(2014) 03 KAR CK 0160

In the Karnataka High Court

Case No : Writ Petition No. 45100 of 2011 (GM-CPC)

Suresh Bhatia APPELLANT

Vs

Gullamma RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2
Karnataka Stamp Act, 1957 — Section 33, 34

Citation : (2014) 3 AKR 827 : (2014) 3 KCCR 2773

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S.K.V. Chalapathy, Sr. Counsel for Chalapathy and Srinivas, Advocate for the Appellant; V. Vijayashekara Gowda, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The petitioner has preferred this writ petition challenging the order passed by the trial Court impounding the Power of Attorney which was sought to be marked by the plaintiff and directing him to pay duty and penalty.

2. The plaintiff has filed a suit for specific performance of the agreement of sale against the defendants. The defendants are contesting the suit. Issues are framed. The Plaintiff, during the course of evidence has produced the agreement of sale which is marked as Ex. P.1. He sought to produce the power of attorney executed by the defendants in favour of his brother Mr. Sunil Bhatia to show that not only the agreement is executed but it is also acted upon. At this stage, the defendants objected to marking of the Power of Attorney on the ground that it is required to be stamped as a conveyance in terms of Article 41 of the Karnataka Stamp Act, 1957 but insufficiently stamped. It is contended by the plaintiff, before the trial court that the Power of Attorney since is not executed for consideration, it need not be stamped as a conveyance.

3. The trial Court after considering the rival contentions and looking into documents produced in the case concluded that the agreement of sale, the

power of attorney, affidavit, confirmation deed, receipts, all have simultaneously been executed. All these documents have to be construed as contemporaneous transactions. Thus, the Power of Attorney is executed for consideration and it is insufficiently stamped. Exercising the powers under Sections 33 and 34 of the Karnataka Stamp Act, the trial court has impounded the document, directed the plaintiff to pay stamp duty of Rs. 90,055/- (Rs. 90,155/- duty payable minus Rs. 100/- stamp duty already paid) and Rs. 9,00,550/- as penalty. Aggrieved by the said order, the plaintiff has preferred this writ petition.

4. Sri. S.K.V. Chalapathy, the learned Senior Counsel appearing for the petitioner contended that, Article 41 is attracted only when a Power of Attorney is executed for consideration and authorizing the attorney to sell the immovable property. In this case though the Power of Attorney authorizes sale of immovable property, it is not for consideration and therefore the order passed by the trial Court treating the power of attorney as an insufficiently stamped document and impounding the same is erroneous. The learned senior counsel appearing for the petitioner has relied on a judgment of this Court in Karar Ahmed represented by GPA Holder Sri A.R. Vasanth Kumar Vs. Rajanna Hanumaiah and Others, in support of his arguments.

5. Per contra, the learned Counsel appearing for the defendants/respondents supporting the impugned order submits that, though passing of consideration is not mentioned in the Power of Attorney, this document cannot be read in isolation. As held by the trial Court, Agreement of Sale, Power of Attorney, affidavits, confirmation deed, receipts, all have come into existence at the same point of time and are to be read together. When so read together it becomes clear that the power of attorney is executed for consideration.

6. During the year 1985, Article 41(e) of the Karnataka Stamp Act read thus:

"Article 41(e) - When a Power of Attorney has been executed for a consideration authorizing the attorney to sett any immovable property, the stamp duty is payable on the market value equal to the amount of consideration i.e. the same duty as a conveyance.''

7. Therefore, in order to attract payment of stamp duty under the above Article, the Power Attorney:

1) Ought to be executed for consideration; and

2) It should authorize the attorney to sell any immovable property.

8. The argument of the plaintiff in the instant case is that the Power of Attorney is not executed for consideration and therefore Art. 41(e) of Karnataka Stamp Act as it stood in 1985 is not attracted. In Karar Ahmed''s case relied upon by the petitioner, this Court while dealing with an agreement of sale, has held as below:

"The petitioner/plaintiff is a stranger to the agreement dated 5-5-1997. The petitioner/plaintiff is not claiming any right under the agreement of sale and he being a stranger to the contract, he cannot enforce the same. The plaintiff has sought to mark the agreement to sell in his evidence to prove that his vendors had entered into an agreement of sale with defendant Nos. 1 to 3. Since the plaintiff is neither claiming any right nor enforcing the agreement of sale, the same could have been marked for collateral purpose though it was insufficiently stamped."

9. The ratio laid down in the decision cited supra, in my view, has no application to the facts of the case. In the instant case the dispute is with regard to stamp duty payable on a Power of Attorney executed by the defendants in favour of the plaintiffs brother in respect of a property, which is the subject matter of the suit and this is the property in respect of which the defendants are alleged to have entered into an agreement of sale with the plaintiff. The Plaintiff is seeking to produce the Power of Attorney to demonstrate that the defendant has not only executed the agreement of sale in his favour, but also executed a Power of Attorney in favour of his brother authorizing to sell the property to him or to his covenants. As such the Power of Attorney holder cannot be held to be a stranger. Nor can it be said that the plaintiff is not claiming any right under the Power of Attorney. The Power of Attorney specifically refers to the fact that the defendants have entered into an agreement to sell the property mentioned therein to one Muniswamappa as per the terms and conditions stipulated in the agreement dated 21-11-95 which is the suit document. In view of this, the contention of the plaintiff that the Power of Attorney was not executed for consideration, cannot be accepted.

10. The Power of Attorney, agreement of sale, affidavit, confirmation deed, receipts have all come into existence simultaneously at the same point of time and as a part of the same transaction. They have come into existence contemporaneously. Therefore the Power of attorney cannot be read in isolation. On a combined reading of all these documents, it can be safely said that the power of attorney is executed by the defendants in favour of the plaintiff''s brother for consideration received under the agreement of sale from the plaintiff. Therefore, the order of the trial Court cannot be found fault with.

11. The correctness of the calculation made by the trial court with regard to the stamp duty payable is assailed by the petitioner. It is also submitted by the parties that by virtue of stay order, further proceedings in the suit are stayed and direction may be issued for early disposal.

12. In the result, I pass the following

ORDER

1) Writ Petition is dismissed.

2) However, if there is any error in the rate of stamp duty payable on the power of attorney as calculated by the trial court, it is open to the plaintiff to point out

the same to the trial court.

3) The trial Court shall proceed with the suit on a day to day basis in terms of proviso to sub-rule (2) of Rule (2) of Order XVII CPC. If any party to the suit seeks adjournment beyond a day, the same shall be granted on payment of a minimum cost of Rs. 1,000/-.

