IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

TUESDAY, THE SEVENTEENTH DAY OF JULY TWO THOUSAND AND TWELVE

PRESENT::

HON'BLE SRI JUSTICE G.V.SEETHAPATHY

C.R.P.No.2902 OF 2012

Between:

Ravipati Kamalamma and two others

Petitioners

A n d

Avula Amarlinga Reddy and another

…Respondents

HON'BLE SRI JUSTICE G.V.SEETHAPATHY

C.R.P.No.2902 OF 2012

ORDER:

This civil revision petition is directed against the order dated 10.04.2012 in O.S.No.77 of 2011, on the file of the V-Additional District Judge, Ongole, wherein the objection raised by the defendants over the admissibility of the suit agreement of sale dated 10.09.2008 on the ground that it requires stamp duty and penalty to be paid, was overruled and held that the plaintiffs need not pay the stamp duty and penalty.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents. Perused the record.

3. The respondents herein, the plaintiffs, filed the suit for
specific performance of suit agreement of sale dated 10.09.2008.
The petitioners herein, the defendants, filed written statement contesting the suit and denying the transaction and also execution of the agreement of sale. They further contended that they have been in possession of the plaint schedule property and the plaintiffs were never in possession. During the course of trial, the defendants raised objection over the admissibility of the suit document on the ground that the same is insufficiently stamped and it requires payment of the deficit stamp duty and penalty, inasmuch as the document recites that the entire sale consideration was received and possession was also delivered. The plaintiffs contended that though the document recites that possession was delivered in pursuance of agreement of sale, subsequently, the plaintiffs were dispossessed and, therefore, the suit is filed not only for specific performance but also for delivery of possession. The plaintiffs further contended that even according to the defendants, they were in possession and, therefore, the question of delivery of possession to the plaintiffs does not arise. The learned Additional District Judge, by the impugned order, held that in view of the admitted facts that the plaintiffs are not in possession of the suit property, it cannot be said that possession was

delivered pursuant to the suit document notwithstanding the recitals contained therein and, therefore, the document does not require stamp duty and penalty.

4. In the plaint it is averred that as per the terms of the agreement dated 10.09.2008, possession was delivered to the plaintiffs by Ravipati Bose, the original vendor, and that subsequently the vendor died intestate and the defendants who are his legal heirs did not comply with the plaintiffs' demand for execution of the sale deed and, on the other hand, on 08.03.2011 the defendants dispossessed the plaintiffs from the suit property. The plaintiffs, therefore, filed the suit for specific performance and also for recovery of possession. The defendants in their written statement categorically denied the suit transaction and also denied the execution of the suit agreement of sale by Ravipati Bose, who is husband of D-1 and father of D-2 and D-3 and also contended that the suit agreement of sale is false and fabricated.

5. A perusal of the suit agreement would disclose that it contains a recital to the effect that possession of the schedule property was delivered to the purchasers i.e., the plaintiffs on the same day under the said document. The document further recites that the entire sale consideration of Rs.45 lakhs was received by the vendor. All the material averments required to be made in a regular sale deed finds mention in the suit agreement except that the regular sale deed is agreed to be

executed on a future date. The suit agreement is, however, executed on a stamp paper worth Rs.110/-. The defendants, therefore, raised an objection over the admissibility of the said document on the ground that it requires to be stamped on par with a conveyance under Article 47-A of the Stamp Act.

6. The question as to whether or not the document is to be treated as a mere agreement of sale or a conveyance depends upon the recitals contained therein. The suit agreement of sale recites that absolute possession of the suit land was delivered under the document on the date of the document, as the entire sale consideration of Rs.45 lakhs was received. Possession delivered as per the recitals in the document was absolute and to be enjoyed by the purchasers for ever without any let or hindrance, but not for any limited purpose. Explanation I to Article 47-A of Schedule 1-A of the Stamp Act read as follows;

> "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".

7. In **B.RATNAMALA v. G.RUDRAMMA**[1]**,** a Division Bench of this Court held as follows:-

> "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.

8. In the present case, the suit agreement of sale specifically recites that absolute possession was delivered through the document on the date of its execution. The contention of the respondents/ plaintiffs

which was upheld by the trial Court is that there has been no effective delivery of possession inasmuch even according to the defendants they are in possession of the property and the plaintiffs also filed the suit for recovery of possession. As per the averments in the plaint also, possession of the property was delivered on 10.09.2008 i.e., date of the agreement. According to the plaintiffs, subsequently nearly three years later on 08.03.2011 he was dispossessed forcibly by the defendants and, therefore, he had to file the suit for recovery of possession. Thus, even according to the plaintiffs, possession was delivered to them under the document and they remained in such possession for nearly three years after the execution of the document. The alleged dispossession on 08.03.2011 is altogether a different aspect to be considered independently unconnected with the original delivery of possession under the suit agreement. The case of the defendants, who are the legal heirs of the original vendor, is that the suit agreement of sale is a false and fabricated document and possession was never delivered to the plaintiffs and the defendants continued to be in possession. The question as to whether or not the suit agreement of sale is to be treated on par with a conveyance for the purpose of stamp duty is to be considered with reference to the recitals contained therein regarding delivery of possession, but not with reference to the alleged subsequent act of dispossession. It is not the case of the defendants that delivery of possession was not effected under the suit agreement. On the other hand, they totally denied the very execution of the agreement of sale and all the recitals contained therein including the one pertaining to delivery of possession and contend that they have been in continuous possession and enjoyment of the suit property.

It is, therefore, not a case where the defendants admitted the execution of suit agreement of sale and contended that possession was not delivered to the plaintiffs in which event the plaintiffs could have perhaps contended that notwithstanding the recitals regarding delivery of possession contained in the suit agreement, possession was not, in fact, delivered and, therefore, there was no effective delivery of possession. Even according to the plaintiffs, as per the averments

in the plaint, absolute possession was delivered to them under

the agreement and they were in effective possession till the alleged dispossession on 08.03.2011. It is, therefore, a case where

effective delivery of possession was given to the plaintiffs which according to the plaintiffs remained for about 3 years thereafter. The decisions relied upon by the trial Court in **CHERIALA SRINIVAS v. MOOLA SUJATHA AND OTHERS (2010 (1) ALD 246** and **KARUMURI**

RAMATHEERTHAM AND ANOTHER v. TIPPAVATHI SESHACHALAM (DIED) BY LRs (2012(1) ALD 612) holding that because there was no effective delivery of possession, the plaintiffs need not pay the stamp duty and penalty are not applicable to the facts of the present case.

9. Under Explanation I to Article 47-A of Schedule 1-A of the Stamp Act, 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. When once it is shown that delivery of possession followed the agreement or that the agreement evidenced delivery of possession, the same is liable to be charged as a sale, the alleged subsequent dispossession being an irrelevant consideration. The suit agreement of sale, therefore, answers the description of conveyance within the meaning of the above Explanation I to Article 47-A and, therefore, requires payment of stamp duty and penalty, before the same can be admitted in evidence. The impugned order, holding that the plaintiffs need not pay the stamp duty and penalty is, therefore, wholly erroneous and unsustainable and the same is accordingly set aside.

10. In the result, the civil revision petition is allowed. Miscellaneous petitions, if any, stand disposed of. There shall be no order as to costs.

G.V.SEETHAPATHY, J

17th July, 2012

Lrkm

[1] 1999(6) ALT 59 (D.B)