
(2013) 11 AP CK 0091
In the Andhra Pradesh High Court
Case No : CRP. No. 5093 of 2011

Vanapalli Jayalaxmi @ Venkata Jayalaxmi	APPELLANT
Vs	
A. Kondalarao and two Others	RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : AIR 2014 AP 1 : (2014) 1 ALD 491 : (2014) 1 ALT 356

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : S.A.V. Ratnam, for the Appellant; K.S. Murthy, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.—This Revision is filed under Article 227 of the Constitution of India challenging the order dt. 09.11.2011 in IA. No. 405 of 2009 in OS. No. 149 of 2009 of the Prl. Junior Civil Judge, Tuni. The petitioner herein is the plaintiff in the above suit. She filed the said suit for a perpetual injunction restraining the respondents from interfering with her alleged peaceful possession and enjoyment of the plaint schedule property and for costs. She pleaded that she is the absolute owner of the plaint schedule property and her grandfather had executed a settlement deed dt. 04.05.1987 in her favor settling item No. 1 of the plaint schedule property in her favor; that she purchased the remaining part of the plaint schedule property and some other property under a registered sale deed dt. 15.04.1992; that she is in possession and enjoyment of the same; she engaged the 1st respondent as her clerk to assist her in cultivating the plaint schedule property for the year 2006-07; thereafter, she was dissatisfied with his work and removed him; for the said reason the 1st respondent and his two sons bore a grudge against her and attempted to trespass into the plaint schedule property.

2. A written statement was filed by respondents denying the plaint averments and contending that the petitioner had entered into an agreement of sale dt.

29.02.1996 with the 1st respondent by paying part of sale consideration; that on 27.05.1996, the petitioner received the balance sale consideration and handed over possession of the property to the respondents; and that by virtue of the said document, they are in possession of the plaint schedule property.

3. Trial commenced and in the course of their evidence the respondents sought to mark the said agreement of sale dt. 29.02.1996 on their behalf. The agreement of sale dt. 29.02.1996 specifically recited that the property was agreed to be sold for Rs. 70,000/- out of which a sum of Rs. 59,000/- was paid on the date on which the agreement of sale was executed and the balance of Rs. 11,000/- was to be paid before 29.05.1996. The said amount was paid on 27.05.1996 and then possession was delivered and endorsement to that effect was made on the reverse of the agreement.

4. The counsel for the petitioner/plaintiff then raised an objection to the marking of the said document contending that as per Explanation- I to Article 47-A of Schedule 1A to the Indian Stamp Act, 1899 (for short, "the Act"), the said agreement needs to be stamped as a regular sale deed; that it was not done; and therefore, it is inadmissible in evidence.

5. By order dt. 09.11.2011, the Court below overruled the said objection and held that the agreement of sale did not require payment of stamp duty and penalty under Article 47-A and that it is admissible in evidence.

6. Challenging the said order this Revision has been filed.

7. Heard the counsel for the petitioner/plaintiff Smt. S.A.V. Ratnam and the counsel for the respondents/defendants Sri K.S. Murthy.

8. The counsel for the petitioner submitted that the order passed by the trial court is contrary to law; that the agreement of sale, under Explanation - I of Article 47-A in Schedule 1A to the Act, was followed by delivery of possession of the property agreed to be sold; so, it shall be chargeable as a sale under the said Article; and unless deficit stamp duty and penalty therefor are paid as per the Act, it could not have been admitted in evidence; that the judgment in Sri Lakshmi Housing Enterprise Vs. Haji Begum and Others relied upon by the respondents/defendants does not reflect the correct state of law and therefore, the trial court erred in applying it. The counsel for the petitioner relied upon the decision of the Supreme Court in Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others, and the decision of the Division Bench of this Court in B. Ratnamala Vs. G. Rudramma,

9. On the other hand, the counsel for the respondents contended that the order of the trial court is correct in law; that after the introduction of Article 6(B) in Schedule 1A to the Act, the situation has underwent a change; that this Court has held that Article 6B does not apply in respect of agricultural lands and would apply only in respect of urban properties; and therefore, the CRP be dismissed. He also relied upon Sri Tirumala Housing (P) Ltd. Vs. GPR Housing (P) Ltd., ;

Saranam Peda Appaiah Vs. S. Narasimha Reddy, Pechitti Ramakrishna Vs. Nekkanti Venkata Manohara Rao and Others, ; and Thippareddy Obulamma and Others Vs. Balu Narasimhulu and Others,

10. I have noted the contentions of both the parties.

11. Firstly I am of the opinion that Article 6(B) of Schedule 1A to the Act has no applicable to the facts of the case. The respondents/defendants did not place any reliance on it in the trial court.

12. Article 6 of Schedule 1A deals with the stamp duty payable on an "agreement or Memorandum of an Agreement" and clause (B) thereof deals with an agreement or memorandum of agreement relating to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storeyed building or for development/sale of any other immovable property. Admittedly, in the present case, the subject matter is only agricultural property and not urban property nor is the agreement in question dealing with construction of a house or building of the nature mentioned in Article 6(B). Therefore, no reliance can be placed on Article 6B by respondents. In this view of the matter, the decisions in Pechitti Ramakrishna Vs. Nekkanti Venkata Manohara Rao and Others, and Saranam Peda Appaiah Vs. S. Narasimha Reddy, which considered the applicability of Article 6(B) of Schedule 1A of the Act and which decided that the said Article did not apply to agricultural lands or to transactions other than those relating to construction of a house, etc., mentioned therein, have no application to the facts of the case.

13. The question is whether the Explanation - I to Article 47-A of the Stamp Act is attracted and if so, whether the respondents are liable to pay stamp duty and penalty by treating the agreement in question as a sale.

14. There is no recital in the agreement dt. 22.09.2006 filed by respondents about the delivery of possession. However, there is an endorsement dt. 27.05.1996 on the reverse of the said agreement to the effect that the balance sale consideration was paid on the said date and possession of the property was delivered to the respondents on the said date allegedly by the petitioner.

15. Article 47A of Schedule 1A of the Act states as follows:

21[47-A. Sale as defined in Section 54 of the Transfer of Property Act, 1882 --

(a) in respect of property situated in any local area comprised in a Municipal Corporation--

(i) where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is the subject matter of the sale whichever is higher but does not exceed Rs. 1,000/-.

Eight rupees for every one hundred rupees or part thereof.

(ii) where it exceeds Rs. 1,000/-.

The same duty as under Clause (i) for the first Rs. 1,000/- and for every Rs. 500/- or part thereof in excess of Rs. 1,000 forty rupees.

(b) in respect of property situated in any local area comprised in the Selection Grade or in Special Grade Municipality,--

(i) where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is the subject matter of the sale whichever is higher but does not exceed Rs. 1,000/-.

Seven rupees for every one hundred rupees or part thereof.

(ii) where it exceeds Rs. 1,000/-.

The same duty as under Clause (i) for the first Rs. 1,000 and for every Rs. 500/- or part thereof in excess of Rs. 1,000 Thirty-five rupees.

(c) where the property is situated in any area other than those mentioned in Clauses (a) and (b),--

(i) where the amount or value of the consideration for such sales as set forth in the instrument or the market value of the property which is the subject matter of the sale, whichever is higher but does not exceed Rs. 1,000/-.

Six rupees for every one hundred rupees or part thereof.

(ii) where it exceeds Rs. 1,000/-.

The same duty as under Clause (i) for the first Rs. 1,000/- and for every Rs. 500/- or part thereof in excess of Rs. 1,000 thirty rupees.]

22[(d) if relating to a multi-unit house or unit of apartment/flat/portion of a multi-storied building or part of such structure to which the provisions of Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987, apply:

(i) where the value does not exceed Rs. 2,00,000/-Rupees Twelve thousand.

(ii) where it exceeds Rs. 2,00,000/- but does not exceed Rs. 3,50,000/-. Rupees Twelve thousand plus 4% on the value above Rs. 2,00,000/-

(iii) where it exceeds Rs. 3,50,000/- but does not exceed Rs. 7,00,000/- Rupees Eighteen thousand plus 6% on the value above Rs. 3,50,000/-

(iv) where it exceeds Rs. 7,00,000/-

Rupees Thirty-nine thousand plus 8% on the value above Rs. 7,00,000/-]

23[Explanation-I An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "Sale" under this Article:

Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in

Clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed.

Explanation-II

For the purposes of Clause (d),

(i) "unit" includes a flat, apartment, tenement, portion or semi-finished part of such structure; and

(ii) "value" means the consideration or value of the apartment/flat/portion or semi-finished part of such structure of multistoried building as declared in the document by the seller and builder or market value whichever is higher.]

16. This provision has been interpreted by a Division Bench of this Court in *B. Ratnamala Vs. G. Rudramma*, as follows:

9. While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place. As the incidence of duty is on the execution of the deed, regard must, therefore, be had only to the terms of the document. Thus the main question that falls for consideration is the interpretation of the expressions "followed by or evidencing delivery of possession". These expressions cannot be read in isolation and one has to find the true meaning by reading the entire Explanation and more so in conjunction with the earlier expression i.e., "agreement". Even if these two expressions are looked independently, it means an agreement to sell followed by delivery of possession and an agreement to sell evidencing delivery of possession. In the first case, i.e., "followed by delivery", possession cannot be disjuncted from the basic source i.e., agreement to sell. Therefore, the expression "followed by delivery of possession" should have a direct nexus to the agreement and should be read in juxtaposition to the word "agreement" and it cannot be independent or outside the agreement. Therefore, the delivery of possession should follow the agreement i.e., through the agreement. It takes in its sweep the recital in the agreement itself that delivery of possession is being handed over. It will also cover cases of delivery of possession contemporaneous with the execution of agreement, even if there is no specific recital in the agreement. In other words, the delivery of possession should be intimately and inextricably connected with the agreement. And in the second type, i.e., agreements evidencing delivery of possession, if the document contains evidence of delivery of possession by a recital in that behalf, that is sufficient. Such delivery of possession can be prior to the date of agreement and need not be under the agreement. If the Agreement records the fact that the possession was delivered earlier and such recital serves as evidence of delivery of possession, though prior to the Agreement, it falls under the second limb. Therefore, on a proper interpretation of the said expressions, it would follow that an agreement containing specific recital of delivery of possession or indicating delivery of possession even in the past is

liable for stamp duty as a "sale" under the said Explanation.

17. This Court followed the decision of the Supreme Court in *Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others*, where the Supreme Court had occasion to consider Explanation - 1 to Article 25 of Schedule 1 to the Bombay Stamp Act, 1958. The said Explanation -1 stated:

Explanation I.-For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of Section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.

18. Interpreting the said Explanation, the Supreme Court held:

7. The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are that if there is an agreement to sell immovable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof, such an agreement to sell is deemed to be a "conveyance". In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance. Now, in the present case, the agreement entered into clearly provides for sale of an immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the scope of Explanation I. It is open to the legislature to levy duty on different kinds of agreements at different rates. If the legislature thought that it would be appropriate to collect duty at the stage of the agreement itself if it fulfils certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later (sic agreement) stage itself though right, title and interest may not have passed as such. Still, by reason of the fact that under the terms of the agreement, there is an intention of sale and possession of the property has

also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that is exactly what has been done in the present case. Therefore, it cannot be said that levy of duty is not upon the instrument but on the transaction. Therefore, we reject the contention raised on behalf of the appellants in that regard.

19. In *Sri Lakshmi Housing Enterprise Vs. Haji Begum and Others* there was no recital in the agreement of sale in question therein to the effect that possession of the property was delivered. Even though the plaintiff pleaded that after the agreement was entered, he paid the balance sale consideration to the defendants and possession was delivered thereafter, the Court held that the possession so delivered cannot be related to the agreement of sale and that only when possession was delivered to the plaintiff through the agreement, Explanation-I of Article 47-A applies; and that the mere fact that possession was delivered at a later point of time does not make the document liable to be stamped as though it is a sale deed.

20. The decision in *B. Ratnamala Vs. G. Rudramma*, was not cited before the learned Judge and it appears from the judgment in the said case that the learned Judge gave much importance to the absence of recital in the agreement about delivery of possession and took the said view even though the plaintiff contended that after the agreement was entered into, the balance of sale consideration was paid to the defendants and possession was delivered thereafter.

21. I am unable to agree with the view taken by him. The learned Judge does not appear to have noticed that under Article 47A, an agreement to sell "followed by or evidencing" delivery of possession of the property agreed to be sold is chargeable as a sale under the said Article. Thus, not only situations where the document in question itself mentions about delivery of possession (evidences delivery of possession) but also situations where delivery of possession is not mentioned in the document (but where such delivery of possession has a direct nexus to the agreement), are also covered. In *B. Ratnamala Vs. G. Rudramma*, the Division Bench laid down that the expression "followed by delivery of possession" should have a direct nexus to the agreement and should be read in juxtaposition to the word "agreement" and it cannot be independent or outside the agreement. Therefore, the delivery and possession should follow the agreement, i.e., through the agreement and in other words, the delivery of possession should be intimately and inextricably connected with the agreement. The Bench categorically held that the expression "followed by delivery of possession" would take in its sweep the recital in the agreement itself that delivery of possession is being handed over.

22. There is no dispute that the payments made by respondents to petitioner under the agreement of sale are pursuant to the agreement of sale and after receiving the full sale consideration only, possession was delivered to respondents by petitioner. Therefore, on the facts of the present case, the delivery of possession is intimately and inextricably connected with the

agreement. Therefore, in view of the decision in *Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others*, and the Division Bench judgment of this Court in *B. Ratnamala Vs. G. Rudramma*, I respectfully dissent from the view expressed in *Sri Lakshmi Housing Enterprise Vs. Haji Begum and Others*

23. The counsel for the petitioner also sought to contend that since the suit in the present case is for a perpetual injunction, possession of the petitioner on the date of the suit is alone to be considered, and for the collateral purpose of proving possession, the said agreement of sale could be received in evidence. This contention, although attractive, does not merit any consideration for the reason that there is a total and absolute bar u/s 35 of the Stamp Act as to admissibility of insufficiently stamped documents. This was considered by this Court in *Thippareddy Obulamma and Others Vs. Balu Narasimhulu and Others*,). This Court held:

13. In *Sanjeeva Reddi Vs. Johanputra Reddi*, while dealing with the scope of Section-35 of the Indian Stamp Act, a learned single Judge of this Court held:

While considering the scope of Section-35 of the Indian Stamp Act, we cannot bring in the effect of non-registration of a document under Section-49 of the Indian Registration Act. Section-17 of the Indian Registration Act deals with documents, the registration of which is compulsory and Section-49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section-17 or by any provision of the Transfer of Property Act. The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition under Section-49 to receive such a document which requires registration to be used for a collateral purpose i.e., for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section-35. In other words, if an unstamped instrument is admitted for a collateral purposes, it would amount to receiving such a document in evidence for a purpose which Section-35 prohibits.

14. In *T. Bhaskar Rao Vs. T. Gabriel and Others*, , a learned single Judge of this Court observed:

It is now well settled that there is no prohibition under Section-49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section-35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section-35 of the Stamp Act.

15. In *Ummadi Subramanyam Vs. Ekka Dhanamma and another*, another learned

single Judge of this Court while dealing with the scope of Proviso to Section-49 of the Registration Act, 1908, observed:

From this it is seen that even if an unregistered document is produced before the Court a discretion is given to the Court to impound the document and admit the same in evidence. Proviso to Section-49 of the Registration Act says that an unregistered document affecting immovable property and required either by the Registration Act or the Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877. As this being a suit for specific performance, as per the proviso to Section-49 of the Registration Act, even if it is a sale deed, the same can be admitted in evidence. But the question of admitting the same in evidence will arise only after the Court impounds the document as contemplated under Section-33 of the Indian Stamp Act, 1899.

....

....

18. From a combined reading of the judgments referred to above, in conjunction with proviso to Section-49 of the Indian Registration Act, 1908, broadly the following would emerge:

(1). An unstamped or insufficiently stamped document is inadmissible in evidence.

(2). As per the proviso to Section-49 of the Indian Registration Act, an unregistered document affecting immovable property and required to be registered can be received as evidence either in cases referred to therein or to prove any collateral transaction.

(3). If an unstamped or insufficiently stamped document coupled with the infirmity of being unregistered can be received as evidence for a collateral purpose, provided, the first defect under the Indian Stamp Act, 1899, is corrected. In other words, an unstamped or insufficiently stamped document after duly impounded as prescribed under Section-33 of the Indian Stamp Act, 1899 can be relied in evidence for collateral purpose.

(emphasis supplied)

24. Therefore, I am of the opinion that the agreement of sale dt. 29.02.1996 cannot be received in evidence unless proper stamp duty and penalty are paid as per Explanation-I of Article 47-A of the Act. The agreement of sale attracts the said explanation and has to be stamped as a "sale" as admittedly possession was delivered on 27.05.1996 after receiving the balance sale consideration as per it's terms. I am therefore of the opinion that the order passed by the trial court cannot be sustained.

25. Accordingly, the Civil Revision Petition is allowed and the order dt. 09.11.2011 in IA. No. 405 of 2009 in OS. No. 149 of 2009 of the Prl. Junior Civil

Judge, Tuni, is set aside. No costs. As a sequel, miscellaneous applications pending, if any, shall stand disclosed.