THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P.NO.4589 OF 2015

O R D E R

Heard the counsel for the petitioner at the stage of admission.

2. Aggrieved by the order and decree dated 15.07.2015 passed by the court of Principal Senior Civil Judge, Vijayawada in I.A.No.394/2005 in I.A.No.1039/2013 in O.S.No.702/2013 in allowing the petition filed by the defendants 1, 3 to 6 in under Section 151 of C.P.C. read with Section 31 and 35 of the Indian Stamp Act, 1899 to refer the receipt dated 25.2.2009 to the Collector, Krishna District under the Indian Stamp Act, 1899 for determining the deficit stamp duty and penalty, so as to impound the document, the plaintiff in the suit filed the present revision.

3. The plaintiff filed the suit for cancellation of registered General Power of Attorney-cum-agreement of sale and for permanent injunction. Along with the suit, the plaintiff field interlocutory application in I.A.No.1039/2013 in O.S.No.702/2013 under Order 39 Rules 1 and 2 of C.P.C. for temporary injunction and both the parties produced documentary evidence and when the respondents sought to mark Ex.R-1 – receipt dated 25.2.2009 evidence delivery of possession of suit schedule property, the counsel for the plaintiff objected for marking of such document for want of stamp duty and penalty. By order dated 4.6.2014, the trial court overruled the objection holding that the said document can be marked and no stamp duty or penalty is leviable. Aggrieved by the same, the plaintiff preferred a revision before this court in C.R.P.No.2963/2014. By order dated 13.3.2015, this court set aside the order of the trial court dated 4.6.2014 holding that the receipt dated 25.2.2009 produced by the respondents/defendants cannot be allowed to be marked unless the required stamp duty and penalty is collected in accordance with law. This court further held that the said order, will not preclude the respondents from payment of stamp duty and penalty by moving appropriate authority. The reasoning and the conclusion of the order of this court dated 13.3.2015 in C.R.P.No.2963/2014 is extracted as under for ready reference:

"3. Heard learned counsel for petitioner and also the learned counsel for the respondent.

4. By virtue of the amendment made to the Indian Stamp Act vide AP. Act 21 of 1995, an explanation is added as under:

"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."

5. Though number of judgments of this Court on the subject are referred to in the impugned order passed by the trial court, whether a particular document attracts stamp duty or not

and whether an agreement of sale is followed by or evidenced delivery of possession or not, is a matter to be considered in each case, having regard to the recitals in the document and other material evidencing delivery of possession. The trial court has simply held that the receipt is liable to be stamped and that has to be tagged to the original General Power of Attorney-cum-agreement of sale and it has also held that as the said agreement of sale dated 28.01.2009 was registered and already marked as Ex.P-1, the receipt dated 25.02.2009 which is produced by the respondent/defendant, requires no stamp duty or penalty. After considering the explanation added to Article 47A of Schedule 1A of the Stamp Act by A.P.Act 21 of 1995, it is clear that the agreement to sell followed by or evidencing delivery of possession of property agreed to be sold, shall be chargeable as a sale. The receipt dated 25.02.2009 shows that the balance amount of Rs.5,000/- was received and possession was given, therefore, it is clear that such possession is only following the General Power of Attorney-cum-agreement of sale dated 28.01.2009 i.e., Ex.P-1, hence, it is to be charged as a sale under explanation to Article 47A of Schedule 1A of the Stamp Act, added by way of A.P.Act 21 of 1995. The reasoning assigned by the trial court that if the receipt is liable to be stamped, the same is liable to be tagged on to the original General Power of Attorney-cum-agreement of sale, is erroneous and the same cannot be the reason to hold that the receipt dated 25.02.2009 does not attract stamp duty and penalty. From the recitals of the receipt, it is clear that balance amount of Rs.5,000/- was paid and possession was delivered on such date, which has to be construed for all purposes as an agreement of sale followed by delivery of possession and is chargeable as a 'sale' as per the explanation to Article 47A of Schedule 1A of the Stamp Act.

6. For the aforesaid reasons, the order dated 04.06.2014, passed by the Principal Senior Civil Judge, Vijayawada, in I.A.No.1039 of 2013 in O.S.No.702 of 2013 is set aside and the document which is sought to be produced by the respondent/defendant i.e., receipt dated 25.02.2009 cannot be allowed to be marked unless the required stamp duty and penalty is collected in accordance with law. However, this will not preclude the respondent from payment of stamp duty and penalty by moving appropriate authority."

4. The above order of this court dated 13.3.2015 in C.R.P.No.2963/2014 has attained finality, as no material is produced before this court showing that any appeal has been preferred before the Apex Court. In pursuance of the order of this court dated 13.32015, the defendants 1, 3 to 6 sought the court below in I.A.No.394/2005 in I.A.No.1039/2013 in O.S.No.702/2013, to refer the receipt dated 25.2.2009 to the Collector for determining the deficit stamp duty and penalty, so as to impound the document. The trial court, taking into considering the order of this court in the earlier revision, allowed the present I.A. and ordered to send the receipt dated 25.2.2009 to the District Collector, Krishna at Machiliipatnam for impounding stamp duty and penalty.

5. In view of the above facts and circumstances, I do not find any reason to interfere with the impugned order of the trial court and the revision is devoid of any merit and the same is dismissed at the stage of admission. No costs.

6. Miscellaneous petitions pending if any, shall stand closed.

AVS ---

27—11—2015