (P) Ltd. v. GPR Housing (P) Ltd. 2006 (5) ALT 532 . 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 47A. 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.

6. For the foregoing reasons, the civil revision petition is allowed and the order under revision is set aside. It is directed that the agreement of sale shall be received in evidence without the necessity of payment of stamp duty or penalty. The suit is of the year 2006. The trial Court shall endeavour to dispose of the same as early as possible, preferably within six months from today. There shall be no order as to costs.

