THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.6081 of 2010

ORDER:

Heard Sri G.Ramgopal, learned counsel for the petitioner and Sri M.S.R.Subrahmanyam, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.08-12-2010 in I.A.No.331 of 2010 in O.S.No.11 of 2006 of the Senior Civil Judge, Chodavaram allowing the said I.A. and permitting the respondent-plaintiff to pay deficit stamp duty of Rs.70/- and penalty of Rs.700/- in respect of the suit agreement for sale dt.20-09-2004 sought to be marked by the respondent.

3. Petitioner herein is the defendant in the suit. The said suit was filed for specific performance of an agreement for sale dt.20-09-2004 allegedly executed by petitioner in favour of the respondent.

4. Written Statement was filed by the petitioner opposing the suit claim.

5. Issues were farmed and the matter was coming up for cross examination of the respondent/plaintiff.

6. At this stage, the respondent filed

I.A.No.410 of 2008 requesting the Court to send the agreement for sale to the District Registrar of Assurances (Collector under the Indian Stamp Act), Anakapalli for impounding. The said application was allowed and the agreement for sale was sent to the District Registrar for impounding. The District Registrar passed an order dt.22-04-2010 directing the respondent to pay deficit stamp duty of Rs.54,595/- and also penalty of Rs.1,63,785/-, total Rs.2,18,380/- stating that Article 6 (B) of Schedule I-A of the Indian Stamp Act, 1899 (for short 'the Act') is applicable to the said document.

7. The respondent-plaintiff felt aggrieved by the said order. Since according to him, the District Registrar had wrongly applied Article 6 (B), he filed the I.A.No.331 of 2010 praying the Court to receive the deficit stamp duty of Rs.70/- along with penalty ten times thereof and permit him to mark the said document.

8. Counter affidavit was filed by the petitioner to the said application contending that it was at the instance of the respondent, the document had been sent to the District Registrar for impounding and once the District Registrar had decided the issue, the petitioner ought to have filed Writ Petition challenging the said order, but he cannot request the Court below to accept his valuation. He therefore, prayed that the application be dismissed.

9. By order dt.08-12-2010, the Court below

rejected the objection raised by the petitioner and allowed the document to be marked by the respondent-plaintiff on payment of deficit stamp duty of Rs.70/- and penalty of Rs.700/-. It held that Section 40 (1) (a) of the Act is not applicable since the District Registrar had not come to the opinion that the document sought to be marked by the respondent is not chargeable with duty; only if there is a determination under clause (a) of Sub section (1) of Section 40, such determination would be final because of sub Section (2) of Section 40 of the Act and is made conclusive; therefore the determination by the District Registrar cannot be said to be final. It relied upon the decision of this Court in **Telugu Solipuram Narasimha Vs. Legisetty Ramaseethamma**[1] in that regard. It further held that since the subject matter of the agreement for sale is agricultural land, as per the decision of a Division Bench of this Court in **Saranam Peda Appaiah Vs. S.Narasimha Reddy**[2]**,** Article 6-B of Schedule 1-A would not apply and only Article 6-A would apply.

10. Challenging the same, this Revision Petition is filed.

11. Learned counsel for the petitioner mainly contended that the determination by the District Registrar of the correct stamp duty is final and binding under Section 40 (2) of the Indian Stamp Act, 1899 and the trial court could not have altered it or disagreed with it; that the

District Registrar rightly applied Article 6-B of Schedule1-A to the Stamp Act, 1899 instead of Article 6-A (iv) thereto; and therefore, the Court below ought to have rejected the said application.

12. Learned counsel for the respondent on the other supported the order passed by the Court below and contended that the conclusion of the Court below is correct ; that the determination by the District Registrar of the Stamp Duty payable on the document in question is not final; it does not bind the Civil Court and the Civil Court is entitled to go into the correctness of the determination by the District Registrar. He contended that if it feels that the said determination is incorrect, it can pass orders thereon independently. He also contended that the Court below did not commit any error in applying Article 6-A of Schedule 1-A to the Act since the subject matter of the document is agricultural land.

13. I have noted the submissions of both sides.

14. Section 33 of the Act entitles any person having authority to receive evidence, except an officer of police, to impound any document produced before him if it is in his opinion chargeable with duty and not duly stamped. Section 38 of the Act directs the person impounding the instrument or document to send the original of it to the Collector.

15. Section 40 of the Act states:

*‘**Section 40 - Collectors power to stamp instruments impounded:***

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38; sub- section (2), not being an instrument chargeable[1][with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:-

(a) if he is of opinion that such instrument is duly stampeded or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or, if he thinks fit,[2][an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.”

16. This section applies to the instruments

impounded by the District Registrar under Section 33 of the Act or sent to him under Section 38 (2) of the Act. It states that if the District Registrar/Collector is of the opinion that the instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon. On the other hand, if he comes to the conclusion that such instrument is chargeable with duty or is not duly stamped, he shall require the payment of proper duty and penalty decided by him, to be paid. Only when such duty and penalty are paid, the Collector shall so certify by endorsement and that the instrument so endorsed shall thereupon be admissible in evidence.

17. The said provision makes conclusive only the certificate issued under clause (a) sub section (1) of Section 40 of the Act i.e. if the certificate is issued by the District Registrar to the effect that the instrument referred to him is not chargeable with duty i.e where it is duly stamped or it is not at all chargeable. It does not make conclusive any determination by the Collector/District Registrar that it is not duly stamped or that it requires payment of proper duty and penalty under clause (b) of sub Section (1) of Section 40 of the Act.

18. This distinction has been pointed out in **Telugu Solipuram Narasimha** (1 supra). In that case, it was held:

> *'9. In this case, there is no dispute that the agreement of sale is dated 20-4-1991, for a sale*

consideration of
Rs. 32,000/-. It is the definite case of the plaintiff and also as per the recitals in the agreement of sale, that possession was also delivered, along with execution of the agreement of sale. Therefore, on the facts of this case, no finality can be attached to the decision of the Revenue Divisional officer as to the stamp duty payable on the agreement of sale. The authority, in this case, the Court Fee Examiner, can certainly point out the defect in the order of the revenue Divisional Officer, as he did not issue certificate Under Section 40(1)(a) and he considered the case Under Section 40(1)(b). This document squarely falls within the scope of Article 20 of Schedule I-A of the Act. In such a case, the proper stamp duty is on the 'ad valorem' stamp required for conveyance of sale under Article 47A. Further, Article 47-A (see explanation) makes it clear that an agreement of sale followed by delivery of possession shall be chargeable as sale under this Article. Therefore, this agreement of sale is chargeable under the Stamp Act, as indicated above. In view of the above discussion, the check slip issued by the Court Fee Examiner cannot be challenged. There is no infirmity in the order of the lower Court."

19. The Court, in the above case, distinguished two other judgments which had dealt with the certificates issued under clause (a) sub section (1) of Section 40 which had been held to be conclusive therein.

20. Although the learned counsel for the petitioner drawn attention of this Court to the decision in **S.Venkataramaiah Vs. Y.Kripavatamma and others**[3] where an opinion appears to have been expressed by this Court that a certificate given by the revenue authorities as to stamp duty is conclusive and binding on the Civil Court, the full facts are not set out therein and it is probably a

case where a certificate was issued under clause (a) of sub section (1) of Section 40 which is made conclusive by sub section (2) of Section 40 and not a case where a determination is made under clause (b) of sub Section (1) of Section 40 of the Act.

21. I am also of the opinion that the Court below is correct in applying Article 6-A and not Article 6-B Schedule-I-A of the Act to the said agreement of sale since it is not disputed that it relates to agricultural property and not to urban/non-agricultural immovable property.

22. A Division Bench of this Court in **Saranam Peda Appaiah** (2 supra) has held that Article 6-B of Schedule I-A to the Act applies only to non-agricultural land and not to agricultural land. It held:

> *'19. Article 6(B) is very clear in its expression that in case of any transactions relating to construction of a house etc. as mentioned in descriptive column of the instrument, the stamp duty required is Rs. 5/- for every hundred or part thereof, of the market value or the estimated cost of proposed construction or development of such property as the case may be. Therefore, the question that calls for consideration is whether the said Article covers the agricultural land also. It is a cardinal principle of the interpretation that the provision interpreted with reference to the words contained in the provisions and by interpretative process, it is neither to be expanded nor constricted. When the Legislature has specifically referred to the document relating to construction of house, apartment, flat, portion of multi-storied building etc and the stamp duty is payable on the market value*

or the estimated cost of the said property, it has to be confined only to houses, multi unit houses or apartment etc. Even the valuation was sought to be arrived at on the basis of the rates prescribed by the Public Works Department authorities. Further it is noticed that the transactions left over by Article 6(B) are covered by Article 6(C). Therefore, it cannot also be said that there was vacuum in the Article. In the instant case, the agreement is after 1.4.1995, but it relates to the agricultural land. Taking the clue from the last expression in the document namely "sale of any other immovable property" it was contended that it would embrace in its fold other immovable property including the agricultural property and therefore, the stamp duty has to be paid on that basis. But, that contention cannot be accepted, in as much as the expression the sale of any other immovable property has to be interpreted keeping in view the principles of ejusdam generis namely where general words fallow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or classes as specifically mentioned. Otherwise, the other provisions become otiose……….”

23. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner that the Civil Court could not have held that Article 6-A applies and that Article 6-B ought to have been made applicable by it.

24. So I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

25. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015
kvr

---

[1] 1996 (3) ALT 550

[2] 2004 (6) ALT 237 (D.B.)

[3] 1967 ALT page 8 (LRC)