HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5949 of 2010

ORDER:

Assailing the order, dated 29.11.2010 passed in I.A.No.1240 of 2008 in O.S.No.164 of 2006 on the file of the II Additional Chief Judge, City Civil Courts, Hyderabad, the plaintiff preferred the present revision.

The facts as culled out from the order under challenge are as under:

Defendant Nos.26 and 39 to 42 filed a petition under Section 35 of the Indian Stamp Act (for short "The Act") to impound the agreements dated 08.05.2000 and 27.01.2003 and also the memorandum of understanding dated 31.07.2004. it is stated that at the time of evidence, PW.1 sought to mark certain documents which were filed at the time of filing of the suit, as exhibits. It is stated that under an agreement dated 08.05.2000 the second respondent/defendant No.1 agreed to sell the suit schedule "A" property to the plaintiff and two others for a sale consideration at Rs.2,500/- per square yard or such higher price as may be fetched in supersession of all the earlier agreements of sale. By an agreement dated 27.01.2003 the plaintiff and others are alleged to have purchased the interest of two partners namely I.Venkateswara Rao and another and defendant No.1 agreed to sell the same under the same terms and conditions as contained in agreement dated 08.05.2000 empowering them to alienate the said property to prospective purchasers. Subsequently, vide memorandum of understanding dated 31.07.2004, the plaintiff and another along with defendant No.1 agreed to sell the said property to one Mr.C.Govinda Swamy and another for a sale consideration of Rs.3.00 crores and the said Govinda Swamy is also alleged to have paid part sale consideration. The said memorandum of understanding also empowers them to alienate the said property. The averments in the affidavit further show that any agreement of sale relating to sale of immovable property requires to be stamped at 5% of the market value or sale consideration whichever is higher. Since the said properties are intended to be transferred to different parties under each of the said three agreements and as the sale consideration is also enhanced on every transaction, it is contended that the agreements have to be impounded for collection of additional stamp duty as per the provisions of the Indian Stamp Act.

A counter came to be filed by the plaintiff opposing the said petition. It is stated that at the time of registering the suit the Court has taken an objection and the same was explained by the plaintiff, which was accepted.

After considering the rival arguments, the trial Court allowed the said I.A. directing the plaintiff to pay stamp duty and penalty for the document within 15 days from the date of the order, failing which, the documents were directed to be forwarded to the District Collector for the purpose of impounding. Challenging the same, the plaintiff preferred the present revision.

Learned counsel for the petitioner/plaintiff mainly submits that the Court below has wrongly classified the documents since no possession was delivered under any deed and in the absence of transfer of title the order passed by the trial Court impounding the documents is illegal and improper. It is urged that under Article 6-B of Schedule 1-A read with 47-A of the Act, if an agreement transfers title and possession it attracts stamp duty as if it is conveyance. Repelling the arguments of respondents, it is stated that as per Section 2 (10) of the Act together with Explanation-II, there is no conveyance in the documents in question. It is said that there was no transfer of title but there was transfer of only shares of adjustments. In view of the above, he submits that impounding and directing the plaintiff to pay the stamp duty is illegal and improper.

On the other hand, learned counsel for the respondents disputes the same.

In order to substantiate the rival arguments, it may be necessary to refer to Article 47-A of Schedule 1 A and also Article 6 of the Schedule 1 of the Indian Stamp Act.

> “Explanation 1 to Article 47-A of Schedule 1-A of the Act reads as follows-

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."

Article 6 of the Schedule 1 of the Indian Stamp Act reads as under:

6. AGREEMENT or MEMORANDUM OF AN AGREEMENT not otherwise provided for:

(A) Where the value-	
(i) does not exceed Rs.5,000/-	Ten Rupees
(ii) exceeds Rs.5,000/- but does not exceed Rs.20,000/-	Twenty Rupees
(iii) exceeds Rs.20,000/- but does not exceed Rs.50,000/-	Fifty Rupees
iv) exceeds Rs.50,000/-	One hundred Rupees
(B) If relating to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/ sale of any other immovable property.	Five Rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities whichever is higher.
Note: Registration under this clause Rs.1000/- vide G.O.Ms.No.2045 (Reg.I) dated 28.11.2005 w.e.f. 01.12.2005	
(C) In any other case	One hundred rupees

In order to appreciate as to whether the documents which are subject matter of dispute in the present revision fall within the ambit of the provisions of the Stamp Act, it may be useful to refer to the contents of three documents.

The first document is an agreement-cum-settlement and assurance dated 08.05.2000. it is an agreement between I.Venkateswara Rao, K.Krishnamurthy Naidu, N.Babu (Manager of plaintiff) and defendant No.1. A reading of the said document show that it refers to internal adjustment between the parties. Clause No.7 and 5 (a) of the agreement reads as under:

> "Whereas the party Nos.1 and 2 of first party have allotted a share to the party No.3 ie. N.Babu for his investment of money and as such all the first party members now together executing this settlement-cum-agreement with second party, subject to however, the terms and conditions of their internal agreements dated 11.11.1999 and 21.04.2000.
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> 5 (a) the first party members shall pay the initially agreed consideration at the rate of Rs.2,500/- per square yard within 36 months by way of four equal instalments from the date of handing over of the possession of the above land to prospective purchasers by the first party members and also after the rights and title of the second party are upheld by the competent Court of law, from the date of this agreement."

From the above, it is clear that no possession was delivered as on that day and it appears to be an internal adjustment between the parties. Clause (12) of the agreement reveals that N.Babu was being inducted as partner and K.K.Naidu ceased to be a partner from the firm.

The second document relates to an agreement-cum-settlement dated 27.01.2003. This agreement was executed in continuation of agreement dated 08.05.2000, to record the retirement of I.Venkateswar Rao from the plaintiff firm. Clause Nos.7, 8 and 11 of the agreement indicate the same as a nature of sale without possession. Clause 9 of the agreement stipulates that N.C.Shivaji and N.Babu granted absolute power and authority to sell the aforesaid land to prospective purchasers and enter into an agreement of sale with prospective purchasers in respect of the above lands at their discretion and to receive part sale consideration.

As per the terms, they shall have authority to settle or compromise all proceedings, claims, demands whatsoever with litigating parties or to defend all actions and other proceedings before all the Courts at their cost and all such acts and deeds shall be deemed to have been ratified by the sixth respondent herein.

The third document is a memorandum of understanding dated 31.07.2004, wherein sixth respondent herein, N.C.Shivaji and N.Babu are alleged to have agreed to sell the aforesaid land to C.Govind Swamy and another for a sale consideration of Rs.3.00 crores, which is evident from clause 5 of the memorandum of understanding.

Though the counsel for the respondents relies on clause 5 (ix) of the said memorandum of understanding in support of his contention that the possession has to be delivered on payment of balance sale consideration, but the same appears to be incorrect. In order to appreciate the same, it would be useful to refer to clause 5 (ix) of the Memorandum of Understanding, which is as under:

> "(ix) That the third party in pursuance of the agreement has paid an amount of Rs.50,000/- today as advance and the balance consideration agreed to be paid within three months of Supreme Court order and after upholding the right, title and interest of first party and after taking possession of the land."

As seen from the contents of these three documents, possession was not delivered to any of the parties. There appears to be an adjustment of investments between the parties therein and also an adjustment among the executants of the documents without transfer of possession.

Learned counsel for the respondents relies upon Article 6 (B) of Schedule 1-A of the Act, as amended by way of G.O.Ms.No.581, dated 30.11.2003 prescribing the stamp duty in respect of sales without possession.

The issue as to the applicability of the said provision came up for consideration before this Court in ***M.Madhusudhan Reddy v. M.Kamalamma and others***[1] wherein this Court while dealing with

Article 47-A of Schedule 1A of the Act and also after referring to a Division Bench Judgment of this Court in ***B.Ratnamala v. G.Rudramma***[2], held as under:

> "4. It is settled principle of law that the nomenclature of a document is not a decisive factor. From the point of view of admissibility, it is the contents of the document that assume importance. If a document, though named as agreement of sale, contains all ingredients of sale, it is to be treated as a sale deed. In such cases, its admissibility would depend upon the compliance with the requirements, such as, stamp duty and registration. The amendment brought about through A.P.Act 21 of 1995 to Article 47A of Schedule 1A of the Stamp Act had narrowed down the distinction between an agreement of sale and a sale deed from the point of view of stamp duty. The explanation added through the amendment reads as under:
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> "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."
> From a reading of the Explanation, it is evident that if an agreement evidenced delivery of possession of the property agreed to be sold, it is liable to be charged as a sale deed. An important distinction brought about by various situations, having relevance to this Explanation, needs to be noted. There are certain agreements, which contain a recital to the effect that the possession has already been delivered to the purchaser or is being delivered through the agreement itself. In such a case, undoubtedly, the agreement is liable to be charged as if it is a sale deed. There are also agreements, which provide for delivery of possession at a future point of time, be it subject to payment of the balance or any portion of consideration, or on occurrence of any event. Here again, two situations may be contemplated. If such delivery of possession at a subsequent point of time is evidenced by that very agreement in the form of an endorsement, etc., it gets attracted by Explanation 1. On the other hand, even if the delivery of possession has taken place at a subsequent date, but the same is not evidenced by the agreement, it

does not attract Explanation 1. In such an event, the document deserves to be treated as agreement simplicitor, notwithstanding the fact that possession of the subject-matter of the agreement was delivered, otherwise than through an endorsement on the agreement itself."

In ***M.Hari Narayana @ Hari Babu v. Chief Controlling Revenue Authority and Commissioner Inspector General of Registration and Stamps, A.P., and others***[3] a learned Single Judge of this Court after referring to all the issues held as under:

> "From a reading of Article 6 (B) of Schedule 1-A, it is also clear that it is applicable only in relation to agreements for developments/sale in relation to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi storied building or for development/sale of any other immovable property."

In the instant case, from a reading of the three documents, it is clear that they are not agreements for the purposes under Article 6 (B) of Schedule 1A of the Act. There is no endorsement on agreement of sale or any evidence being adduced to show delivery of possession of the property.

In ***Dudekula Allauddin V. G.Sivaramkrishna and others***[4] a learned Single Judge of this Court categorically held as under:

> "When the right to register the land to convey the title of the land was still reserved with the vendee and what was given to the vendee was only the right to develop the land by dividing it into plots and laying roads, which cannot be considered to be conveying absolute possession."

In view of the judgments referred to above and for the aforesaid reasons, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.06.2016
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[1] (2004) 1 ALD 260

[2] (1999) 6 ALD 160 (DB)

[3] (2008) 2 ALD 515

[4] (2011) 5 ALD 702