HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITON No.2683 OF 2018

ORDER:

This Civil Revision Petition is filed against order dated 07.03.2018 in I.A.No.782 of 2017 in O.S.No.73 of 2017, wherein and whereby the objections raised by the respondent/defendant with regard to marking of document dated 10.04.2016 coupled with document dated 30.03.2016 is to be treated as sale within the meaning of Explanation I to Article 47-A of the schedule I-A, is upheld by the Court below.

2. Heard learned counsel for the petitioners, who submits that in the suit document i.e., agreement of sale dated 30.03.2016, nothing is mentioned about handing over of possession of the suit schedule property to them by the respondent and document dated 10.04.2016, which is sought to be marked is only a permissive possession given to the petitioners, that too only to an extent of Acs.4.48 cents, as such, permissive possession granted to petitioners under document dated 10.04.2016 cannot be termed as possession in pursuant to agreement of sale dated 30.03.2016. He submits that the document dated 10.04.2016 is only a licence granted to run the poultry form, as such, the document dated 10.04.2016 cannot be considered as sale and need not be stamped as sale by virtue explanation to Article 47-A of the Schedule 1-A of the Indian Stamp Act, 1899. He further submits that the document dated 10.04.2016 is an independent document and same is not in pursuance to suit agreement of sale

dated 30.03.2016 and that there is no reference of agreement of sale dated 30.03.2016 in the document dated 10.04.2016, as such, no stamp duty as sale is liable to be paid. In support of his contention, he relied on the judgment reported in **B.Ratnamala v. G.Rudramma [1999 (6) ALT 59].**

3. On the other hand, learned counsel appearing for the respondent submits that the document dated 10.04.2016 is in pursuant to suit agreement of sale dated 30.03.2016 and possession was delivered through the said document dated 10.04.2016, as such, same is liable to be stamped as sale within the meaning of explanation to 1-A of Article 47. He submits that vendor and vendee relationship exists between the parties and in relation to same by virtue of document dated 10.04.2016 possession was delivered, as such, the same is to be stamped as per explanation to Article 47. In support of his contention, he relied on the judgment reported in **Dauluru Ramachandra Rao v. Bhogi Venkata Ramana [1996 Law Suit (AP) 488].**

4. In this case, it is to be seen that admittedly, the suit document i.e., agreement of sale dated 30.03.2016 does not show that the possession of the suit property is delivered to the petitioners. But, a perusal of document dated 10.04.2016, which is sought to be marked as document and objected to by the respondent, goes to show that possession of part of the suit schedule property i.e., Acs.4.48 cents out of total extent of land was delivered to the petitioners, for the purpose of utilizing the same for poultry form. According to the learned counsel for the respondent, since possession was delivered to the petitioners by

virtue of document dated 10.04.2016, the same is liable for stamp duty as per Explanation I to Article 47-A Schedule 1-A of the Indian Stamp Act. In this context, it is relevant to extract the said explanation, which reads as follows:

> "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.
> 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."

As per the aforesaid provision, an agreement to sell i.e., document dated 30.03.2016 is followed by delivery of possession of part of suit schedule property through the document dated 10.04.2016, as such, same is chargeable as a sale. Though there is no reference about the agreement of sale dated 30.03.2016 in the subject document dated 10.04.2016, but the possession of part of the suit schedule property was delivered to the petitioners, which followed suit document dated 30.03.2016. As such, it can be construed that the delivery of possession is in continuation of agreement of sale dated 30.03.2016. That apart, in the affidavit filed in support of I.A.No.782 of 2017 in O.S.No.73 of 2017, it is specifically stated after execution of agreement of sale dated 30.03.2016, permissive possession was handed over by the respondent in respect of land to an extent of Acs.4.48 cents by executing permission letter, which goes to show that possession is in pursuance of agreement of sale dated 30.03.2016, i.e., delivery of possession followed agreement of sale dated 30.03.2016. While dealing with the similar issue in **Dauluru Ramachandra Rao v.**

Bhogi Venkata Ramana (supra), learned Single Judge of this Court held as follows:

> "3. I am unable to agree with his contention. The document is dated 30-3-1989. Admittedly, the plaintiff is in possession in pursuance of the said agreement, though possession was given at a later date, i.e., in April, 1990. This certainly evidences the delivery of possession of the property agreed to be sold and comes within the ambit of Explanation to Article 47-A of Schedule I-A of the Stamp Act as amended. In this view, I am fortified by a judgment of this Court in Mekapothula Linga Reddy v. Durgempudi Gangi Reddy, wherein it was held by my learned brother Sri S. Dasaradha Rama Reddy, J. as follows:
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> "As can be seen from Section 53-Aof the Transfer of Property Act, delivery of possession need not be immediate and buyer is given the right when once possession is given pursuant to the agreement of sale. As the object of introduction of Explanation to Article 47-A and Proviso to Article 20 is to plug loopnoles in evasion of Stamp duty by persons invoking the theory of part performance Under Section 53-A of the Transfer of Property Act, the word 'possession' has to be interpreted as including possession pursuant to the agreement of sale and not restricted to possession that must immediately follow the execution of the agreement Otherwise, the buyer can easily circumvent the law and evade the duty by entering into agreement to-day and obtaining possession couple of days thereafter, at the same time claiming benefit of Section 53-A of Transfer of Property Act It is obvious that such interpretation has to be avoided. The contention of Sri P.S. Narayana, learned counsel for the petitioner, that there was no fresh agreement on 30-5-1990 when possession was delivered to attract explanation is not correct On 30-5-1990, when possession was delivered pursuant to the agreement of sale, there is, in the eye of law, deemed to be a new instrument attracting Explanation to Article 47-A."

The Hon'ble Division Bench of this Court, while referring to the aforesaid principle in **B.Ratnamala v. G.Rudramma (supra),** held as follows:

> "9. 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."

Both the learned counsel have relied on the aforesaid judgment, it clearly shows that delivery of possession in pursuance of agreement of sale is chargeable as per the Explanation I to Article 47-A of Schedule I-A of the Act. The court below also relied on the aforesaid judgments of this Court and came to same conclusion, which cannot be faulted. But, learned counsel for the petitioners submits that by virtue of the document dated 10.04.2016, only permissive possession was given to them by the respondent and no actual possession was delivered in pursuant to agreement of sale dated 30.03.2016. But admittedly, part of suit schedule property i.e., Acs.4.48 cents was delivered to the petitioners in pursuance to establishing of vendor & vendee relationship by acquiring rights over the said property and link documents of property were also handed over to the petitioners, as per affidavit filed in support of I.A.No.782 of 2017. In pursuance of the document dated 30.03.2016 only, the document in question 10.04.2016 was executed, as such, the contention of the learned counsel for the petitioners the same is only a licence, independent of agreement of sale dated

30.03.2016, cannot be accepted. Even a perusal of the document dated 10.04.2016 goes to show that possession of land to an extent of Acs.4.48 cents was delivered to the petitioners, but not the entire suit schedule property. As such, to that extent only it is liable to be charged as sale as per Explanation I to Article 47-A of the Act.

In view of the same, I do not see any illegality or infirmity in the order passed by the Court below upholding the objection raised by the respondent. But, the petitioners are liable to pay stamp duty only with regard to an extent of Acs.4.48 cents out of total suit schedule property and order of trial Court is modified to that extent.

Accordingly, this Civil Revision Petition is allowed in part to the extent indicated. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stands closed.

A.RAJASHEKER REDDY, J

14.11.2018
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.2683 OF 2018

Date: 14.11.2018

kvs