THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.6531 of 2012

%20.09.2018

Chebrolu Srinivasa Rao and others.

...Petitioners

VERSUS

$ Ravi Venkata Ratna Vara Prasad and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioners: Sri K.Suresh Reddy

^Counsel for Respondent No.1: Mr.M.Sudhir Kumar

? Cases referred

1. 2010 (6) ALD 307
2. (2014) 1 Supreme Court Cases 618
3. 1999 (6) ALD 160 (DB)
4. 2012 (6) ALD 766
5. 2016 (6) ALT 594

THE HON'BLE SRI JUSTICE S.V.BHATT

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ORDER:

Heard Mr.K.Suresh Reddy for revision petitioners and Mr.M.Sudhir Kumar for 1st respondent.

Defendant Nos.5 to 14 in O.S.No.210 of 2011 in the Court of III Additional District Judge, Ongole, are the revision petitioners.

The 1st respondent filed O.S.No.210 of 2011 for specific performance of agreement dated 09.06.2007 said to have been executed by defendants 1 to 4 (respondents 2 to 5 herein), permanent injunction restraining the defendants from alienating plaint schedule, creating third party interest etc.

The revision is directed against the docket order dated 19.11.2012. The 1st respondent tendered the suit agreement in evidence as Ex.A-1 and the revision petitioner raised objections on admissibility of suit agreement in evidence. The revision petitioners objected to marking the suit agreement by contending that the suit agreement is written on the stamp paper of Rs.100/-. The agreement refers to delivery of possession under the agreement by the executants in favour of 1st respondent. The recitals of suit agreement attract the bar under Section 17 of the Registration Act read with Section 35 of the Indian Stamp Act and therefore the suit agreement is inadmissible in evidence for any purpose. The trial Court held as follows:

"In the aforesaid decision i.e., B. Bhaskar Reddy v. Bommireddy Pattabhi Rami Reddy (died) by LRs and others, as per the case of plaintiff, possession of subject matter of suit agreement of sale was not delivered to plaintiff as per the recitals of that agreement and the case of defendant therein was that he never executed any such agreement of sale and he was in possession of subject matter of that agreement of sale. Considering those facts, the Hon'ble High Court of A.P., observed as "*wherever the agreement holder is not in possession of the 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 as required. It shall be treated as a simple agreement of sale falling outside the scope of Explanation I to Article 47-A of Schedule I of the Indian Stamp Act. Various situations may arise for consideration on this aspect. The purpose of the Act is to see that a person, who is in physical possession and enjoyment shall not avoid to pay proper stamp duty as required under Explanation I to Article 47-A of the Stamp Act. Otherwise, the document shall not be admissible in evidence as required under Section 35 of the Stamp Act.*"

In this particular case on hand, the rival contentions of the parties in this petition discloses that petitioner is not in possession of suit property despite the recitals of suit agreement of sale evidencing the delivery of possession of suit property to petitioner on the date of said document. Therefore, the observations of the Hon'ble High Court in the aforesaid referred decision are squarely applicable to the facts of case on hand."

Learned counsel appearing for parties in the Civil Revision Petition made submissions on the legal infirmity under the Stamp Act. Therefore, the Civil Revision Petition is considered and decided by referring to the rival contentions made in this behalf.

Mr.Suresh Reddy contends that the order under revision is followed on the decision of this Court reported in *B.Bhaskar Reddy*

Vs. Bommireddy Pattabhi Rami Reddy[1]. According to him, the ratio laid down in *P.Bhasker Reddy's* case (1 supra) is not applicable to the facts and circumstances of the case. Secondly, the necessity to pay stamp duty is dependant on the recitals incorporated in the document but not by reference to the averments either in the plaint or in the written statement. According to him, in the case on hand, the plaint is silent about the possession whether it is claimed as taken or still continued with the executants. Under those circumstances, the 1st respondent if intends to introduce suit agreement atleast as an agreement of sale, the 1st respondent is under obligation to pay deficit stamp duty and penalty on Ex.A1. He further contends that in view of the ratio laid down by the Apex Court in *OM PRAKASH Vs. LAXMINARAYAN AND OTHERS*[2] the recitals are the deciding factor in determining whether the document is liable for stamp duty under Article 47-A etc. He finally contends that the ratio of this Court in *P.Bhasker Reddy's* case (1 supra) no more is good law and prays for declaring accordingly.

Mr.Sudhir Kumar refers to statement of objects and reasons of Act No.21 of 1995 and contends that according to him, the stamp duty is payable if under the agreement power of attorney is created, total consideration is paid, possession is delivered to vendee but not in a case where the agreement is between the vendor and vendee. Therefore, according to him, payment of Rs.100/- stamp duty would be sufficient.

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[1] 2010 (6) ALD 307
[2] (2014) 1 Supreme Court Cases 618

Article 47-A of Stamp Act reads thus:

47-A Sale as defined in Section 54 of the Transfer of Property Act, 1882 : (a) in respect of property situated in any local area comprised in a Municipal Corporation :	
(i) Where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is the subject matter of the sale whichever is higher but does not exceed Rs.1,000/-.	Eight rupees for every one hundred rupees or part thereof.
(ii) where it exceeds Rs.1,000/-.	The same duty as under Clause (i) for the first Rs.1,000/- and for every Rs.500/- or part thereof in excess of Rs.1,000 forty rupees.
(b) in respect of property situated in any local area comprised in the Selection Grade or in Special Grade Municipality :	
(i) where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is	Seven rupees for every one hundred rupees or part thereof.

the subject matter of the sale whichever is higher but does not exceed Rs.1,000/-.	
(ii) where it exceeds Rs.1,000/-.	The same duty as under Clause (i) for the first Rs.1,000/- and for every Rs.500/- or part thereof in excess of Rs.1,000 Thirty-five rupees.
(c) where the property is situated in any area other than those mentioned in Clauses (a) and (b) :	
(i) where the amount or value of the consideration for such sales as set forth in the instrument or the market value of the property which is the subject matter of the sale, whichever is higher but does not exceed Rs.1,000/-.	Six rupees for every one hundred rupees or part thereof.
(ii) where it exceeds Rs.1,000/-.	The same duty as under Clause (i) for the first Rs.1,000/- and for every Rs.500/- or part thereof in excess of Rs.1,000 thirty rupees.
(d) if relating to a multi-unit house or unit of apartment/flat/portion of a multistoried building or part of such structure to which the provisions of Andhra Pradesh Apartments (Promotion of Construction	

and Ownership) Act, 1987, apply :	

This Court in B. Bhaskar Reddy case (1 supra) on payment of stamp duty/penalty, held as follows:

> "It is admitted fact that though an agreement of sale was executed reciting as to delivery of possession, possession was not delivered and there was exchange of notices for delivery of possession under the agreement. Whereas, the defendants denied the very execution of the agreement and also stated that the question of delivery of possession does not arise since there was no agreement executed between the parties. In the plaint it was pleaded that though there is a recital in the agreement, possession was not delivered in spite of issuance of legal notice. In the written statement, defendants stated that they are in possession of the property. Under those circumstances, the Court is of the considered view that an agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as sale and not otherwise and, in the case on hand, agreement of sale is not followed by or evidencing delivery of possession of the property agreed to be sold. The pleadings, nature of the documents and the recitals and the surrounding circumstances must be taken into consideration for the purpose of Explanation I to Article 47-A of Schedule I-A of the Indian Stamp Act, in the interest of justice. Therefore, agreement of sale in question does not fall within the scope of Explanation I to Article 47-A of Schedule 1-A of the Indian Stamp Act; thus, impounding of such document does not arise.
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> In a situation like this, the aid of purposive interpretation needs to be taken into consideration. The purpose to insist upon payment of proper stamp duty is to earn revenues to the State. If a person, being in physical possession and enjoyment of the property under the agreement of sale, wherein there is a recital as to delivery of possession or evidencing delivery of possession, avoids to pay proper stamp duty, such document is inadmissible under Section 35 of the Indian Stamp Act, 1899. In nutshell, wherever the agreement holder is not in possession of the 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 as required. It shall be treated as a simple

> agreement of sale falling outside the scope of Explanation I to Article 47-A of Schedule I of the Indian Stamp Act. Various situations may arise for consideration on this aspect. The purpose of the Act is to see that a person, who is in physical possession and enjoyment shall not avoid to pay proper stamp duty as required under Explanation I to Article 47-A of the Stamp Act. Otherwise, the document shall not be admissible in evidence as required under Section 35 of the Stamp Act."

The above paragraph from B. Bhaskar Reddy's case reads that the recitals in the document are not conclusive but also averments etc., are looked into while determining the payment of stamp duty and penalty. The other reason recorded by the learned Judge is that purposive interpretation needs to be taken into consideration while determining the issue of payment of stamp duty/penalty. The Revision Petitioner assails these findings both by reference to Stamp Act and also the precedents on the point.

The petitioner relies on Om Prakash case (2 supra) to contend that the legal duty to pay stamp duty is dependent on the recitals in the document, which record a particular state of affair but not the pleadings in the suit. The circumstances in Om Prakash case (2 supra) are substantially similar, hence for appreciating the ratio laid down by the Apex Court the following paras are excerpted.

> "The appellant-defendants executed a deed of agreement to sell the suit land to the respondent-plaintiffs. It was inter alia clearly recited in the agreement to sell that the seller, having received a part of the sale consideration as a token amount, has handed over possession of the land to the purchaser and that after receiving the remaining sale consideration amount from the purchaser within a year, the seller would get the sale deed registered in the name of the purchaser."

The respondent filed a suit for specific performance of the agreement to sell, possession and permanent injunction in respect of the land. It was the case of the respondents that the suit land was delivered to them on payment of a part of the consideration money in pursuance of the agreement to sell. The defendants in the written statement, however, denied the assertion of the plaintiffs and stated that no agreement to sell was ever executed and no possession was given.

During the course of the trial the agreement to sell was sought to be proved and admitted in evidence by the Plaintiffs. But its admissibility was questioned by the defendants on the ground that the agreement to sell contains a recital that possession has been handed over to the purchaser and, therefore, it is a deemed conveyance in terms of the Explanation appended to Article 23 of Schedule 1-A of the Stamp Act as substituted by Section 6 of Act 22 of 1990, in the State of M.P. over which the stamp duty as indicated in Schedule 1-A of the Stampt Act, 1899, as substituted by M.P.Act 22 of 1990, is required to be affixed. It is pointed that the agreement to sell in question is executed on a stamp paper of Rs.50 only. The submission made by the defendants found favour with the trial court and it held the agreement to sell to be inadmissible in evidence as it has not been sufficiently stamped. It further observed that if the plaintiffs want to produce the said document in evidence then they can make proper application as envisaged under Section 35 of the Stamp Act.

The plaintiffs challenged the trial court's order in a writ petition filed under Article 27 of the Constitution contending that when the defendants themselves had asserted that possession of the property was not delivered and the plaintiffs too had claimed the relief of possession, this meant that they were not in possession, then the recital in the agreement was of no consequence and the view taken by the trial court was erroneous. The Single Judge of the High Court accepted this contention and held the agreement to sell to be admissible in evidence.

Thus the question which fell for consideration by the Supreme Court in this appeal was : whether the admissibility of a document produced by the party would depend upon the recitals in the document or on the pleadings raised by the parties in the suit or the factual situation, and whether the document in question was a deemed conveyance in terms of the Explanation appended to Article 23 of Schedule 1-A of the STampt Act as substituted by Section 6 of Act 22 of 1990 in the State of M.P. and is duly stamped.

At the time of considering the question of admissibility of a document, it is the recital(s) therein which shall govern the issue. It does not mean that the recital(s) in the document shall be conclusive but for the purpose of admissibility of a document it is the terms and conditions incorporated therein which shall hold the field. In this case, the agreement to sell clearly acknowledges payment of a part of the consideration money and further, the giving of actual physical possession to the purchaser by the seller.

If in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. For example, in a given case, if there is an unregistered absolute sale deed and the parties say that the same is not required to be registered then the court would not be entitled to admit the document simple because the parties say so. The jurisdiction of the ocurt flows from Sections 33, 35 and 38 of the Stamp Act and the court has to decide the question of admissibility. Whether the possession in fact was given or not in terms of the agreement to sell in question: it is the recitals contained in the document that are decisive of admissibility."

Let me now refer to the following decisions of our High Court. In B. Ratnamala v. G. Rudramma[3], it was held as follows:

"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

[3] 1999 (6) ALD 160 (DB)

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."

Ponnapola Seetha Ramaiah v. Sanagala Sreenivasulu[4], has applied the ratio laid down in B.Ratnamala's case and held as follows:

> "In the instant case, it is not in dispute that the agreement, as it was originally drafted, did not contain the recital relating to delivery of possession of the property. However, on the back of the agreement, several endorsements were made relating to receipt of money by the respondent. Two endorsements were found against the date 28.5.2005. In the later endorsement, it is stated that on that day Rs.6,19,000/- was received towards the amount under the agreement and the property was delivered. This recital would clearly show that the delivery of possession has taken place a few months after entering into the agreement and in pursuance thereof. Thus, delivery of possession is directly connected with and traceable to the agreement of sale. Hence, the ratio laid down by the Division Bench of this Court in B. Ratnamala's case (supra), clearly applies to this case."

Ratnamala's case is followed in Gankidi Venkateshwar Reddy Vs. Podem Veeraiah and others[5] and for brevity, the same view is not referred to.

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[4] 2012 (6) ALD 766

The above discussion takes this Court to the recitals in the suit document dated 09.06.2007, and are as follows:

> "4. The balance payment of Rs.15,00,000/- will be paid by the purchaser to the sellers at the time of execution of the absolute sale deed and thus complete the sale transaction.
>
> 5. The sellers confirms with the purchase that they have not entered into any agreement of sale, mortgage or exchange whatsoever with any other person relating to the schedule property of this agreement except with A.P.S.F.C., Ongole Branch.
>
> 6. Sellers today handed over the peaceful physical possession of the schedule of property to the purchaser."

The plaint admittedly silent on the recitals referred to above. Therefore, it is but legal to refer to the primary clauses on which the objection on non-payment of stamp duty/penalty is raised.

The clause (6) in clear terms states that the sellers under the agreement on 09.06.2007 have handed over the peaceful physical possession of the schedule of property to the purchaser.

Therefore the decision on payment of required stamp duty on suit agreement is to be decided by reference to the very recitals in the agreement but not the pleadings. The ratio of Apex Court and this Court in the decisions referred to above lays down the binding principles.

Therefore, it is held that the view taken by this Court in B.*Bhasker Reddy's* case (1 supra) cannot be treated as good law in view of the ratio in *Om Prakash's case* (2 supra) and *PONNAPOLA SEETHA RAMAIAH's case* (4 supra).

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[5] 2016 (6) ALT594

Keeping in view the above decisions, the order under Revision is set aside. The 1st respondent is given liberty to take steps as are required in law for getting the agreement dated 09.06.2007 impounded. The objection if any under the Registration Act is left open for consideration as and when the document is tendered in evidence.

The Civil Revision Petition is allowed accordingly. No costs.

SVB,J

Date:20-09-2018
Note:
L.R.Copy to be marked
(B/o)
Prv