HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5140 OF 2010

ORDER :

Heard learned counsel appearing for the petitioners. In spite of service of notice, there is no representation on behalf of the respondent.

The defendants in O.S. No.1136 of 2007 on the file of the V Additional Senior civil Judge (FTC), Visakhapatnam, preferred the present Revision under Article 227 of the Constitution of India, assailing the order dated 23.09.2010 passed in the O.S. No.1136 of 2007 wherein the objections raised by the defendants with regard to marking of a document on the ground that it requires stamp duty, was rejected.

The respondent/plaintiff filed O.S. No.1136 of 2007 for specific performance of the agreement of sale or to refund the advance sale consideration of Rs.1,41,000/- to the plaintiff. The averments in the plaint show that there was an agreement of sale dated 13.04.1999 executed by the mother of defendants 1 to 3 by name Simhachalam infavour of the plaintiff in respect of the schedule land and possession was also delivered on the same day. The averments further disclose that the 4th defendant, who is the eldest son-in-law of Simhachalam, who used to look after the financial affairs of the said Simhachalam, received balance sale consideration from the plaintiff on different occasions and issued receipts to that effect. After the death of the mother of defendants 1 to 3 and when the property devolved upon defendants 1 to 3, the plaintiff demanded the defendants 1 to 3 to execute registered sale deed in his favour and when they failed to accede to the request made, he got issued legal notice on 29.09.2006 to which a reply was also sent by the defendants on 20.10.2006. The averments in the suit further disclose that on 30.04.2007 the defendants tried to trespass into the schedule property and occupy the same by force, which was resisted by the plaintiff. Thereafter, defendants 1 to 4 started proclaiming in the village that they will occupy the schedule land even by force on one day or the other, which lead to filing of the suit. During the examination of P.W.1/plaintiff, the learned counsel for the plaintiff requested the Court to mark an agreement of sale which was objected to by defendants stating that since the contents of the document and the material on record show delivery of possession to the plaintiff the same requires to be registered. After hearing both sides, the learned Senior Civil Judge held that the said document is to be treated as sale agreement but not sale deed and accordingly the office was directed to put up office note regarding impounding of the document. Challenging the same, the defendant preferred the present Revision.

The main argument advanced by the learned counsel for the petitioners is that the said document is to be treated as sale deed since possession was delivered to the respondent. It is his case that the nomenclature of the document cannot be considered but the contents of the document need to be looked into to decide as to whether the same requires payment of stamp duty.

Now the question is whether the document in question is to be treated as an agreement of sale or sale deed?

The recitals of the agreement of sale show delivery of possession on 13.04.1999 ie. on the date of execution of the agreement of sale.

In ***Vanapalli Jayalaxmi @ Venkata Jayalaxmi v. A.Kondal Rao and others***[1] a learned Single Judge of this Court was dealing with a case where the plaintiff filed a suit for specific performance of an agreement of sale which was marked as Ex.A1 during the trial. On an objection taken by the defendant by filing an application seeking impounding of the said document, levying stamp duty and penalty as a sale deed under Article 47-A of Schedule I-A of the Indian Stamp Act. The trial Court allowed the said application over ruling the objection taken by the plaintiff. While interpreting the above provision and after referring to the Division Bench Judgment of this Court in ***B.Ratnamala v.***

G.Rudramma[[2]] this Court held as under:

"While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place. As the incidence of duty is on the execution of the deed, regard must, therefore, be had only to the terms of the document. Thus the main question that falls for consideration is the interpretation of the expressions "followed by or evidencing delivery of possession". These expressions cannot be read in isolation and one has to find the true meaning by reading the entire Explanation and more so in conjunction with the earlier expression i.e., "agreement". Even if these two expressions are looked independently, it means an agreement to sell followed by delivery of possession and an agreement to sell evidencing delivery of possession. In the first case, i.e.", "followed by delivery", possession cannot be disjuncted from the basic source i.e., agreement to sell. Therefore, the expression followed by delivery of possession should have a direct nexus to the agreement and should be read in juxtaposition to the word 'agreement' and it cannot be independent or outside the agreement. Therefore, the delivery of possession should follow the agreement i.e., through the agreement. It takes in its sweep the recital in the agreement itself that delivery of possession is being handed over. It will also cover cases of delivery of possession contemporaneous with the execution of Agreement, even if there is no specific recital in the Agreement. In other words, the delivery of possession should be intimately and inextricably connected with the Agreement. And in the second type, i.e., agreements evidencing delivery of possession, if the document contains evidence of delivery of possession by a recital in that behalf, that is sufficient. Such delivery of possession can be prior to the date of agreement and need not be under the agreement. If the Agreement records the fact that the possession was delivered earlier and such recital serves as evidence of delivery of possession, though prior to the Agreement, it falls under the second limb. Therefore, on a proper interpretation of the said expressions, it would follow that an agreement containing specific recital of delivery of possession or indicating delivery of possession even in the past is liable for stamp duty as a 'sale' under the said Explanation."

In ***Veena Hasmukh Jain vs. State of***

Maharashtra and others[3] the Apex Court while interpreting Explanation I to Article 25 of schedule I to the Bombay Stamp Act held as under:

"Explanation I. For the purposes of this article, where in the case of agreement to sell an immoveable property, the possession of any immoveable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly :

Provided that, the provisions of Section 32-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under the section :

Provided further that, were subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are if there is an agreement to sell immoveable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof such, an agreement to sell is deemed to be a "conveyance". In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to (be) a conveyance shall be adjusted towards the total duty leviable on the conveyance. Now, in the present case, the agreement entered into clearly provides for sale of an immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the scope of the Explanation I. It is open to the Legislature to levy duty on different kinds of agreement in different rates. If the Legislature thought that it would be appropriate to collect duty at the stage of agreement itself if it fulfils certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by-passing of a consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later stage itself though right, title and interest may not have passed as such. Still by reason of the fact that under the terms of the agreement there is an intention of sale and possession of the property has also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that is exactly what has been done in the present case. Therefore, it cannot be said that levy of duty is not upon the instrument but on the transaction. Therefore, we reject the contention raised on behalf of the appellants in that regard.

In the instant case, possession was delivered on the date of execution of agreement of sale itself as the entire sale consideration was received. Hence, the trial Court erred in treating the said document as an agreement of sale. In view of the judgments referred to above and since the agreement of sale is followed by delivery of possession, the said document must be treated as a sale deed as per Article 47-A of Schedule I-A of Stamp Act.

For the aforesaid reasons, the Civil Revision Petition is allowed and the order under challenge is accordingly set-aside. There shall be no order as to costs. Miscellaneous petitions, if any, shall stands closed.

C.PRAVEEN KUMAR,J

Dt:23.02.2016

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[1] (2014) 1 ALT 356

[2] (1999) 6 ALT 59 (D.B.)

[3] (1999) 5 SCC 725