Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 21/09/2026

(1998) 02 AP CK 0030

In the Andhra Pradesh High Court

Case No : C.R.P.No. 831 of 1998

Sub-Registrar, Nalgonda Dist. APPELLANT

Vs

Amaranaini China Venkat Rao and others RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 — Rule 3(3), 3(4)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34, Order 26 Rule 10B
Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 38(1), 47A, 75

Citation : AIR 1998 AP 252 : (1998) 3 ALD 46 : (1998) 2 ALT 457 : (1998) 1 APLJ 404

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Government Pleader for Arbitration, for the Appellant; Mr. V.V.N. Narasimham, for the Respondent

Judgement

1. A very important question of law fells for consideration in this revision petition i.e., what is the stamp duty payable on a sale deed executed by the Court pursuant to a judgment and decree in a suit for performance, on the basis of an agreement of sale. To put it in more clear terms whether the Registering Officer can demand stamp duty on the basis of the prevailing market value of the property on the date of execution of the regular sale deed by the Court without reference to the consideration which the purchaser/ vendee agreed to purchase the property under an agreement of sale and without reference to the time taken by the Courts in decreeing the suit for specific performance.

2. The factual matrix of the case is that respondents herein seemed to have entered into an agreement of sale on 27-06-1965 to purchase an extent of Ac 300.00 of land in Vajincpalli Village, Nalgonda District for a consideration of Rs. 10,500/- from one S. Venkata Laxmamma. When the said lady refused to execute the sale deed as per the terms of the agreement of sale, these

individuals seemed to have filed O.S.No.23 of 1968 seeking a decree for specific performance of the above agreement of sale and the suit was ultimately decreed by judgment and decree dated 21-2-1997. In the mean time another person by name A. China Venakatarao appears to be the cousin of Venkata Laxmamma filed OS No.101 of 1976 on the file of the District Munsif, Huzuranagar seeking permanent injunction against respondents 1 to 3 and their vendor Smt. Venkata Laxmamma by contending that she entered into an agreement of sale with him on 27-06-1965. After contest the suit was dismissed on 31-01-1980. Thereafter he seemed to have carried the matter in appeal by filing A.S.No.37 of 1984 and the District Court seemed to have allowed the appeal and granted permanent injunction against respondents 1 to 3 herein and their vendor. Thereafter the petitioners herein seemed to have carried the matter to this Court by filing S.A.No.445 of 1985 and it was ultimately allowed by decree and judgment dated 25-06-1986 and restored the judgment and decree of the trial Court.

3. After the above two rounds of litigation was over, the respondents seemed to have filed E.P.No.4 of 1987 against their vendor seeking execution of the sale deed in terms of judgment and decree of the Sub-Court, Nalgonda in O.S.No.23 of 1968. But the said Venkata Laxmamma having received notice in the E.P. did not come foiward to execute the sale deed for a long time. During the pendency of this E.P., the first respondent as well as his vendor seemed to have died and their legal representatives were brought on record. In such circumstances the respondents filed E.A.No.6 of 1994 in E.P.No.4 of 1987 requesting the Court to execute a registered sale deed in their favour and they also filed draft sale deed and the stamp duty payable on the basis of sale consideration. Thereafter the Court seemed to have addressed a letter to the Sub-Registrar concerned to find out the market value of the said lands and the Sub-Registrar informed the Court that as per the basic value of the register, the market value of the land is more than Rs.35,000/- per acre and on the basis of the prevailing market rate, a stamp duty of Rs. 47,03 5-50ps. were required to be paid. In those circumstances, die Subordinate Judge framed the following issue for consideration.

(1) Whether there arc sufficient grounds to send the deposited stamps to the Sub-Registrar for registration of the lands?

4. Having considered the binding nature of the market values given in the basic register, the Subordinate Judge observed as follows:

"It is extremely hard upon the decree holder to abide by the values stated in the Basic Valuation Register. As pointed by the decree holder the value slated as per the Basic Valuation Register arc contrary to Section 47(A) of the Indian Stamp Act".

Having referred to the judgments of this Court reported in M/s. Sagar Cements Limited, Mattampalk v. Stale of Andhra Pradesh represented by Us Secretary, G.A.I)., 1989 (3) ALT 677 and in K. Sivaramaiah v. Special Deputy Collector, Urban, Cuddapali, 1989 (1) ALT 546, the Sub-Court recorded a finding as hcrcunder;

"" I hold that a deed of sale proposed can be engrossed upon Non-Judicial stamps of required value and present for registration and u/s 47 of the Stamp Act, the registering authority shall accept the consideration stated in the document as representing true market value unless there is clear material before him to hold that the parties to document have deliberately understated the consideration with a view to avoid stamp duty.

So far as suit lands covered by a decree in O.S.No.23 of 1968 is concerned, the consideration stated in Judgment and decree shall be treated as the market value irrespective of the value stated in Basic Valuation Register.

In the result, the petition is allowed to execute the registered sale deed on the Non-Judicial Stamps enclosed and send the same to the Registrar, concerned."

5. It is seen from the record that after the said Order, the vendor seemed to have died and his legal representative who is 4th respondent in the revision petition refused to come forward to execute the sale deed. In those circumstances the respondents filed E.A.No.15 of 1995 under Order 21. Rule 34 read with Order 26 Rule 10 (B) of C.P.C. for appointment of a Commissioner and one Sandhya Rani was appointed as a Commissioner. When the Advocate-Commissioner presented the document for registration, the Sub-Registrar insisted for payment of stamp duty as per the market value shown in the Basic Valuation Register for the year 1995. Ultimately, without registering the document he seemed to have addressed a letter in L.R.No38/96 dated 13-02-1996 seeking instructions of the District Registrar and the District Registrar seemed to have opined that the stamp duty has to be paid on the basis of the prevailing market value on the date of execution of the document i.e., 24-08-1995 on which date the Court executed the sale deeds in favour of the respondents. Even according to the District Registrar as the sale deed is being presented for the first time in the year 1996 the stamp duty is payable on the basis of the market value shown in the Basic Valuation Register. This correspondence is also filed in the Court and once again in the Sub-Court having considered the subsequent judgments on the scope and ambit of Section 47(A), Read with the Andhra Pradesh Stamp (Prevention of Under Valuation Instruments) Rules, 1975 held that the letter addressed by the Registrar and the opinion of the District Registrar is not binding as that is beyond jurisdiction as contemplated u/s 47(A) of the Indian Stamp Act. But the relief sought for in the petition is only for appointment of a Commissioner for presentation of the document. The Subordinate Judge closed the matter as the Advocate-Commissioner was already appointed in the case.

6. Under those circumstances, the respondents filed another application in E.A.No.213 of 1996 making the Sub-Registrar as a party respondent and sought for a direction to the Sub-Registrar to register the sale deed. The Court by an

order dated 25-10-1996 seemed to have directed the Sub-Registrar to present in the Court on 6-2-1997. On that date the Sub-Registrar not only appeared in the Court but also filed a counter. Having considered the objections raised by the Sub- Registrar, the Court passed a docket order on 6-2-1997 to the following effect:

7. "The Sub-Registrar, Kodad, K. Keshavulu is present, he is directed to ., complete the registration and send the registered document along with the covering letter to the Court on or before 21-2-1997", This order is now under challenge.

8. The learned Government Pleader for Arbitration strenuously contends that stamp duty is payable on the market value prevailing at the time of presentation of the sale deed and as such the Court below cannot direct him to register the sale deed on the basis of the value of the property shown at the time of purchase in the agreement of sale which reflected ultimately in the sale deed. In support of his contention he placed reliance on a judgment of this Court reported in Media Anasuyamma and another Vs. Choppela Lakshmamma, . In that case plaintiff who is sister of one Subbaiah filed a suit against his daughter (first defendant) for declaration of title and possession on the basis of a registered settlement deed dated 25-08-1974. The defence taken by the daughter of Subbaiah was that her father executed another registered settlement deed on 23-5-1979 in her favour i. e., subsequent to the settlement deed in favour of his sister. During the course of trial, the first defendant sought to file an un-registered karamama deed dated 4-9-1959 said to have been executed by Subbaiah to settle the suit property in her favour in consideration of some other property said to have been given to him by her. As this document being an unregistered document, the plaintiff seemed to have objected for making the same as a document in this case. Though from the judgment it is not seen that the document was impounded by the Court in exercise of the powers conferred on it u/s 38(1) of the Stamp Act, two contentions were raised before a Division Bench of this Court.

(1) Whether an instrument has been duly stamped according to law in force on the date of its execution can be said to be in-admissible by an application of subsequent amendment to the statute relating to stamp duty.

(2) Whether the order of the lower Court not admitting the document dated 4-9-1959 in the evidence of DWI amounts to a "case decided".

9. In that case the correctness of the judgment of a learned Single Judge in A. Chandra Sekhar v. R.Namsimha Reddy, 1990 (1) ALT 264 and also the judgment in K. Obaiah v. T. Venkatamma, 1988 (2) ALT 435 was canvassed by contending that every document is liable to a stamp duty in accordance with the provisions of the Indian Stamp Act 1899 as in force on the date of execution of the document irrespective of the date of presentation or marking it in Court. As this Court in those two cases has taken the view that stamp duty is payable on the

document on the market value prevailing at the time of its presentation before the Registrar, the learned Judges having noticed the amended provisions of the Stamp Duty Act by amending Act 17 of 1986 recorded a finding that the amending Act has no retrospective effect and held that stamp duty on instruments is payable according to law in force on the date of execution.

10. Having taken the above view both the judgments referred to above have been overruled. Now on the basis of the above judgment this Court is called upon to decide whether stamp duty has to be paid on the sale deed on the basis of the market value prevailing on the date of execution of the sale deed by the Court. The Indian Stamp Act 1899 was amended by Act 22 of 1971 and Section 47(A). The prescribing procedure to deal with the instruments of conveyance are under valued in the opinion of the Registration Officer. To decide the controvercy in this revision I feel it suffice to extract Section 47(A)(1) and (6) on which Sri M.Y.K. Rayudu, the learned Government Pleader placed in support of his case.

(1) "Where the Registering Officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition "Settlement or release" reason to believe mat the market value of the property which is the subject-matter of such instrument has not been truely set forth in the instrument "he may, keep pending such instrument and refer the matter to the Collector for determination of market value of such property and proper duty payable thereon".

(2) "For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance, exchange, gift, partition or settlement".

Pursuant to the above provisions read with Section 75 of the Indian Stamp Act, Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules 1975 were framed inG.O.Ms.No.1031, Revenue U(2), dated 31-7-1975. We are concerned with Rule 3(3) and 3(4).

(3) The Registering Officer may, for the purpose of satisfying himself whether the market value or the consideration has been correctly furnished in the instrument or not make such enquiries, as he may deem fit. He may elicit from the parties concerned, any information having a bearing on the subject and call for and examine''any records kept with any public officer or authority.

(4) If the Registering Officer is of the opinion that the market value of the property affected by the instrument is not correctly furnished, he shall keep the document pending and with delay refer the matter to the Collector with details or his assessment of the market value arrived at by him in the Form-1. No copy of such document shall be granted notwithstanding anything contained in any of the provisions of any other Act or Rules.

11. From the above provisions it is seen that as and when any instrument of conveyance, exchange, gift, partition, settlement or release, etc., are presented for registration, if the Registration Officer has reason to believe that the market value of the property has not been properly set out in the instrument, he is expected to keep die instrument pending registration and refer the matter to the Collector for determination of the market value of such property and for collection of proper duty thereon. Under Rule 3(3) the Registering Officer for the purpose of satisfying himself whether market value or the consideration has been correctly furnished in the instrument or not, is empowered to make such enquiry as he may deem fit. He may elicit from the parties concerned any information having a bearing on the subject and call for and examine any records kept with any public Officer or authority. After enquiry if the Registering Officer comes to the opinion that the market value was not correctly furnished, he shall keep the document pending and refer the matter to the Collector with the details of the assessment of the market value arrived at by him in Form No. 1.

12. It is also now on record that pursuant to the above provisions, the Inspector General of Stamps and Registration was preparing Basic Valuation Register for each local area on the basis of the recommendations made by the Committee constituted for the guidance of the Registration Officers. While Hon''ble Justice Jeevan Reddy and the Hon''ble Justice Sri S.R.Nayak have taken the view that the value of the property shown in the Basic Value Register may be a relevant factor in finding out whether the true value of the property was shown in the instrument of conveyance or not, a Division Bench of this Court in Mohd. Abbas Shafi Vs. Sub-Registrar, has taken the view that the Basic Valuation Register has no statutory basis nor having any determinative role in fixing the valuation of the property and observed as follows:

" There has been successive decisions of this Court laying down the basic value registers to have no statutory basis nor to have been any determinative role to play in fixing the valuation of the property fixed unilaterally at the instance of the Government, though it is submitted that the Government guidelines for fixing the basic valuation are based upon enquiries relating to the land values by the Government".

In the present case, when the Advocate-Commissioner presented the document for registration, the Registration Officer without conducting any enquiry to satisfy himself whether the consideration shown in the instrument is true or not seemed to have referred the matter to the District Registrar, who in turn opined that the instrument is chargeable with judgment on the basis of the market value on the date of execution of the document. Having taken such a view the Registration Authorities insisted for payment of stamp duty on the market value prevailing on 24-08-1985, the date on which the sale deed was executed by the Court. The scope and ambit of Section 47(A) is the subject-matter of several decisions of this Court as well as Madras High Courts. In The State of Tamil Nadu Vs. T.N. Chandrasekharan, a Division Bench of Madras High Court while dealing with similar provisions observed as hereunder:

"We are inclined to think that the subject of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself, as we already mentioned, is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is in the nature of things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion".

The first of a series of the decision of this Court being N. Rartga Reddy v. The Government of Andhra Pradesh, 1987 (J) APLJ 131 Justice Jeevan Reddy while considering the salient objectives of the amending Act has taken judicial notice about die large scale evasion of the stamp duty by grossly under valuing the instruments and upheld the validity of Section 47(A) which introduced a new concept of market value of the property as the basis for payment of stamp duty instead of the consideration that was passed between the parties. At the same time having considered the above provision held that:

"It is evident from a reading snb-section(l) of Section 47(A) and from a perusal of the Act, that the Government has no power in law to fix the values of lands or properties for the purposes of the Stamp Act and/or to direct the registering authorities not to admit documents for registration unless the value stated in the documents conforms to the value fixed by the Government".

In other words his Lordship categorically held that the Government has no power to fix the value of the lands or properties on its own for the purpose of Stamp Act. What all the Registration Officer can do u/s 47(A) is that when he is of the opinion that he has reason to believe that the market value of the property shown in that instrument has not been truly setforth, he shall hold an enquiry and forward the same to the District Registrar for his decision on the market value of the property and the stamp duty payable thereon. The words "Market value of the property which is the subject matter of such instrument has not been truly setforth in the instrument" were explained by Justice Ramanujam Nayudu in K. Sivaramaiah v. Special Deputy Collector, Urban, Citddapah (supra). In that case temple property was sold for a consideration of Rs. 36,200/- on 6-10-1981 and after confirmation of the sale by the Commissioner of Endowments, the said instrument was presented for registration on 2-9-1983. The Collector, Cuddapah in exercise of his powers u/s 47(A) (2) determined the market value of the property at Rs.1,66,980/- and levied a duty of Rs. 16,6997-. The statutory appeal preferred by a vendee was dismissed. Thereafter the vendee approached by way of revision to this Court. While allowing the revision petition this Court held as hereunder.

"Section 47-A of the Act empowers the Registering Officer appointed under the Registration Act to make a reference to the Collector for determination of the market value of the property conveyed under an instrument where ho has reason to believe that the market value has not been truly setforth in the instrument. The object underlying Section 47 of the Indian Stamp Act is to neutralise the effect of undervaluation of the immovable property conveyed under registered instruments of sale, or exchange, or gift, or partition, or settlement, In the instant case there could be no question of undervaluation of the property as the property was sold in public auction in favour of the appellant. The expression used as "truly" and not "properly" or "correctly". The consideration, the appellant parted with for purchase of the property, it is not denied, was truly setforth in the instrument. It therefore follows that the reference made by the Sub-Registrar, Pullampet is bad."

From the above judgment it is evident that the Registration Officer while conducting enquiry should concentrate himself whether the consideration mentioned in the instrument of conveyance is true or the instrument was undervalued to avoid stamp duty. It is not his concern to see whether the market value of the property as given in the instrument is proper or correct. That being the legal position in this case, the Registration Authorities cannot contend that the value of the property shown in the sale deed is not true consideration that was paid by the respondent to their vendors. As the vendor went back on performing his part of contract, the respondents arc forced to approach the Court of law by way of filing a suit for specific performance. Because of the cumbursum legal procedures that arc vogue in this Country, the suit could not be disposed of till 1977 and in the meantime as seen from the record, the vendors seemed to have set up her relative to prevent the execution of the sale deed by getting another suit filed for a permanent injunction by stating that she the vendor entered into an agreement with him in the year 1976 to sell the land. After the plethora of appeals provided in C.P.C. were exhausted the execution proceedings in the suit filed by the respondents could be initiated only in the year 1987. Even thereafter for some time the vendor or her legal representative after her death did not come forward to execute the sale deed. In those circumstances, the Court was compelled to register the sale deed in favour of the respondents. From the above factual narration it cannot be said that the sate consideration shown in the sale deed cannot be the true consideration passed on between the parties. When once the consideration paid by the respondents cannot be attacked on any ground, the question of demanding stamp duty on the basis of the market value prevailing on the date of execution of sale deed docs not arise. Because of the circumstances that have taken place in this case there is an abnormal delay in execution of sale deed in terms of the agreement of sale deed and the respondents are in no way responsible for the delay in execution of the sale deed. On the other hand they were fighting the litigation throughout in one Court or the other and ultimately realised the fruits of litigation by 1995. Hence there is no justification on the part of the registering authorities in demanding stamp duty on the basis of the market value prevailing on the date of execution of the sale deed by the Court.

13. Yet in another judgment in Swamy Talkies v. Sub-registrar of Assurances, East Godavari District, 1997 (1) ALD 779, also the Endowments Department sold the property to the petitioner but to complete the formalities under the Endowments Act, the Endowments authorities have taken considerable time in-executing the regular sale deed. After reviewing the case law, has Lordship Justice K Bhaskara Rao held that:

"As indicated above, the petitioner has performed his part of contract and what remained was the formality of execution of conveyance. Undoubtedly the delay in executing the document was on account of the red-tapism prevailing in the Government machinery and there docs not appear to be any default on the part of the petitioner for the above delay"

In the instant case also the respondents performed their part of the contract and the moment the vendor refused to execute the sale deed, the respondents approached the Court of law seeking redressal of their grievance and in that case if it is red-tapism prevailing in the Government, in this case it is the cumbursum legal procedures that are in vogue in this Country are responsible for the delay in execution of the sale deed. Hence there is no justification for directing the respondents to pay the stamp duty on the market value prevailing at the time of execution of the document.

14. At this stage the learned Government Pleader brought to my notice a judgment of this Court in W.A.No.104 of 1997 dated 28-03-1997 whereunder their Lordships Justice Prabha Shankar Mishra (Chief Justice as he then was) and Justice K Rajgopal Reddy held that the writ petition filed by the petitioner seeking writ of Mandamus directing the registration authorities to register the sale deed by receiving the stamp duty on the basis of the market value prevailing on the date of execution without insisting for the enhanced stamp duty that came into force at the time of presentation is not maintainable in law. The reason being that an elaborate procedure was prescribed under Section. 47(A) of the Indian Stamp Act which is much more adequate than the proceedings in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. But at the same time this judgment did not relate to the case in which Justice Y. Bhaskar Rao rendered judgment but in some other case the learned Judges have taken that view. Even assuming without admitting that writ petition is not maintainable ratio decidendi laid in a particular case cannot be brushed aside as along as it stands to reason, fair play and equity.

15. Lastly the learned Government Pleader contended that the very relief sought for by the respondents in the lower Court is only to direct the Registrar to follow the procedure u/s 47(A) of the Indian Stamp Act, this Court may not be justified in deciding the issue here and the matter may be remanded back to the District Registrar for holding an enquiry. In the normal course if the learned Government

Pleader made such a request I might have accepted the request. But this case was on my list for nearly one year to enable the learned Assistant Government Pleader to look into the legal position and it is only after investigation of the entire case law by the Court such a request came forward from the learned Government Pleader. Having come to the decision that u/s 47(A) of the Stamp Act the registering authority is empowered to hold an enquiry to satisfy himself whether the value of the property was truly shown in the document or not without going into the aspect whether the consideration passed between the parties is proper or correct and in the instant case having come to the conclusion that the sale consideration was properly shown, I cannot remand the matter. Further, parties are already in the Court for the last 30 years and I cannot subject them once again to the ordeal of continuing the litigation without end. Hence I rejected the request of the learned Government Pleader and decided the issue on merits.

16. Lastly the learned Government Pleader relies on a circular issued by the High Court dated 3-8-1982, whercunder the Presiding Officers of the Courts were directed to refer the instruments to the registering authorities for ascertainment of the market value u/s 47(A) of the Act. Even according to the learned Government Pleader it is only administrative in nature and it cannot have any force of law. Further, on the very first occasion itself the learned Subordinate Judge in E.A.6/94 dated 25-10-1994 went into the question and held that the instrument should be registered on the basis of the consideration shown in the document. In fact that order has become final and the learned Government Pleader did not question the validity of that order.

17. For all these reasons I did not find any merit in any of the contentions raised by the learned Government Pleader. Accordingly the revision petition is dismissed.

18. At the end of the proceedings the learned Counsel for the respondents brought to my notice that the document was kept pending with the Registration Officer since the date of presentation. If that is the case, the Registration Officer shall deliver the sale deed to the respondents within one week from the date of furnishing a copy of the order by the respondents without waiting for the receipt of the copy by him.

