(2019) 02 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 12190 Of 2014

Yalakkappa APPELLANT

Vs

Venkateshaiah RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:
Karnataka Stamp Act, 1957 — Rule 41(e)

Citation : (2019) 02 KAR CK 0034

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : A V Gangadharappa, B.N.Umesh

Final Decision : Allowed

Judgement

1. Plaintiffs in OS.No.65/2008 on the file of Civil Judge (Jr.Dn), Ramanagara, have come up in this writ petition impugning the order dated 29.10.2013, vide Annexure-K, wherein the plaintiffs are directed to pay duty and penalty of Rs.50,100/- on General Power of Attorney dated 20.8.1992 under Article 41(e) of the Karnataka Stamp Act, 1957. The parties herein are referred to by their rank in the court below.

2. Brief facts leading to this writ petition are as under: Plaintiffs 1 to 3 are the husband and sons of one Smt.Shivarathnamma - agreement holder for purchase of suit schedule property in OS.No.65/2008. The plaint averments would indicate that an agreement was entered in to on 5.12.1991 between Smt.Shivarathnamma and defendant No.1 Venkateshaiah for valuable consideration of Rs.73,000/- and under the said agreement a sum of Rs.13,000/- was paid by Shivarathnamma to Venkateshaiah. Subsequently, another agreement was entered in to between the parties on 15.6.1992 wherein the vendor would receive a further consideration of Rs.36,500/-and at the same time, it is stated that from out of the consideration due to him a sum of Rs.35,000/- should be paid by the purchaser to KHB directly to clear the loan due by the vendor to KHB. While doing so, possession of the property is also

delivered to the purchaser.

3. Later on 20.8.1992 a General Power of Attorney is executed by the vendor under the agreement along with his wife wherein he would make reference to the agreement of sale entered in to between himself and the purchaser on earlier occasion and also with reference to payments made to him from time to time. In the General Power of Attorney the vendor would further confirm that under the agreement she has paid the entire sale consideration to him and that to assure proper conveyance of the property to the name of the purchaser, the power of attorney is executed by him with reference to suit schedule property in favour of the purchaser.

4. Subsequently, it is seen that the 1st defendant did not convey the suit property to Smt.Shivarathnamm, instead, he has executed a Gift Deed of suit property in favour of his son, that too after receiving the entire sale consideration from the wife of 1st plaintiff. It is on the basis of said Gift Deed executed by 1st defendant in favour of his son - 2nd defendant, the 2nd defendant in turn has sold the said property in favour of 4th defendant and it is the 4th defendant who is opposing the suit in the court below.

5. In the said suit when the agreements of sale and General Power of Attorney were produced to be marked, the same is opposed on the ground that the power of attorney which is executed by the 1st defendant along with his wife in favour of Shivaratnamma cannot be marked in the said proceedings on the ground that it is insufficiently stamped and the same is required to be rejected under

Description

Proper Stamp Duty

of Instrument

e) When

given

for

The same duty as a

consideration

and

Conveyance

(No.20)

authorizing

the

for a

market

value

attorney to

sell

any

equal

to the amount

immoveable property;

of the consideration.

e) When given for The same duty as a consideration and Conveyance (No.20) authorizing the for a market value attorney to sell any equal to the amount immoveable property; of the consideration.

6. Learned counsel for the petitioners/plaintiffs would try to assert that the manner in which the said document is appreciated by the court below is erroneous in as much as the contents of the same would not attract Article 41(e) of the Act for the reason that besides the General Power of Attorney, which was executed on 20.8.1992, two other agreements were already entered in to between the parties under which the entire sale consideration is paid by the 1st plaintiff's wife to 1st defendant. In fact, whatever that is stated in the document sought to be marked in support of suit transaction is reiteration of the agreement of sales which were entered in to between the parties earlier to execution of GPA.

7. In this background, when the document - General Power of Attorney which is produced at Annexure-C is looked in to along with the copies of agreements of sale, which are at Annexures - A and B, it clearly discloses that the court below has committed grave error in independently looking at Annexure-C without taking reference to Annexures - A and B. In fact, main documents in the entire sale transaction are Annexures - A and B, which are agreements of sale entered in to on different dates between the parties. The recitals in said agreements clearly indicate that a sum of Rs.13,000/- was paid as advance under the 1st agreement and under the 2nd agreement the balance sale consideration is received by the 1st defendant after leaving a sum of Rs.35,000/- at the hands of 1st plaintiff's wife to be cleared to KHB on his behalf.

8. Thereafter, the 1st defendant would state in the very same agreement dated 15.6.1992 that he has received the sale consideration and as well as delivered possession of the property in favour of the purchaser under the said agreements. Subsequently, as and by way of supportive and collateral document, he has executed General Power of Attorney, therefore, that document itself cannot be looked in to as main document and further the said document does not indicate as if the sale consideration amount is paid under the said document. In fact, it is

prior to execution of the General Power of Attorney, the entire sale consideration was already paid and the same is reflected in the said two documents.

9. In that view of the matter, this Court is of the considered opinion that the trial court has not properly appreciated the material on record and it has mislead itself to believe that sale consideration was paid by the 1st plaintiff's wife to the 1st defendant under the disputed document namely, General Power of Attorney dated 20.8.1992, which is erroneous. Therefore, the stamp duty which is paid on the said document is just and proper and the same does not attract either additional stamp duty or penalty as considered by the trail court in its order impugned.

10. Accordingly, this writ petition is allowed. The order dated 29.10.2013 passed in OS.No.65/2008 on the file of Civil Judge (Jr.Dn), Ramanagara, is hereby quashed.