THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 2059 of 2018

ORDER:

This civil revision petition arises out of the order dated 27.02.2018 in E.A.No.301 of 2017 in E.P.No.194 of 2016 in L.A.C.No.146 of 2008 passed by the Principal District Judge, Khammam (for short, 'the trial Court').

2. The revision petitioner is a third party to the above E.P. proceedings. He filed E.A.No.301 of 2017, a claim petition under Order XXI Rules 58, 97 r/w Sections 47, 151 of CPC, having come to know about the filing of execution petition E.P.No.194 of 2017 in PLC No.11 of 2008 in L.A.C.No.146 of 2008 by respondents 1 and 2 against respondent No.3. The petitioner's contention is that the third respondent played fraud upon him in collusion with respondents 1 and 2 and intended to sell the E.P. schedule property to them, with a view to defeat the rights of the petitioner acquired under agreement of sale dated 03.04.2016.

3. It appears from the order of the trial Court that the trial Court has considered the objections of respondents 1 and 2 with regard to the admissibility of agreement of sale dated 03.04.2016 and the receipt dated 21.12.2016, and held that the objection raised was sustainable in view of the terms of Explanation-I of Article 47-A of the Indian Stamp Act. The trial Court, on consideration of the decision in **Veesarapu Padma v. Rangineni Anitha**[1], and the judgment of this Court in **Vanapally Jayalaxmi @ Venkata Jayalaxmi v. Kondalrao and**

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[1] 2014 (1) ALT 216

others[2] has sustained the objection raised by respondents 1 and 2 and directed the revision petitioner to pay Stamp Duty holding that the agreement of sale is a conveyance deed in terms of Explanation (1) to Article 47 of the Indian Stamp Act.

4. The short point that arises for consideration in this revision petition is:-

> **Whether the revision petitioner is liable to pay stamp duty in terms of Explanation-I to Article 47 of the Indian Stamp Act for the agreement of sale entered into by him with the third respondent.**

5. Learned counsel for the petitioner submits that the delivery of possession of the property by an independent receipt dated 21.12.2016 after payment of sale consideration does not amount to a conveyance, as such it cannot be treated as a conveyance for levy of Stamp Duty.

6. Learned counsel for the petitioner placing reliance on the judgments of this Court in **Makineni Srinivas Rao v. Manthena Prabhakar Reddy**[3]; and **Sri Lakshmi Housing Enterprises v. Haji Begum**[4], submits that as the possession was delivered subsequent to the agreement of sale, as such the petitioner is not liable to pay any Stamp Duty as per the provision in Explanation-I of Article 47-A of the Indian Stamp Act.

7. In **Makineni** (3 supra), this Court held in a different context about the payment of Stamp Duty in the light of the facts of the said case. In the present case, since there is a recital for delivery of possession on payment of full consideration, the delivery was effected after payment of

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[2] 2014 (1) ALT 356
[3] 2014 (5) ALT 241
[4] 2010 (6) ALT 24

substantial portion of the sale consideration, and therefore, the delivery has to be considered as "delivery followed by agreement of sale dated 03.04.2016". In **Makineni** (3 supra), there is no recital with regard to delivery of possession, and the events transpired much after execution of agreement of sale and, therefore, the said decision is not applicable to the facts of the present case.

8. In **Sri Lakshmi Housing** (4 supra), this Court held in paragraph 4 as under:

> *"In his plaint, the Petitioner stated that after the agreement was entered into, he paid the balance of sale consideration to the Respondents and possession was delivered thereafter. The possession so delivered cannot be related to the agreement of sale. It is only when the possession has accrued to the Petitioner through the agreement that he can be required to pay the stamp duty. The mere fact that the possession has been delivered, at a later point of time, does not make the document liable to be stamped as though it is a sale deed."*

The facts of the present case are different, as there is a clause in the agreement of sale dated 03.04.2016, and in continuation of the said agreement of sale dated 03.04.2016, the payments were made, and possession was delivered. Therefore, the above case is not applicable to the facts of the present case.

9. Learned counsel for respondents 1 and 2 placed reliance on the judgments in **Veesarapu Padma** (1 supra), **Vanapally Jayalaxmi** (2 supra) and submitted that as the delivery of possession is intimately and inextricably connected with the agreement of sale, the petitioner has to pay Stamp Duty considering it as sale.

10. A perusal at the agreement of sale dated 03.04.2016 and the receipt dated 21.12.2016 reveals that, out of agreed sale

consideration of Rs.26,00,000/-, an amount of Rs.24,00,000/- was paid and the possession was delivered on such payment. The relevant portion in the agreement of sale in respect of delivery of possession is as follows:

> *"..... on receipt of entire sale consideration, the possession of the property shall be delivered to you and the registered sale deed in respect of the said property within one month thereof with your own expenses and costs till the complete payment of sale consideration, the possession of the said property shall be with me....."*

11. The above recital reveals that delivery of possession would be made after payment of entire sale consideration. In fact, substantial portion of sale consideration was paid and consequent to payment, the possession was delivered. The delivery of possession is intimately and inextricably connected with the agreement of sale. Without there being an agreement of sale dated 03.04.2016 and a clause for delivery of possession, there would not have been a delivery of possession. The recitals in the possession receipt reveals that substantial portion of Rs.24,00,000/- out of the total sale consideration of Rs.26,00,000/- was received, and the possession of schedule property was delivered. There is *consensus ad idem*. The conduct and understanding of the parties clearly reveal their intention in continuing the agreement of sale dated 03.04.2016. Therefore, it can be concluded that under agreement of sale and receipt, the possession was delivered; which means the possession was delivered following the agreement of sale with the consent of the parties. What remains for execution of registered sale deed was only payment of balance of sale consideration of Rs.2,00,000/- as per the agreement.

12. It is appropriate to refer to Article 47 of the Indian Stamp Act, and Section 54 of the Transfer of Property Act at this juncture.

> *"47. Power of payer to stamp bills, and promissory notes received by him unstamped. – When any bill of exchange 1 [or promissory note] chargeable 2 [with a duty not exceeding ten naye paise] is presented for payment unstamped, the person to whom it is so presented, may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill 3 [or note], and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill 3 [or note], shall, so far as respects the duty, be deemed good and valid : Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, 3 [or note]."*
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> *Explanation - I : 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:*
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> *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.*
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> *"54. "Sale" defined: "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and partpromised. Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of*

itself, create any interest in or charge on such property."

13. As per Article 47 of the Indian Stamp Act, under Explanation-I, 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. The said proposition of law has been explained in **B. Ratnamala v. G. Rudramma**[5]. The trial Court relied on the Division Bench judgment of this Court in **Vanapally Jayalaxmi** (2 supra), wherein the judgment of Division Bench of this Court in **B. Ratnamala** (5 supra) has been followed, had directed the revision petitioner to pay Stamp Duty, and penalty holding that the agreement of sale is a conveyance deed in terms of Explanation (1) of Article 47 of the Indian Stamp Act.

14. In view of the above provisions, an agreement of sale containing specific recital of delivery of possession or indicating delivery of possession, even in the past, was liable for payment of stamp duty as 'sale' under Explanation-I of Article 47 of the Stamp Act.

15. The interpretation of the expressions *"followed by"* and *"evidencing delivery of possession"* are explained in **B. Ratnamala** (5 supra), which read as under:

> *"13. Thus, it was a specific case where in so many words the Explanation takes in all the situations i.e., delivery of possession before the execution or at the time of execution or after the execution of an agreement and such agreements are deemed to be conveyances for the purpose of imposing stamp duty. Thus the Apex Court had approved the intention of the Legislature in equalising an Agreement on par with a conveyance in the circumstances contemplated thereunder, apparently, the object being to realise the revenue at the earliest point of time on the Agreement akin to sale deeds.*

[5] AIR 2000 AP 167

Though in different words, in the instant case, the amendment brought in tries to achieve a similar object.

14. In the case on hand, there is a variation in the expressions used viz., "followed by" and "evidencing delivery of possession". As discussed above, the expression "followed by" should be read in conjunction with the earlier expression "agreement" and in the latter case, any agreement recording delivery of possession should invite the stamp duty as a sale deed, even though the possession had been delivered in the past. The expression "evidencing delivery of possession" applies to the situation with which we are concerned in the present case."

16. No doubt, in the instant case, there is a clause in the agreement of sale for delivery of possession on payment of entire sale consideration. The substantial portion of sale consideration was paid under the Receipt dated 21.12.2016, which was in continuation of the agreement of sale dated 03.04.2016. As per the interpretation with regard to delivery of possession in **Ratnamala** (5 supra), delivery of possession before the execution, or at the time of execution or after the execution of agreement, and such agreements are deemed to be conveyances for the purposes of imposing stamp duty. It is clearly explained in **Ratnamala** referred above, that the Apex Court has approved the intention of legislature in equalizing an agreement on par with the conveyance in the circumstances contemplated thereunder. It is also made clear that the object was to realize the revenue at the earliest point of time on the agreement of sale which are akin to sale deeds. The judgment in **Ratnamala** clarifies the position with regard to imposing Stamp Duty and penalty on the agreement of sale, if it is followed by the delivery of possession at any of the three stages referred above. In the instant case, the delivery of possession was followed in continuation of the agreement of sale and therefore it has to be considered that the delivery of

possession was intimately and inextricably connected with the agreement of sale. Therefore, there are no reasons to differ with the view taken by the trial Court in directing the petitioner to pay the Stamp Duty and penalty on the agreement of sale.

17. In view of the foregoing reasons, I do not find any reason to interfere with the order of the trial Court.

18. **IN THE RESULT**, the civil revision petition is dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

11th September, 2018

Msr / Ksm

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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