**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.689 of 2013**

**ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.05.06.2012 in O.S.No.28 of 2011 of the Senior Civil Judge, Jangaon at Warangal.

2. Petitioner herein is the plaintiff in the above suit. He filed the said suit for specific performance of an agreement of sale against the 1st respondent.

3. In the plaint the petitioner had pleaded that the 1st respondent had agreed to sell the suit schedule property to him and he had paid an advance amount of Rs.50,000/- to the 1st respondent; that on receipt thereof, the 1st respondent executed a suit agreement of sale on Rs.100/- non-judicial stamp paper on 14.01.2011; and that after receiving the amount, the 1st respondent handed over the suit schedule property to the petitioner.

4. No doubt the stand of the petitioner was disputed by the 1st respondent in the written statement.

5. During the course of trial, the petitioner wished to mark the agreement of sale dt.14.01.2011 in evidence, but the

same was objected to by the counsel for the 1st respondent on the ground that it is inadmissible in evidence for want of registration as well as on the ground that it is insufficiently stamped. He pointed out that the document is followed by delivery of possession of the property and so it should have been stamped as if it is a sale deed as per explanation I of Article 47-A of Schedule IA of the Indian Stamp Act, 1899 (for short 'the Act') and since it is not so stamped, it cannot be admitted in evidence.

6. The petitioner contended before the Court below that there is no recital in the said agreement of sale about the delivery of possession of the property and therefore in the absence of any such recital, the document bearing the stamp of Rs.100/- is adequate and is admissible in evidence.

7. By order dt.05.06.2012, the Court below sustained the objection raised by the 1st respondent and refused to admit the agreement of sale in evidence on the ground that explanation I to Article 47-A of Schedule I A appended to the Act is attracted; and since the document in question was not stamped as a sale deed, it cannot be received in evidence. It relied upon the recital made by the petitioner in the plaint that after receiving the advance amount of Rs.50,000/- on 14.01.2011, the 1st respondent delivered the plot to the petitioner and promised to execute sale deed. It also observed that though the document does not contain specific

recital about the delivery of possession of the property, the specific admission of the plaintiff that possession of the property was delivered to him pursuant to the said document, is sufficient to hold that it should be treated as a sale deed and stamped accordingly.

8. Challenging the same this Revision is filed.

9. Heard Sri D.V.Chalapathi Rao, Counsel for the petitioner and Sri S.Chalapathi Rao, Counsel for the 1st respondent.

10. Counsel for the petitioner contended that since the document does not contain any recital about delivery of possession to the petitioner by the 1st respondent, Court below ought not to have held that explanation I to Article 47-A of Schedule I A of the Act is attracted.

11. Counsel for the 1st respondent refuted the above contentions and supported the order passed by the Court below.

12. Explanation I to Article 47 A of Schedule I A of the Indian Stamp Act, 1899 states :

> *"Explanation-I to Article 47-A of Schedule I-A—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."*

13. A reading of the above provision indicates that an agreement to sell <u>followed by</u> or <u>evidencing</u> delivery of possession of the property agreed to be sold, is required to be chargeable as a sale under Article 47A.

14. If the agreement to sell itself contains a recital about delivery of possession, it would fall in the category of an agreement to sell evidencing delivery of possession.

15. Since the provision also deals with a situation of an agreement to sell followed by delivery of possession of property agreed to be sold, in order to make explanation I of Article 47-A applicable it is not necessary that the agreement to sell should itself contain a recital about delivery of possession of the property agreed to be sold. It is sufficient to attract stamp duty applicable to a 'sale', if delivery of possession is admitted to follow the execution of agreement of sale.

16. The admission in the plaint by the petitioner that possession of the property was given to him after execution of the agreement would thus fall in category of agreement "followed" by delivery of possession and is sufficient to attract explanation I to Article 47-A of Schedule I-A of the Act.

17. Therefore, I do not find any merit in this Civil Revision

Petition and is accordingly dismissed. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

**M.S. RAMACHANDRA RAO, J**

27th August, 2015.
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