HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3373 OF 2018

ORDER:

The present Civil Revision Petition is filed under Article 226 of the Constitution of India by respondent No.1 - plaintiff, questioning the order, dated 27.03.2018, passed in I.A. No.121 of 2011 in O.S. No.17 of 2017, by the learned Judge, Family Court - cum - VI Additional District Judge, Kadapa.

2. Revision Petitioner herein is the plaintiff in O.S. No.17 of 2007, while respondents are the defendants.

3. Respondent Nos.1 and 2 herein, who are defendant Nos.2 and 3 in the aforesaid suit, have filed a petition, which was numbered as I.A. No.121 of 2011, under Order XIII, Rule 3 of the Code of Civil Procedure, 1908 (for short 'Code') to direct the revision petitioner herein to pay stamp duty and penalty on the suit agreement of sale, dated 09.9.2002, and in default, to reject the same, alleging that the petitioner herein instituted a suit - O.S. No.17 of 2007 against the respondents herein for specific performance of the agreement of sale, dated 09.09.2002, and the said suit is being contested by the respondents herein before the trial Court by filing a written statement, and the trial Court framed appropriate issues. The said agreement of sale, dated 09.09.2002 requires payment of stamp duty and penalty, since, it is a document sued upon in a suit for specific performance. Unless the

stamp duty and penalty is paid, admission of the document in evidence is illegal and requested to pass appropriate order.

4. The revision petitioner herein filed counter denying material allegations, while admitting the document to be marked as an exhibit though, it is deficiently stamped, as contended by the respondents herein, and that possession of the property was not delivered and, therefore, direction to pay stamp duty and penalty on the document sued upon does not arise and prayed to dismiss the petition.

5. Upon hearing the arguments of both counsel, the trial Court allowed the said petition, by order, dated 27.03.2018 in I.A. No.121 of 2011, directing the revision petitioner - plaintiff to pay stamp duty and penalty on the suit agreement, dated 09.09.2002, on or before 09.04.2018, concluding that under the suit agreement, the Vendors delivered possession of the property and, therefore, it is liable to be stamped as if it is a sale in view of Article 47-A of Schedule 1-A of the Indian Stamp Act (Andhra Pradesh Amendment) Act, 1922 (for short 'Act, 1922').

6. Aggrieved of the said order, the plaintiff filed the present Civil Revision Petition under Article 227 of the Constitution of India, mainly on the ground that when no possession of the property is delivered as per the suit agreement, or in the absence of any recital evidencing delivery of possession, directing to pay stamp duty and penalty by

exercising power under Section 35 of the Indian Stamp Act, 1899 (for short 'Act, 1899') is illegal and prayed to set aside the order passed by the trial Court.

7. During hearing, Sri L.J. Veera Reddy, learned counsel for the revision petitioner, would contend that the order under challenge is illegal for the reason that under the agreement of sale, dated 09.09.2002, which is a document sued upon, possession of the property was not delivered, and in the absence of any recital in the said document that possession of the property was delivered on the date of its execution, the direction issued by the trial Court to pay stamp duty and penalty is an illegality, and in such a case, this Court can exercise power under Article 227 of the Constitution of India, and requested this Court to set aside the said order, by placing reliance on the judgments of this Court in **M. Hari Narayana @ Hari Babu v. The Chief Controlling Revenue Authority and Commissioner and Inspector General of Registration and Stamps**[1], **M. Madusudan Reddy v. M. Kamallamma**[2] and **B. Bhaskar Reddy v. Bommireddy Pattabhi Rami Reddy (died) per LRs.**[3].

8. *Per contra,* Sri O. Manohar Reddy, learned counsel for respondent No.2 - defendant No.3, supported the order in *toto*, while contending that recitals of the agreement of sale, dated 09.09.2002 disclose the delivery of possession on the date of agreement itself,

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1. AIR 2008 AP 117
2. 2004 (1) ALD 260
3. AIR 2011 AP 1

thereby it is required to be duly stamped in terms of Article 47-A of Schedule 1-A of the Act, 1922, and when the document is admitted without considering the objection, Court can exercise power under Order XIII, Rule 3 of the Code to reject the document by placing reliance on the judgments rendered by the Hon'ble Supreme Court in **Avinash Kumar Chauhan v. Vijay Krishna Mishra**[4], **Veena Hasmukh Jain v. State of Maharashtra**[5], and the judgments rendered by this Court in **B. Ratnamala v. G. Rudramma**[6], **M/s. Sri. Tirumala Housing (P) Ltd., Hyderabad v. M/s. GPR Housing (P) Ltd., Hyderabad**[7], and the judgments rendered by the Karnataka High Court in **Sri J. Prakash v. Smt. M.T. Kamalamma**[8], **M/s. Kapoor Constructions v. Leela Nagaraj**[9], and the judgment rendered by the Madras High Court in **Balakrishnan v. Chandrasekharan**[10]. On the basis of the principles laid down in the aforesaid judgments, the learned counsel for respondent No.2 sought to sustain the order passed by the trial Court and dismiss the present revision.

9. Basing on the rival contentions, point that arises for consideration is:

> Whether the plaintiff is liable to pay stamp duty and penalty on the Agreement of Sale, dated 09.09.2002, on the ground that it is insufficiently stamped?

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4. AIR 2009 SC 1489
5. AIR 1999 SC 807
6. AIR 2000 AP 167
7. AIR 2006 AP 392
8. AIR 2008 Karnataka 26
9. AIR 2005 Karnataka 285
10. (2003) 3 M.L.J. 45

POINT:

10. Order XIII, Rule 3 of the Code deals with power of Court to reject any document which is inadmissible etc., according to it, at any stage of suit, recording the grounds of such rejection. The power under Order XIII, Rule 3 of the Code can be exercised at any stage, more particularly, even after admitting the document in evidence and marking the same as an exhibit, if the Court finds that it is inadmissible for any other reason. In the present facts of the case, the document sought to be rejected is an agreement of sale, dated 09.09.2002. The recitals of the document extracted in paragraph No.11 of the order disclose that there was an earlier agreement between the parties for sale of Acs.5.93 cents of land, and the same was divided into plots and later the agreement was cancelled, again entered into another agreement. But, subsequently, differences arose between the parties on division of land and sale of some of the plots in pursuance of the earlier agreement. Even now, as per the recitals of the document, remaining unsold plots out of Acs.5.93 cents of land were purchased by the revision petitioner from the respondents herein, and the respondents agreed to sell the plots and to share the sale proceeds as agreed therein 50% to defendant No.1 and remaining 50% to defendant Nos.2 and 3. Based on this averment in the agreement, it is contended that the agreement of sale is evidenced by delivery of possession of immovable property, thereby stamp duty is to be paid in terms of the Article47-A of Schedule 1-A of the Act, 1922. Even if the recitals of entire document are taken into consideration, the

agreement entered into between the plaintiff and defendant Nos.2 and 3 was on 16.04.2001, wherein it was agreed by the parties to develop the land by converting into plots and sell the same in open market and share the profits after deducting the expenses, which would be borne out by the plaintiff, in accordance with the ratio mentioned therein i.e., 2:1:1, and in pursuance of the same, some of the plots were sold, later, some differences arose between the parties, the said agreement was cancelled and entered into the present agreement on 09.09.2002. But, the delivery of possession was taken place even prior to the present agreement in pursuance of the earlier agreement referred in paragraph No.11 of the order under challenge. Thus, it is clear that possession of the property was not delivered as on the date of execution of agreement of sale, dated 09.09.2002, and that the possession was delivered in pursuance of the earlier agreement, it is difficult to hold that it is a possessory agreement of sale to attract Article 47-A of Schedule 1-A of the Act, 1922. But, the learned counsel for respondent No.2 herein contended that the allegations made in the plaint, more particularly, in the cause of action paragraph is suffice to hold that the agreement of sale, dated 09.09.2002, which is in dispute, is a possessory agreement of sale. Undoubtedly, there is a recital in the cause of action paragraph of the plaint that possession was delivered in terms of agreement of sale, but the allegations made in the plaint cannot be taken into consideration while assessing stamp duty and penalty payable on the agreement of sale. Undoubtedly, there is little controversy about the power of Court under Order XIII, Rule 3 of the Code and Section 36 of the Act, 1899. Order

XIII, Rule 3 of the Code permits the Court to reject any document if it is otherwise inadmissible on any ground in evidence, but Section 36 of the Act, 1899 created an interdict on the power of the Court to reject such document at any stage subsequently when it is marked as an exhibit before the Court. Moreover, the Stamp Act is a fiscal enactment, whereas CPC is a procedural law. The procedural law is only hand-made of justice and the provisions of the Stamp Act have to be construed strictly. Therefore, it is difficult to issue such direction, at this stage, in view of the bar under Section 36 of the Act, 1899.

11. The learned counsel for the petitioner, Sri L.J.Veera Reddy, contended that when no possession was delivered under the agreement of sale or by any endorsement on the reverse of agreement of sale, dated 09.09.2002, it would not attract Article 47-A of Schedule 1-A of the Act, 1922, placed reliance on the judgments of this Court in **M. Hari Narayana**[1], **M. Madusudan Reddy**[2] and **B. Bhaskar Reddy**[3]. In **B. Bhaskar Reddy**[3], a suit for specific performance of agreement of sale was filed for enforcement of agreement of sale and for delivery of possession, but the trial Court held that the document is inadmissible in evidence and stamp duty and penalty are to be paid before admitting the document as in evidence. Aggrieved by the said order, the petitioner therein filed revision under Article 227 of the Constitution of India before this Court, and this Court on appreciation of terms and conditions of the agreement of sale, held that if the agreement holder was not in possession of property under agreement of sale, even though there is a

recital in the agreement as to delivery of possession, he need not pay proper stamp duty, it shall be treated as a simple agreement of sale falling outside the scope of the Indian Stamp Act and ordered the trial Court to admit the document. In **M. Madusudan Reddy**[2], this Court held that when the document in question not evidencing delivery of possession of the subject matter either anterior or subsequent to date of execution, question of payment of stamp duty and penalty does not arise and party cannot be compelled to pay stamp duty and penalty. Similarly, in **M. Hari Narayana**[1], this Court in paragraph No.12 held that *"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."*, and this Court also explained the words *"followed by or evidencing delivery of possession of the property agreed to be sold"* and finally concluded that when the document does not disclose delivery of possession of the property either on the date of execution or subsequent date, parties to the document are not liable to pay stamp duty and penalty. If these principles are applied to the recitals in the document in question, the revision petitioner need not pay stamp duty and penalty. But, the Hon'ble Supreme Court in **Veena Hasmukh Jain**[5], based on the amendment to Schedule I of Article 25 of explanation 1, which is identical to Article 47-A of Schedule 1-A of the Act, 1922, held that when the possession of property was delivered under the agreement of sale, it is liable to be treated as a sale for the purpose of payment of stamp duty in terms of explanation to Article 47-A of Schedule 1-A of the Act, 1922, based on the principles laid down in the above judgment, the learned Single Judge of this Court in **D. Ramachandra Rao v. B. Venkata Ramana**[11], and **V.L. Narasimha Rao v. K.T. Pentaiah**[12] and **M/s. Sri. Tirumala Housing (P) Ltd., Hyderabad**[7], and also Division Bench of this Court in **B. Ratnamala**[6], and two other judgments rendered by the Karnataka High Court consistently held that when possession of property was delivered under the agreement of sale, it is liable for payment of stamp duty as if it is a sale, in view of the Article 47-A of Schedule 1-A of the Act, 1922. But, in the present case, there is a reference about delivery of possession of property under the earlier agreement of sale, which was cancelled later. But, the recital of

[11]. 1996 (3) ALT 725
[12]. AIR 2002 AP 218

the document further discloses that they agreed to sell the plots and share the sale proceeds proportionately, thus, it means, the purchaser is in possession of property in pursuance of the earlier agreement, but not under the agreement of sale, dated 09.09.2002. In such case, the document in question cannot be treated as sale deed for the purpose of payment of stamp duty and penalty in terms of explanation to Article 47-A of Schedule 1-A of the Act,1922. But, the trial Court on erroneous appreciation of recitals of the agreement of sale, dated 09.09.2002, issued such direction to pay stamp duty and penalty or otherwise to reject the document if stamp duty is not paid within the time stipulated in the order. The order is erroneous on the face of record for the following three reasons:

a. No possession of the property was delivered under the agreement of sale, dated 09.09.2002;

b. Delivery of possession of the property was only in pursuance of the earlier agreement of sale not under the present agreement of sale.

12. In view of the foregoing discussion, the order passed by the trial Court is contrary to law laid down by various Courts and explanation to Article 47-A of Schedule 1-A of the Act,1922 and erroneous and the same is liable to be set aside by exercising power under Article 227 of the Constitution of India.

13. In the result, the present Civil Revision Petition is allowed, and the order under challenge is hereby set aside. There shall be no order as to costs.

Consequently, the Miscellaneous Petitions, if any, pending in the present revision, shall stand closed.

M. SATYANARAYANA MURTHY, J

September 07, 2018
Mgr