

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 585 of 2016**

Sardar Satpal Singh S/o late Vidyal Singh, aged about 63 years, R/o Church Road, Kedarpur, Nagar Ambikapur, District Surguja, Chhattisgarh.

---- **Petitioner**

Versus

1. Smt. Saroj Shukla W/o late Jainath Shukla, aged about 75 years, R/o Anand Nagar, Riapur, post Raipur, District Raipur, Chhattisgarh
2. Shri Sachin Dev Shukla S/o late Jainath Shukla, aged about 51 years, R/o Anand Nagar, Riapur, Post Raipur, District Raipur, Chhattisgarh
3. Shri Jaidev Shukla S/o late Jainath Shukla, aged about 48 years, R/o Anand Nagar, Riapur, Post Raipur, District Raipur, Chhattisgarh
4. The Sub Registrar, office of Sub-Registrar, Ambikapur, District Surguja, Chhattisgarh

---- **Respondents**

For Petitioner	:	Shri Rakesh Pandey, Advocate
For Respondents	:	Shri Rahul Mishra, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

09/05/2017

1. The present writ petition under Article 227 of the Constitution of India has been preferred assailing the order dated 08.07.2016 and 24.08.2016 passed by the 3rd Additional District Judge, Ambikapur in Civil Suit No. 34 of 2015. The Court below initially vide its order dated 08.07.2016 had ordered for depositing of stamp duties of Rs.28,05, 374/- as per Schedule 1 A of Article 23 of the Indian Stamp Act, 1899 (for short, the Act). Likewise, vide its order dated 24.08.2016 the Court below has rejected the objection filed by the petitioner/plaintiff against the report of the Sub-Registrar and directed the petitioner to deposit court fees as valued by the Sub-registrar and as ordered by the Court vide its order dated 08.07.2016.

2. Brief facts of the present case is that the petitioner/plaintiff had filed a civil suit for specific performance of contract and also seeking possession and grant of permanent injunction against the defendants. The suit property involved in the case is the land situated at Khasra No. 1245 and 1246 in the village Kedarpur, District Ambikapur. The suit property originally was in the name of one Jainath Shukla, the husband of defendant no.1 and the father of defendants 2 & 3. The suit property was given on rent to the father of the petitioner somewhere in the year 1962. On 04.07.1987 it is alleged that there was an agreement in respect of the sale of the said property between the original owner Jainath and the petitioner for the sale consideration of Rs.55,001/- and advance of Rs.5,000/- was paid immediately. As per the petitioner/plaintiff, periodically, he had made the entire payment to the original landlord but the landlord did not execute the sale deed which lead to the filing of the suit for specific performance.
3. At this juncture, it would be relevant to mention that the petitioner on an earlier occasion had filed a suit seeking for declaration of title and permanent injunction before the Civil Judge Class-II, Ambikapur which got dismissed on the ground of pecuniary jurisdiction. The first appeal and the second appeal preferred against the said judgment also got dismissed reserving liberty to the petitioner/plaintiff of filing a suit for specific performance of contract. Thereafter, the petitioner filed the Civil Suit no. 34/2015. Pending the said civil suit, the eviction petition filed by the defendants was also decided in favour of the landlord and the petitioner has been evicted from the said premises. In the civil suit, after the pleadings were complete on either side, the trial Court framed issues on the basis of the pleadings and thereafter, the case was fixed for plaintiff's

evidence. The respondents herein who are the defendants before the civil Court raised an objection before the trial Court that the agreement to sale dated 04.07.1987 is not properly stamped. On the basis of the said objection, the plaintiff immediately moved an application on 28.04.2016 before the trial Court under Section 33 of the Stamp Act seeking for impounding of the document.

4. The trial Court vide its order dated 14.06.2016 sent a copy of the agreement to sale to the Collector of Stamp, Ambikapur for valuation of stamp duty and to submit its report. The Registrar after getting the proper valuation done from the Sub-Registrar, Ambikapur submitted his report before the trial Court on 07.07.2016. As per the report of the Registrar, Stamp, the plaintiff has to pay stamp duty of Rs. 28,05,734/- according to Article 23 Schedule - 1A of the Indian Stamp Act. The Court below accordingly vide its order dated 08.07.2016 directed the petitioner/plaintiff to deposit the said stamp duty by next date of hearing.
5. The petitioner raised an objection on the report of the Sub-Registrar, Ambikapur and challenged the valuation done on the ground that the basis on which the valuation has been done could not have been made effective relying upon an amended provision of law. This amended provision would not have the retrospective effect and therefore the valuation made is incorrect. According to the petitioner, the valuation ought to have been made on the basis of the value of the property as it stood on the date when the agreement to sale was executed i.e. 04.07.1987.
6. The trial Court vide impugned order dated 24.08.2016 rejected the objection and consequently ordered for payment of stamp duty by the next

date of hearing and also to keep all the witnesses present on the next date of hearing.

7. It is this impugned order which is under challenge in this writ petition.
8. Learned counsel for the petitioner challenged the impugned order on two grounds. Firstly, according to the petitioner, the court below has committed an error of law in not appreciating the fact that the provisions of Article 23 of Schedule-I of the Act would not be applicable in the given facts of the case. Rather, it is a case where the provisions of Article 5 of Schedule-I of the Act would be attracted, and therefore, the impugned order is bad in law. According to the petitioner, since the possession was not handed over to the present petitioner at the time of execution of agreement to sale, it is only Article 5(b) of Schedule-I of the Act which would be applicable and that the court below has erroneously brought it under the purview of Article 23. Counsel for the petitioner relied upon the judgment of Supreme Court in case of Omprakash Vs. Laxminarayan and Other, 2014(1) SCC 618 in this regard.
9. The second ground on which the counsel for the petitioner challenged the impugned order is the fact that valuation which has been done by the Sub-Registrar also is erroneous as he has taken the present value of the suit property for calculating the stamp duty whereas, he should have calculated the stamp duty on the basis of valuation of the property as it stood on the date of the agreement to sale having been executed i.e. on 04.07.1987. Counsel for the petitioner referred to the definition of “chargeable” under Section 2(6) of the Act. in this regard. He also referred to the judgment of Andhra Pradesh High Court in case of Media Anasuyamma and Another Vs. Choppela Lakshmanna, 1992 AIR AP 183.

10. The counsel for the respondent however opposing the petition refers to the plaint filed by the petitioner wherein he has categorically stated that the petitioner and his family members are in possession of the suit property since ages i.e. from the time of his forefathers. According to the respondent, since the petitioner were already in possession of the property, the question of there being any act of handing over possession of the suit property does not arise. Thus, it is established that the plaintiffs were in possession of the property at the time of filing of suit.
11. He also refers to the contents of the earlier suit wherein also the petitioner while claiming declaration of title had clearly stated in his plaint that he and his family members are in exclusive possession of the suit property since long from the time of his forefathers. These two averments in the two suits filed by the petitioner-plaintiff itself sufficiently proves that petitioner was already in possession of the suit property, and therefore, there was no need to claim for possession.
12. He further submits that the petitioner initially filed a suit for declaration of title which has been lost by him up till the stage of Second Appeal. It was also contended that meanwhile, the respondent-landlord had already initiated proceedings for eviction under the Rent Control Act and there is an order in his favour and in compliance of the said order, the respondent have also obtained possession of the suit property. Thus, nothing further remains to be adjudicated upon. The question involved in this case is of only academic interest and prayed for rejection of the writ petition.
13. Having heard learned counsel appearing for either side, if we look into the Article 23 of Schedule-I of the Act with Chhattisgarh amendment, it holds as under :

23	Conveyance, not being a transfer charged or exempted under No.62, irrespective of the market value of the property which is the subject matter of conveyance. Exemptions Assignment of Copy-right under the Copy-right Act, 1957 (No.14 of 1957), Section 18, Co-partnership deed, See Partnership (No.46) Explanation – For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after 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: (a) provided further that, where an instrument relates to the amalgamation or reconstruction of companies under orders of the High Court under section 394 read with section 391 of the Companies Act, 1956 (1 of 1956) or under orders of the Reserve Bank in India under section 44-A of the Banking Regulation Act, 1949 (10 of 1949), the duty chargeable shall not exceed an amount equal to 7.5% of the market value of the immovable property transferred which is located within the State of Chhattisgarh or an amount equal to 0.7% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such transfer, whichever is higher.” Added by C.G. Act No.4 of 2005 Published in C.G.Rajpatra (Asadharan) dated 12-05-2005 Page 190(1) Provided that, the provisions of Section 47-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section: Provided further that where subsequently a conveyance is effected 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, subject to a minimum of Rs.10.	Seven and half percent of such market value; Provided that if the total amount of duty payable is not a multiple of fifty paise, it shall be rounded off to the nearest rupee half of a rupee or over being counted as one rupee and less than half of a rupee being disregarded.
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14. Likewise, Article 23-A of the Act also speaks as under :

23-A	Conveyance in the nature of part performance , Contracts for the transfer of immovable property in the nature of part performance in any Union Territory under Section 53-A of the Transfer of Property Act, 1982.	Ninety percent of the duty as a Conveyance (No.23)
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15. It would be also beneficial to reproduce the definition of conveyance as defined under Section 2(10) of the Act which reads as under:

(10) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I"

16. A plain reading of aforesaid three provisions clearly reflects that the meaning of conveyance means an instrument by which movable or immovable property is transferred. Admittedly the petitioner and his forefathers were in possession of the suit property as a tenant since long. This fact is admitted from the pleadings of the petitioner-plaintiff in two complaints which he had filed before the court below, one in the present case and another in an earlier litigation where the relief sought for was for declaration of title. Since the petitioner was already in possession of the property, there was no additional act which had to be performed by the respondent-landlord for handing over possession to the plaintiff-petitioner at the time of execution of the agreement to sale. Hence, as the petitioner was in possession of the property, document i.e. agreement to sale entered into between the parties would fall within the ambit of conveyance as defined under Section 2(10) of the Act.

17. In view of the aforesaid facts and circumstances of the case, the judgment of Omprakash (Supra) which has been relied by the counsel for the petitioner in fact goes against the petitioner, inasmuch as, the said judgment clearly and emphatically holds that once when the movable or immovable property gets

transferred, the deed by which the transfer has been made becomes a conveyance and if it is a conveyance, it definitely would attract Article 23 and not Article 5 of Schedule-I. The judgment cited by the petitioner going against the petitioner himself is reflected from the reading of paragraphs 11 and 13 of the said judgment which is being reproduced herein as under :

“11. As stated earlier, the plaintiffs filed a suit for specific performance of contract and their case is founded on the agreement to sell executed on 27th December, 2000. The agreement to sell acknowledges payment of the part of consideration money and further giving actual physical possession to the purchaser by the seller. Though the defendants dispute that, but in our opinion, for determination of the question of admissibility of a document, it is the recital therein which shall be decisive. Whether the possession in fact was given or not in terms of the agreement to sell is a question of fact which requires adjudication. But, at the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue. It does not mean that the recital in the document shall be conclusive but for the purpose of admissibility it is the terms and conditions incorporated therein which shall hold the field. Having said that, we proceed to consider as to whether the document in question is “conveyance” within the meaning of Section 2(10) of the Act.

13. From a plain reading of the aforesaid provision, it is evident that an instrument by which movable or immovable property is transferred, comes within the expression “conveyance”. In the present case, an immovable property is transferred on payment of part of the consideration and handing over the possession of the property.”

- 18.** Thus, the contention raised by the petitioner that it would be Article 5(b) of Schedule-1 which would be applicable in the case of the petitioner so far as stamp duty is concerned, is not tenable and the said objection thus stands rejected and the order of trial court to that extent is affirmed.

19. However, taking into consideration the second contention of the petitioner that the suit property has not been properly valued and that the Sub-Registrar should have made the calculation in accordance with the provisions of law as it existed on the date of execution of agreement to sale is concerned, it would be relevant to first understand the definition of chargeable. For ready reference, the term chargeable as defined under Section 2(6) of the Act is reproduced herein as under :

“(6) "Chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in [India] when such instrument was executed or, where several persons executed the instrument at different times, first executed”

20. It is also pertinent to refer to judgment of Andhra Pradesh in case of Media Anasuyama (Supra) wherein the Division Bench of Andhra Pradesh referring to certain judgments in the past, has held as under:

“**11.**For the aforesaid reasons we are of the view that proper stamp duty payable on an instrument will be payable as on the date of the execution of that instrument and the same applies to the provisions of the Indian Stamp Act, 1879, as amended from time to time in Andhra Pradesh.....”

12.....The said decision was rendered without adverting to the relevant principles of law and provisions mentioned above, which clearly show that the stamp duty on instruments is payable according to law in force at the date of execution.....”

21. The ratio of law laid down by the Andhra Pradesh High Court as also the definition of chargeable clearly reflects that the stamp duty payable would be what it was at the time of execution of the agreement to sale which in the instant case is 04.07.1987. In the factual background of the case it appears

that the Sub-Registrar has taken into consideration the present day valuation of the suit property to ascertain the stamp duty. This objection of the petitioner-plaintiff before the court below has not been properly dealt with by the trial court while rejecting the objection raised. It would be also relevant to take note of the rates of the property as fixed by the government, which has been enclosed by the petitioner along with the petition.

22. Considering all these facts, this court has no hesitation in reaching to the conclusion that the valuation of the suit property for the purpose of ascertaining the stamp duty seems to be the present day valuation which has been taken into consideration for ascertaining the stamp duty. The said assessment made by the Sub-Registrar thus does not seem to be proper, legal and justified and the same warrants interference.
23. In view of the same, the writ petition is partly allowed to the extent that the matter is remitted back to the court below to seek for fresh report from the Sub-Registrar as to whether the stamp duty assessed was on the basis of the present day value of the suit property or was on the basis of the valuation of the property on the date of execution of agreement to sale i.e. 04.07.1987, and thereafter to proceed further and decide the case on merits. So far as the objection of the petitioner that it would be Article 5(b) of Schedule-I which would be applicable for the purpose of stamp duty is concerned, the same being unsustainable stands rejected affirming the order of trial court in this regard.

Sd/-
(P. Sam Koshy)
Judge