(2009) 02 AP CK 0045

In the Andhra Pradesh High Court

Case No : C.R.P. No. 321 of 2009

Syed Jaheer Ahamad — APPELLANT

Vs

Haji Jandamanu Yusuf Saheb (died) — RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Article 47A

Citation : (2009) 3 ALT 178 : (2009) 1 APLJ 406

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : M.V. Suresh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—The Revision petitioner is the defendant in O.S. No. 21 of 2005 on the file of the Court of the Ill-Addl. District Judge (FTC), Anantapur. The said suit was filed by the 1st respondent herein for specific performance of Agreement of Sale, dated 14.10.2004, allegedly executed by the defendant/Revision petitioner. Subsequently the sole plaintiff died and the respondents 2 to 9 herein were brought on record as his legal representatives.

2. The defendant/Revision petitioner filed a written statement in which the execution of agreement of sale was not disputed, but it was pleaded that the possession of the property was also delivered to the 1st plaintiff on the date of the agreement and to avoid stamp duty and registration the same was not mentioned in the agreement. It was also pleaded that taking advantage of delivery of possession, the plaintiff was postponing payment of sale consideration. During the trial, the Agreement of Sale dated 14.10.2004 was marked on behalf of the plaintiffs as Ex.A-1 subject to objection. While the matter was coming up for cross-examination of P.W.1, the defendant filed I.A. No. 515 of 2008 with a prayer to decide the objection relating to stamp duty and penalty on Ex.A-1. The plaintiffs/respondents 2 to 9 herein filed a counter stating

that the possession was delivered subsequent to execution of the agreement and therefore the objection raised by the defendant that the Agreement of Sale was not properly stamped was untenable. The Court below, after hearing both the parties, by order dated 29.12.2008 dismissed I.A. No. 515 of 2008 holding that the dispute with regard to the date of delivery of possession of the schedule property has to be decided in the main suit after full-fledged trial. The said order dated 29.12.2008 is under challenge in this Civil Revision Petition filed under Article 227 of the Constitution of India.

3. The learned Counsel for the petitioner vehemently contended that the objection that Ex.A-1 is not properly stamped has to be decided before proceeding further in the suit and such a question relating to the admissibility of the document on the ground of sufficiency of stamp duty cannot be postponed to be decided in the final judgment. In support of the said contention, the learned Counsel for the petitioner relied upon Bipin Shantilal Panchal v. State of Gujarat (2001) 3 SCC 1 : 2001 (1) ALT (Crl.) 230 (SC) Part 33 State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors. 2003 (1) Decisions Today (SC) 490, D. Joganna v. U. Chayadevi 1997(5) ALT 628 and M. Hari Narayana @ Hari Babu Vs. The Chief Controlling Revenue Authority and Commissioner and Inspector General of Registration and Stamps and Others,

4. There can be no dispute about the well-settled principle that an unstamped or insufficiently stamped document is inadmissible in evidence and cannot be looked into for any purpose and therefore such a question requires determination at the threshold. However, in the case on hand the document in question is only an Agreement of Sale and there is no recital regarding delivery of possession of the suit land to the 1st plaintiff on the date of execution of the agreement. The Court below also found that no other document was available on record to show the delivery of possession of the suit property so as to treat the suit agreement as a sale deed attracting stamp duty and penalty under Article 47-A of Schedule 1-A of Stamp Act. The question whether the said document is a mere agreement of sale or it is an agreement coupled with delivery of possession is an issue which can be resolved only after a full-fledged trial in the suit. Hence, the Court below cannot be said to have committed any error in declining to decide the objection with regard to stamp duty and penalty payable on Ex.A-1 at the time of marking the document.

5. It is true that in Bipin Shantilal Panchal''s case (supra) and Navjot Sandhu''s case (supra) it was observed that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. The same principle has been laid down by this Court in D. Joganna''s case (supra) and M. Hari Narayana''s case (supra). However, the ratio laid down in the said decisions has no application to the present case since the very nature of the document is in dispute which cannot be resolved unless the evidence is produced by both the parties.

6. Accordingly, the Civil Revision Petition is dismissed. No costs.

