HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.2963 of 2014

ORDER :

This civil revision petition is filed under Article 227 of the Constitution of India, by the petitioner in I.A.No.1039 of 2013 in O.S.No.702 of 2013, aggrieved by order dated 04.06.2014, passed by the Principal Senior Civil Judge, Vijayawada.

2. The suit in O.S.No.702 of 2013 is filed for cancellation of registered General Power of Attorney-cum-agreement of sale and for permanent injunction. In the aforesaid suit, the petitioner/plaintiff has filed an application in I.A.No.1039 of 2013 under Order 39 Rules 1 and 2 of CPC, and in the said petition, on behalf of petitioner/plaintiff, Exs.P-1 to P-22 are marked and on behalf of respondent, Ex.R-1 was sought to be marked which is receipt dated 25.02.2009, evidencing delivery of possession of property and at that stage, counsel for petitioner/plaintiff raised objection for marking of such document for want of stamp duty and penalty. On such objection, after hearing learned counsel for the parties, the Court below has passed the impugned order holding that the aforesaid document can be marked and no stamp duty or penalty is leviable on such document. As against the said order, this revision is filed.

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

4. By virtue of the amendments made to the Indian Stamp Act vide A.P.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.

7. Subject to the above directions, the revision is allowed. Pending miscellaneous applications, if any, shall stand closed. No costs.

R. SUBHASH REDDY, J

13th March 2015
ajr