HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No. 1711 of 2015

ORDER :

This Civil Revision Petition is filed against the order dated 13.03.2015 in O.S.No.87 of 2008 wherein the Court below upheld the objection raised by the respondent/plaintiff for marking the photocopy of the agreement of sale dated 10.01.2002 on the ground that the original of the same is not properly stamped as per Explanation I to Article 47 of Schedule 1A of the Indian Stamp Act, 1899 (for short 'the Act of 1899') as the agreement of sale contained clause regarding delivery of possession and held that the same is not admissible in evidence.

2. The facts which are necessary for disposal of the Civil Revision Petition are that the respondent/plaintiff filed suit for declaration of title, recovery of possession and permanent injunction with future mesne profits against the petitioners/ defendants. When the matter came up for petitioners' evidence, the counsel for the petitioners/defendants intended to mark the photocopy of the agreement dated 10.01.2002 on the ground that the original agreement of sale is snatched away by the respondent/plaintiff. The same was objected to by the learned counsel for the respondent/plaintiff on the ground that the said agreement contained a clause regarding delivery of possession, as such, the agreement of sale shall be chargeable as a sale as per Article 47 of Schedule 1A of the Act of 1899.

3. Heard Sri M.V.Durga Prasad, learned counsel for the petitioners and Sri K.Sitaram, learned counsel for the respondent.

4. Learned counsel for the petitioners submit that the respondent/plaintiff himself admitted that the suit schedule property was leased out to the first petitioner during the period from March,

2000 to March, 2004, as such, the first petitioner was put in possession much earlier to the disputed agreement of sale dated 10.01.2002. As such, the question of coming into possession of the property on the date of agreement, as stated in the agreement, does not arise. He further contends that unless the petitioners come into possession in pursuant to agreement of sale, the same cannot be chargeable as sale as per explanation 1 to Section 47A of Schedule 1A of the Act of 1899. When actual possession is not delivered as per the agreement dated 10.01.2002, the question of paying stamp duty as assailed does not arise. In support of his contention, he relied on the judgments reported in **Karumuri Ramatheertham and another v. Tippavathi Seshachalam (died) by L.Rs.**[1]**, Cheryala Srinivas v. Moola Sujatha and others**[2]**, Penkey Suryakantham v. Shaik Sillar**[3] **and M.A.Gafoor v. Mohd.Jani and others**[4]**.**

5. On the other hand, learned counsel appearing for the respondent/plaintiff submits that for the purpose of determining the admissibility of document, the recitals in the documents alone are to be taken into account and not the pleadings of the parties. He further submits that the trial Court has rightly held that the agreement of sale dated 10.01.2002 is chargeable to stamp duty as a sale as per Article 47 of Schedule 1A of the Act of 1899 as it is clearly mentioned in the agreement of sale that possession was delivered on the date of agreement, the question of going into pleadings does not arise for determining the admissibility of the document. He also submits that the secondary evidence cannot be validated as per Section 33 of the Act of 1899. In support of his contention, he relied on the judgments reported in **Omprakash v. Laxminarayan and others**[5]**, Hariom Agarwal v. Prakash Chand Malviya**[6]**, E.Venkat Reddy and another v. E.Yadgir Reddy and others**[7] **and Veesarapu Padma v. Rangineni Anitha**[8]

6. Before considering rival contentions of the parties, it is necessary to extract the relevant provisions of the Act of 1899 for disposal of this case.

Section 2(14) of the Act reads as follows:

"2(14). 'Instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record;

Section 35 of the Act reads as follows.

35. Instruments not duly stamped inadmissible in evidence, etc.:

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

Section 33 of the Act reads as follows:

33. Examination and impounding of instruments:

1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.
2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force [India] when such instrument was executed or first executed:"

As per Section 35 of the Act referred to above, the instrument chargeable to duty shall not be admitted into evidence unless such instrument is duly stamped. Section 33 of the Act provides for procedure for impounding the said document. Now, it is to be seen whether the agreement of sale dated 10.01.2002 is liable to be charged as sale as per Explanation I to Article 47-A of the Act.

7. A perusal of the agreement of sale dated 10.01.2002 goes to

show that possession was delivered to the 1st petitioner on the same day on which the alleged agreement was executed. There is no ambiguity regarding delivery of possession on the date of agreement of sale. Now, it is to be seen whether the recitals in the document alone have to be taken into consideration for deciding the admissibility of document, as contended by the learned counsel for the respondent/plaintiff, or pleadings and evidence can be looked into for deciding whether the possession was delivered in pursuant to the agreement or not, as contended by the learned counsel for the revision petitioners.

8. In **Omprakash v. Laxminarayan and others (supra),** the Hon'ble Supreme Court held as follows:

> "10. In view of the rival submission, the question which falls for our determination is as to whether the admissibility of a document produced by the party would depend upon the recital in the document or the plea of the adversary in the suit and whether the document in question is "conveyance" as defined under the Act and is duly stamped.
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> 11. As stated earlier, the plaintiffs filed a suit for specific performance of contract and their case is founded on the agreement to sell executed on 27th December, 2000. The agreement to sell acknowledges payment of the part of consideration money and further giving actual physical possession to the purchaser by the seller. Though the defendants dispute that, but in our opinion, for determination of the question of admissibility of a document, it is the recital therein which shall be decisive. Whether the possession in fact was given or not in terms of the agreement to sell is a question of fact which requires adjudication. But, at the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue. It does not mean that the recital in the document shall be conclusive but for the purpose of admissibility it is the terms and conditions incorporated therein which shall hold the field. Having said that, we proceed to consider as to whether the document in question is "conveyance" within the meaning of Section 2(10) of the Act.
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> 18. To put the record straight, the correctness of the impugned judgment (Laxminarayan & Ors. v. Omprakash & Ors., 2008 (2) MPLJ 416) came up for consideration before a Division Bench of the High Court itself in Writ Petition No. 6464 of 2008 (Man Singh (deceased) through Legal Representatives Smt. Sumranbai & Ors. v. Rameshwar) and same has been

overruled by judgment dated January 22, 2010. The High Court observed as follows:

> "8. A document would be admissible on basis of the recitals made in the document and not on basis of the pleadings raised by the parties. In the matter of Laxminarayan (supra), the learned Single Judge with due respect to his authority we don't think that he did look into the legal position but it appears that he was simply swayed away by the argument that as the defendant was denying the delivery of possession, the endorsement/recital in the document lost all its effect and efficacy.
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> 9. It would be trite to say that if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we don't think that the Court would be entitled to admit the document because simply the parties say so. The jurisdiction of the Court flows from Sections 33, 35 and 38 of the Indian Stamp Act and the Court has to decide the question of admissibility. With all humility at our command we over-rule the judgment in the matter of Laxminarayan (supra)." We respectfully agree with the conclusion of the High Court in this regard."

In the aforesaid decision, the Hon'ble Apex Court in clear and categorical terms held that for the purpose of deciding the admissibility of a document, the recitals contained in the document shall alone govern the issue, though it is not conclusive. In the instant case on hand, the agreement dated 10.01.2002 unequivocally states that possession has been delivered on the date of agreement itself, chargeable. Whether the possession was delivered or not, as contended by the learned counsel for the respondent/plaintiff, cannot be gone into at the stage of deciding the admissibility of the document, as held by the Hon'ble Supreme Court in the aforesaid decision. In view of above facts and circumstances, the agreement of sale is liable to be charged as sale within the meaning of Explanation 1 to Article 47-A of the Act.

9. In **Penkey Suryakantham v. Shaik Sillar (supra),** a learned Single Judge of this Court clearly held that there is no averment in the sale agreement that possession was delivered to the plaintiff and that he

was in occupation as a tenant, as such, the sale agreement cannot be treated as a regular conveyance falling under explanation to Article 47 -A of the Act of 1899.

10. In **M.A.Gafoor v. Mohd.Jani and others (supra), a** learned Single Judge of this Court held that the time of delivery of possession is not mentioned in the agreement therein and that the disputed agreement of sale does not state anywhere that the delivery of possession followed execution of the agreement. In those circumstances, it was held that Explanation I to Article 47-A of Schedule 1-A of the Act has no application and the document should not be treated as sale.

11. With due respect, I am unable to subscribe to the view taken by the learned Single Judge in **Cheryala Srinivas v. Moola Sujatha and others (supra)** as the Hon'ble Apex Court in **Omprakash v. Laxminarayan and others (supra)** in categorical terms held that the recitals of the documents alone should be taken into account for deciding the admissibility of document into evidence and not on basis of the pleadings raised by the parties. In the instant case on hand, there is clear recital in the agreement of sale dated 10.01.2002 that possession was delivered to the 1st petitioner on the day when the agreement was executed. Moreover, I had an occasion to deal with the similar issue in **Veesarapu Padma v. Rangineni Anitha (supra),** wherein I held that if an agreement of sale contains clause regarding delivery of possession, the said agreement is chargeable to stamp duty under Article 47A of the Act, as if it is a sale. The said agreement of sale cannot be admitted into evidence, unless it is duly stamped. Therefore, the judgments relied on by the learned counsel for the petitioner cannot come to the rescue of the petitioners.

12. When once the agreement of sale dated 10.01.2002 is chargeable to Stamp duty as a sale within the meaning of Article 47 of Schedule 1-A of the Act of 1899, then question arises whether the copy of the agreement produced, can be validated, as per Section 33

of the Act of 1899. When once it is chargeable document, then the question arises whether a copy of agreement produced can be validated or not. In **Hariom Agarwal v. Prakash Chand Malviya (supra),** the Hon'ble Apex Court held as follows:

> "8. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899.
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> 13. Section 37 of the Act would be attracted where although the instrument bears a stamp of sufficient amount but such stamp is of improper description, as in the present case where the proper stamp duty of Re.1/- under the Act has not been paid but a notarized stamp of Rs.4/- was affixed on the document. The sufficient amount of the stamp duty has been paid but the duty paid by means of affixture of notarized stamp is of improper description. By virtue of Rule 19 of the Madhya Pradesh Stamp Rules, 1942, the Collector of Stamp is authorized to receive the proper stamp duty on an instrument which bears a stamp of proper amount but of improper description, and on payment of the adequate duty chargeable under the Act he would certify by endorsement on the instrument that the instrument is duly stamped. Under the proviso to the Rule, the Collector may pardon the further payment of duty prescribed in this Rule provided the person holding the original instrument moves the Collector within three months of the execution of the instrument for certification by endorsement and the Collector is satisfied that the stamp of improper description was used solely on the account of the difficulty or inconvenience of the holder of the instrument to procure the adequate stamp duty required to be paid on the instrument. But the power under Section 37 and Rule 19, even after framing the rules by the State Government, could only be exercised for a document which is an instrument as described under Section 2(14). By various authorities of this Court, an instrument is held to be an original instrument and does not include a copy thereof. Therefore, Section 37 and Rule 19 would not be applicable where a copy of the document is sought to be produced for impounding or for admission as evidence in a case.
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> 15. On a plain reading of Section 48-B, we do not find that the submission of the learned counsel for the appellant that by virtue

> of this provision the Collector has been authorized to impound even copy of the instrument, is correct…….”

In E.Venkat Reddy and another v. E.Yadgir Reddy and others (supra) a Division Bench of this Court held as follows:

> 23. For the reasons which we have given, the trial Court, in our, view, was right in holding that when the original deed was unstamped or insufficiently stamped, no copy of it by way of secondary evidence is admissible in evidence, in view of Section 35 of the Stamp Act. The said decision of the Trial Court is perfectly in accord with what we have stated above. The revision, therefore, is accordingly dismissed with costs.

13. In view of the above decisions, wherein it is clearly held that a copy of an agreement of sale is not an instrument within the meaning of Section 2(14) of the Act, as such, only instrument is liable to be impounded as per Section 33 to 35 of the Act and that the secondary evidence of the original not duly stamped is inadmissible in evidence. The trial Court also considered several judgments of this Court and also the Apex Court and came to the same conclusion.

a) In **Penkey Suryakantham v. Shaik Sillar**[9]**,** a learned Single Judge of this Court held that no averment was made in the sale agreement that possession was delivered to the plaintiff therein.

b) In **M.Madusudan Reddy v. M.Kamalamma and others**[10]**,** this Court held that there was no mention about delivery of possession in the agreement. There also the learned single Judge held that the recitals in the agreement did not reflect delivery of possession.

c) In **Dudekula Allauddin v. G. Sivaramakrishna and others**[11]**,** it is a case wherein the agreement of sale containing recital that vendor gave permission to vendee for development activities. The vendee was given only right to develop land by dividing it into plots and laying roads and that cannot be considered to be conveying absolute possession.

d) In **R.Venkatram Reddy and another v. Jetamoni Gouramma**[12], the land was placed in the hands of purchased under an agreement for purpose of survey and demarcation does not constitute handing over possession in law, as such, it does not require stamp duty as sale deed as per Explanation I of Article 47-A of the Act.

e) In **E.Padma Rao @ Vadla Padma Rao and others v. Vijay Kumar and another**[13], learned Single Judge of this Court held that an agreement of sale giving mere permission to enter land to divide into plots cannot be treated as handing over absolute or unconditional possession of land.

As such, the above decisions are not applicable to the facts of the present case on hand.

In view of above facts and circumstances, I do not see any error or infirmity in the order passed by the Court below.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

31.12.2015.
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HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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[1] 2012(1) ALD 612

[2] 2010 (1) ALT 448

[3] 2003 (4) ALD 61

[4] 1999 (1) ALT 596

[5] (2014) 1 Supreme Court Cases 618

[6] AIR 2008 Supreme Court 166

[7] AIR 1973 Andhra Pradesh 398 (V 60 C 87)

[8] 2014 (1) ALD 162

[9] 2003 (4) ALD 61

[10] 2004 (1) ALD 260

[11] 2011 (5) ALD 702

[12] 2011 (6) ALD 355

[13] 2013 (1) ALD 581