

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITON No.1188 of 2011

ORDER:

When an agreement of sale together with the delivery of possession is sought to be marked on behalf of the plaintiffs in the suit, the trial Court felt that the document being an agreement of sale together with the delivery of possession requires to be sufficiently stamped and also liable to be registered failing which the same cannot be received in evidence.

However, it is to be noticed that the document itself was executed on 02.01.1982 by which date the Item 47-A in schedule 1-A of the Stamp Act has not been introduced and as a matter of fact Item 47-A in schedule 1-A has been introduced with effect from 01.04.1986 and prior thereto any such agreement of sale is liable to suffer stamp duty of Rs.5/- only. Since the document in question has been reduced on a white paper and it has not suffered any stamp duty, the proper course to be adopted by the Court below is to forward the document to the Registrar for impounding or exercise the power available to it under Section 33 of the Stamp Act. In fact this Court in "***Meesala Krishna Rao v. Assu Suryanarayana and another***"^[1] has clearly said in paragraph No.7 that the suit document purported to have been executed on 20.11.1981, by which date the stamp duty payable being only Rs.5/- and since the suit document executed on the stamp paper worth Rs.7/-, it cannot be said that the suit document is insufficiently stamped as the enhanced stamp duty has been brought in to force with effect from 01.04.1990, a subsequent date. Hence, this Court arrived at a finding that the question of applying the bar contained under Section 35 of the Stamp Act does not, therefore, arise.

In so far as the objection with regard to registration of a document is concerned, it is to be noticed that the proviso to Section 49 of the Registration Act, 1908 clearly spelt out that an

unregistered document affecting immovable property and required by this Act, 1908 or by the Transfer of Property Act, 1982 to be registered may be received as evidence of a contract in a suit for specific performance. Hence, in the instant case the suit is for specific performance of the contract and hence in terms of proviso to Section 49, even though the said document is unregistered, the same can be received in evidence. This principle was evolved by the Supreme Court in “**S.Kaladevi v. V.R.Somasundaram and others**”^[2],

In this view of the matter, the revision is disposed of directing the Court below to exercise the power available under Section 33 of the Stamp Act and then proceed further in the matter. No order as to costs.

It is needless to observe that all other objections which are permissible to be taken by the opposite party are entitled to be raised and considered by the Court below.

The miscellaneous petitions, if any pending in the revision, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

04.02.2015
Ksp

^[1] 2010 (3) ALD 345

^[2] (2010) 5 Supreme Court Cases 401