THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1320 of 2014

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the defendants 1 to 3 is directed against the order dated 31.01.2014 of the learned Principal Senior Civil Judge, Mancherial passed in O.S.No.81 of 2009.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants 1 to 3 ('the defendants 1 to 3', for short) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for short). I have perused the material record.

3. To begin with, the facts, which led to the filing of the present revision petition by the defendants 1 to 3, in brief, are as follows:

The plaintiffs brought a suit against the defendants 1 to 3 and two others for declaration of title, particularly, the title of the 1^{st} plaintiff in respect of open land admeasuring 1815 square yards in Sy.No.315/A relating to Northern side part of H.No.26-368 of Garmilla village, Mancherial Municipality, more fully described in the schedule annexed to the plaint and for declaration that the unregistered sale deed dated 10.08.1975 executed in favour of the 1^{st} defendant by one late Akula Ramakistaiah, the elder brother of 1^{st} plaintiff, is null and void and not binding on the plaintiffs and for delivery of the suit schedule land to the plaintiffs and for other allied reliefs. The 1^{st} defendant having filed a written statement is resisting the suit. At trial, PW1 had tendered in his evidence, the agreement of sale-cum-General Power of Attorney (with possession) dated 24.08.2007 for being exhibited as exhibit A1. At that time, an objection was raised on behalf of the defendants for exhibiting the said document on the ground that the said document is deficiently stamped being an agreement of sale with possession and that stamp duty has to be paid on the said document as per the provision in explanation 1 to Article 47 A of Schedule 1-A of the Indian Stamp Act, 1899, which came into force with effect from 01.04.1995, as per the amendment by the A.P. Act No.21 of 1995. When such objection was raised for marking the said document, the trial court had heard the arguments of the learned counsel for both the sides and had passed the impugned order overruling the objection of the defendants and had confirmed the tentative marking as 'exhibit A1' given to the said document. The trial court while overruling the objection of the defendants had *inter alia* held that the said document is liable to stamp duty as an agreement of sale but not as an agreement of sale evidencing delivery of possession of the property. Therefore, the aggrieved defendants had filed this revision petition.

4. The learned counsel for the defendants 1 to 3 would contend as follows:

The trial court ought to have upheld the objection raised on behalf of the defendants 1 to 3 and ought to have held that the provision in explanation 1 to Article 47 A of Schedule 1-A of the Indian Stamp Act is attracted to the document exhibit A1, which is an agreement of sale (with possession)-cum-General Power of Attorney as the said document, on a plain reading, would show that the property covered by the said document has already been delivered to the purchaser. Hence, the said recital in the said document is sufficient to fasten the liability to pay the stamp duty and levy the stamp duty as per the provision in the explanation 1 of Article 47A of Schedule 1A of the Indian Stamp Act, which came into force with effect from 01.04.1995. When in any agreement of sale the delivery of possession of the property is recited or when possession is delivered pursuant to the agreement of sale or when possession, which was already delivered prior to execution of the agreement of sale, is acknowledged in the agreement of sale, in all such cases, stamp duty is to be levied treating the document as a sale deed. The Indian Stamp Act deals with fiscal measures and therefore, the provisions of the Act have to be interpreted strictly. The trial court had ordered for marking the document tentatively, which is opposed to the settled legal position. Whenever an objection as regards the deficiency of stamp duty is raised, the Court is obliged under law to decide the said objection before proceeding further in the matter and the decision on such objection cannot be postponed by giving a tentative marking to the document. Therefore, the procedure adopted by the trial court in marking the said document tentatively as exhibit A1 and the finding in the impugned order confirming the said tentative marking is bad in law; and the said course adopted by the trial Court is deprecated in several precedents. The trial court ought to have upheld the objection raised on behalf of the defendants 1 to 3 and ought to have directed the plaintiffs to pay the required stamp duty and penalty on the said document.

5. On the other hand, the learned counsel for the plaintiffs would contend as follows:

The trial court has not finally made a decision on the admissibility of the document and also on the aspect of the stamp duty to be levied and collected on the document and therefore, the trial court had permitted the document to be marked as exhibit A1 tentatively and had only confirmed the tentative marking and, therefore, no damage is caused and no infraction of rights of the petitioners had occasioned by the impugned order. The decision on the collection of stamp duty and penalty, if any, necessary would be made by the Court below at the end of the trial and before pronouncement of the judgment, if need be. Since the document is only tentatively marked, the revision petition filed under Article 227 of the Constitution of India is not maintainable. *Prima facie*, the property is an agricultural open land. Therefore, it is saved from the provision of Article 47A of Schedule 1A of Indian Stamp Act and it is covered by the exemption under Section 6(B) of Schedule 1A. The agreement of sale did not confer any title on the agreement holders and no right, title or interest in and over the property is created in favour of the agreement holders under the said document as the execution of another document is contemplated; and, until and unless another document as contemplated is executed, there will not be a culmination of the sale transaction. The provision relied upon by the defendants 1 to 3 deals with the property, which is intended for construction of house, apartment, flat, portion of multi-storied building etcetera. However, the subject property covered by the said document is an agricultural land and thus, is saved by the exemption under Section 6(B) of the Act. Hence, the civil revision petition may be dismissed.

6. Now the questions for determination are –

1. 'Whether the agreement of sale-cum-General Power of Attorney (with possession) dated 24.08.2007 executed between Akula Srinivasa Rao and others on one hand and Pudari Kalavathi on the other is not

sufficiently stamped as contended by the defendants 1 to 3?

2. Whether on the said document stamp duty is leviable and collectable as per the provision of Article 47A of schedule 1A of the Indian Stamp Act as contended by the defendants 1 to 3? And whether the said document is covered under the exemption under Article 6(B) of the Schedule 1A of the said Act as being contended by the plaintiffs?

3. Whether the order of the court below, which is impugned is not sustainable under the facts and in law?

7. POINTS:

7. (a) The law is well settled that the nomenclature of the document is not the criterion. Therefore, it is necessary to examine the contents of the said document, i.e., agreement of sale-cum-General Power of Attorney (with possession) dated 24.08.2007. A careful perusal of the said document would reveal that under the said document, the vendors agreed to sell to the vendee 1815 square yards in Sy.No.315/A relating to Northern side of H.No.26-368 situated in Garmilla village and within the limits of Municipality Mancherial, more fully described in the schedule annexed to the said document. Further, it is recited in the said document as follows:

> **"And whereas the Vendors herein for their necessities hereby offered to sell away part of the property i.e., 1815 Square Yards, relating to Northern Side of H.No.26-368 situated in Sy.No.315/A of Garmilla village and within the limits of Municipality Mancherial to the purchaser for a consideration of Rs.11,89,000/- (Eleven lakhs eighty nine thousand only) and the purchaser accepted to purchase the same for the above sale consideration and paid entire sale consideration to the Vendors for which is the Vendors hereby acknowledged the receipt of the same and possession of the property has been already delivered to the purchaser."**

It is also stated in the document as follows:

> **"To complete the sale of said property the Vendors handed over the possession and delivered the possession of the said property to the sub-purchaser or purchasers to appear and act in all courts civil, criminal, revenue whether original or appellate in the registration and other offices of the State and Central Government and of local bodies in relation to the said property."**

Therefore, a plain reading of the said document would show that it is an agreement of sale-cum-General Power of Attorney (with possession). Further, there is a clear recital in the said document that possession has been already delivered to the purchaser-vendee.

8. Now the important first question is as to whether the transaction covered by the document attracts the provision of Article 47-A of Schedule I-A of the Indian Stamp Act (‘the Act’, for short) or provision of Article 6(B).

9. Having examined the contents of the document in question, firstly, I am of the considered view that Article 6 (B) of Schedule 1A to the Act has no application to the facts of the case. Article 6 of Schedule 1A deals with the stamp duty payable on an "agreement or Memorandum of an Agreement" not otherwise provided for. 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. In the present case, the subject matter is neither an agricultural dry land nor an urban property nor is the agreement in question dealing with construction of a house or building of the nature mentioned in Article 6(B). The property in the instant case is one adjacent and related to a house property as per the recitals in the subject document. Therefore, no reliance can be placed on Article 6(B). In this view of the matter, the decision in **Saranam Peda Appaiah v. S. Narasimha Reddy** is not helpful to the plaintiffs/ respondents to advance their case that Article 6(B) of schedule 1A of the Act is not attracted. In the cited decision, the applicability of Article 6 (B) of Schedule 1A of the Act was considered by a Division Bench of this court. This Court while considering the question whether the said Article covers agricultural land also had held as follows:

> **“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, inasmuch 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."

10. The next important question now is whether the Explanation - I to Article 47-A of the Stamp Act is attracted and if so, whether the plaintiffs are liable to pay stamp duty and penalty by treating the subject agreement in question as a sale. The contents of the subject agreement are already referred to supra.

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

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 multi-storeyed building as declared in the document by the seller and builder or market value whichever is higher.]

This provision was added by A.P. Act 17 of 1986 with effect from 16.08.1986. The explanation is added with effect from 01.04.1995.

11. It is also advantageous to refer to the decision in **B. Ratnamala v. G. Rudramma** wherein a Division Bench of this Court had an occasion to interpret the said provision. In the said decision at paragraph number (9) it was held as under:

"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."

The above decision was rendered following the decision of the Hon'ble Supreme Court in **Veena Hansmukh Jain vs. State of Maharashtra**. In the said precedent the Hon'ble Supreme Court had considered the scope of the Explanation - 1 to Article 25 of Schedule 1 to the Bombay Stamp Act, 1958, which read as follows:

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 the 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.

Finally, while rejecting the contention raised by the appellants the Hon'ble Supreme Court held as under:

"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 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 the Explanation I."**

12. The law is well settled that a document, which is not sufficiently stamped cannot be exhibited for any purpose including a collateral purpose and the question of admission of a document in evidence will arise only after the court impounds the document as contemplated under Section 35 of the Indian Stamp Act. Therefore, considering the legal position obtaining which is applicable to the said document, this court holds that as rightly contended by the revision petitioners, Article 47A explanation 1A of Schedule 1A is attracted to the document in question.

13. Before parting with the case, it is necessary to mention that the learned counsel for the plaintiffs/respondents had placed reliance on a decision in **Cheryala Srinivas v. Moola Sujatha and others** and had contended that merely because there is a recital as to delivery of possession, in the document, the defendants 1 to 3 cannot be permitted to contend that stamp duty for the document is insufficient as admittedly, the plaintiffs are not in possession of the property and they had sought recovery of possession of the property. The sum and substance of the contention is that though the property was delivered as recited in the said document, since possession of the property was lost and as the recital regarding delivery of possession paled into insignificance, the same cannot be taken into consideration while determining the stamp duty leviable on the document. I have gone through the decision relied upon in Cheryala Srinivas (4 supra) relied upon by the learned counsel for the plaintiffs/ respondents. A perusal of the said decision would show that in that case the vendor himself is not certain about the boundaries and does not hold title and therefore, the plea as to delivery of possession was not accepted by this court in the limited context of determination of extent of stamp duty. This court in this cited case had also considered the aspect that the vendor himself is not the absolute owner of the property covered by the agreement. Therefore, the decision in that case was purely rendered on the facts of that case and is not helpful to advance the case of the plaintiffs/respondents. Further, the learned counsel for the plaintiffs had placed reliance on the decision in **Suraj Lamp & Industries Pvt. Ltd. V. State**

of Haryana in support of the contention that the agreement of sale-cum-General Power of Attorney does not confer title on such agreement holders and that the agreement of sale (with possession) is not a conveyance deed and that it falls short of the requirement of Sections 54 and 55 of the Transfer of Property Act and that since such an agreement does not create right, title and interest in the property transferred, such a document cannot be considered as a sale deed and stamp duty cannot be levied by treating the transaction covered by the document as a sale. However, in the State of Andhra Pradesh, by an amendment to Schedule 1A, which is applicable to the State of Andhra Pradesh, Article 47-A was introduced. In view of the law applicable in the state of A.P., the contention that the agreement of sale contemplates execution of a deed of conveyance and therefore, the agreement of sale with possession cannot be treated as a sale transaction cannot be countenanced. In the decision in **Veena Hansmukh Jain vs. State of Maharashtra** (3 supra), the Hon'ble Supreme Court considered this aspect and had held as follows:

> **"It is open for the legislature to levy duty on different kinds of agreements in different rates. If the legislature thought that it would be appropriate to collect duty at the stage of 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 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."**

Further, in **Bipin Shantilal Panchal vs. State of Gujarat And Another** on the aspect of the objections generally raised before the trial Courts which relate to deficiency of stamp duty of a document, the Hon'ble Supreme Court had held as follows: "**However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further.** Therefore, in the instant case, the procedure adopted by the trial court in marking the said document tentatively as exhibit A1 and the finding of the trial court in the impugned order confirming the said tentative marking are bad in law as the objection as to deficiency of stamp duty has to be decided before proceeding further, and, without postponing the decision on the objection till the conclusion of trial.

14. Viewed thus, this court finds that the order of the court below which is contrary to law and facts brooks interference.

15. In the result, the Civil Revision Petition is allowed and the impugned order is set aside holding that the agreement of sale-cum-General Power of Attorney (with possession) dated 24.08.2007 attracts the provision of Explanation 1 of Article 47-A of Schedule 1A of the Indian Stamp Act. Accordingly, the trial court is directed to collect deficit stamp duty and penalty on the subject document by following the due procedure established by law. However, in case, the plaintiffs choose to make a request by filing an appropriate application to send the document to the Collector for collection of stamp duty and penalty, the trial court shall give an opportunity to the defendants to file a counter and then decide such application, if any filed, on merits and in accordance with the procedure established by law.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

10th April, 2015

RAR