*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HONOURABLE Ms. JUSTICE J.UMA DEVI

+ Civil Revision Petition No.5658 of 2017

% 20-12-2018

Suram Bapu Reddy, S/o late Linga Reddy,
Aged 58 years, Occ: Employee, R/o H.No.5-7-636/2,
1st Floor, Sai Nilayam, Premnagar Colony, Naimnagar,
Hanamkonda, Warangal District
... Petitioner/Defendant No.1

Vs.

$ 1. Janagam Laxmi, W/o Narasimha Reddy,
Aged 61 years, Occ: Household,
R/o H.No.1-49/1/B-2, Street No.3,
Venkateswara Colony, Uppal, Ranga Reddy District
... Respondent/Plaintiff

2. Bollu Bharathi W/o Ganapathi Reddy, Aged 60 years,
Occ: Household, R/o H.No.2-7-604, Excise Colony,
Subedari, Hanamkonda, Warangal District

3. Suram Buchamma W/o Late Linga Reddy, Aged 78 years,
Occ: Household, R/o C/o Bollu Ganapathi Reddy,
H.No.2-7-604, Excise Colony, Subedari,
Hanamkonda, Warangal District
... Respondents/Defendants 2&3

! Counsel for the Petitioner : Mr. Ravulapati Srinivasa Rao

^ Counsel for Respondent No.1: Mr. Bankatlal Mandhani
Counsel for Respondents 2&3: ---

<GIST:

> HEAD NOTE:

? Cases referred:
1. (1994) 1 SCC 531
2. (2010) 14 SCC 334

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms. JUSTICE J.UMA DEVI

Civil Revision Petition No.5658 of 2017

Order: (per V.Ramasubramanian, J.)

Unable to agree with the opinion of a learned Judge made in ***Ayitham Venkaiah v. Ayitham Surya Bhaskara Rao*** (*2006 (4) ALT 305*) on the question of admissibility of an unstamped and unregistered copy of the award of the Legal Services Authority, a learned Judge has referred the matter on hand to the Division Bench for an authoritative pronouncement.

2. Heard Mr. Srinivasa Rao Ravulapati, learned counsel for the petitioner and Mr. Bankathlal Mandhani, learned counsel for the respondent.

Brief facts

3. The 1st respondent herein filed a suit in O.S.No.50 of 2011 for partition and separate possession of her 1/4th share in the suit schedule property, which is described an agricultural land of an extent of Ac.9.26 guntas in Survey Nos.130/A of Munipally village, H/o Chinthagattu, Hasanparthy Mandal, Warangal District.

4. In the suit, the 1st defendant filed a written statement claiming that the suit schedule property belonged to one Suram Linga Reddy, the father of the plaintiff and defendants

1 to 3 and that the property was delivered in favour of the 1st defendant, by virtue of an award passed by the Lok Adalat in a suit in O.S.No.1679 of 2004 instituted by one of the sons of the paternal uncle.

5. After the evidence on the side of the plaintiff was over, the 1st defendant filed his affidavit in lieu of chief-examination. Thereafter, the 1st defendant attempted to mark as Ex.A.1, a copy of the award passed on 09-03-2005 by the Lok Adalat in O.S.No.1679 of 2004. The marking of the document was objected to on the ground that the same was not duly stamped and registered under the Indian Stamp Act and the Indian Registration Act, despite the document containing recitals about the relinquishment of rights over an immovable property. The objection was upheld by the trial Court and the 1st defendant was given time to make payment of stamp duty and penalty, with a rider that the document could be marked only for collateral purpose, as the non-registration was an incurable defect. Aggrieved by the said order, the 1st defendant came up with the above revision.

6. When the above Civil Revision Petition came up before a learned Judge of this Court, the petitioner placed reliance upon the decision of a learned Judge of this Court in ***Ayitham Venkaiah v. Ayitham Surya Bhaskara Rao*** (*2006 (4) ALT 305*). In the said decision, the learned Judge held that the amended Section 2 (10) of the Stamp Act, would apply

only to decrees obtained from Civil Courts, which include a direction to effect mutation in the revenue records and that the decrees obtained in the normal course are not amenable to stamp duty under the Stamp Act as a 'conveyance'.

7. But the learned Judge before whom the above revision petition came up for hearing, was unable to agree with the interpretation given in ***Ayitham Venkaiah*** to the definition of the word "conveyance" appearing in Section 2(10) of the Stamp Act. The learned Judge felt that the legislative intent was to make every compromise decree or award amenable to stamp duty and registration, whenever there was transfer of interest in immovable property. Therefore, the learned Judge referred the matter to the Division Bench and hence, the revision petition had been placed before us.

Contentions

8. Placing strong reliance upon the decisions of the Supreme Court in (1) ***Ruby Sales and Services (P) Ltd., v. State of Maharashtra***[1] and (2) ***State of Uttranchal (now State of Uttarakhand) v. Khurana Brothers***[2], the learned counsel for the respondent contended that the law laid down in ***Ayitham Venkaiah*** may not be correct and that once the Legislature has specifically included every decree of a court by which any property is transferred, within the definition of the

[1] (1994) 1 SCC 531
[2] (2010) 14 SCC 334

expression "conveyance", there is no scope for a different conclusion.

9. We have carefully considered the above submissions.

<u>Reasoning in Ayitham Venkaiah</u>

10. In ***Ayitham Venkaiah***, a copy of the award passed by the Lok Adalat was sought to be marked in evidence, in a suit for perpetual injunction. It was objected to on the ground that the document was not duly stamped and registered. The Trial Court upheld the objection and directed payment of stamp duty and penalty, as a condition precedent to receive the same in evidence. When the matter was brought to the High court, the learned Judge took note of Section 2(10) of the Stamp Act after its amendment under A.P. Act 8/1998 and Article 20 of Schedule I-A. In interpreting in Section 2(10) of the Stamp Act, as amended by such enactment, the learned Judge took note of the intention of the Legislature as spelt out in the statement of objects and reasons and then came to the conclusion that the object of the amendment was not to bring within its fold, all decrees or final orders of Civil Courts transferring any interest in property in the normal course. Accordingly, the learned Judge held that the award of the Lok Adalat was admissible in evidence even though not stamped and registered.

Reasons for disagreement

11. But in the order under reference, the learned Judge took note of Section 17(1)(f) of the Registration Act, 1908 and the amendment made to Section 17(2)(vi) of the Act under the A.P. Amendment Act No.4/1999 and came to the conclusion that after the amendment to the Registration Act, even a compromise decree required compulsory registration and that the documents on which appropriate stamp duty is not paid and which are not registered, are not admissible in evidence under Section 35 of the Stamp Act and Section 49 of the Registration Act respectively. The interpretation given in ***Ayitham Venkaiah*** to the expression "conveyance" was found by the learned Judge not to be in tune with the object of the amendment. Therefore, the learned Judge referred the matter to the Division Bench.

Discussion and Analysis

12. Before proceeding to consider the relevant provisions of the Stamp Act and the Registration Act, let us take a look at the 2 decisions cited by the learned counsel for the respondent. In ***Ruby Sales and Services (P) Ltd.***, the first decision cited by the learned counsel for the respondent, the question that fell for the consideration of the Supreme Court was whether a consent decree under which title to immoveable property is conveyed, would fall within the definition of the word "conveyance" under Section 2(g) and

within the definition of the word "instrument" under Section 2(l) of the Bombay Stamp Act, 1958. After taking note of the definition of the expressions aforesaid, the Supreme Court concluded that a consent decree would fall within the definition of the expressions "conveyance" and "instrument". In the second decision relied upon by the learned counsel for the respondent, namely, ***State of Uttaranchal v. Khurana Brothers***, the Supreme Court drew a distinction between a contract of sale and agreement to sell and indicated that the essence of sale is a transfer of property in a thing from one person to another for a price and that therefore a document by which property is transferred will be conveyance within the meaning of Section 2(10).

13. It may be seen from the aforesaid decisions that one of them related to a consent decree passed by a Civil Court and the other related to an auction sale. Both the judgments did not deal with an award of the Lok Adalat. Therefore, it may be necessary to look at the interplay between the provisions of the Legal Services Authorities Act, 1987, the Indian Stamp Act, 1899, the Registration Act, 1908 and the Transfer of Property Act, 1882 for a better understanding of the question raised.

14. Section 2(10) of the Indian Stamp Act, 1899, defines a conveyance to include a conveyance on sale as well as every instrument and every decree or final order of any Civil Court,

by which property, whether moveable or immoveable, or any estate or interest in any property is transferred to or vested in or declared to be of any other person *inter vivos* and which is not otherwise specifically provided for by Schedule I or Schedule I-A as the case may be. Section 2(10) reads as follows:

> "**(10) "Conveyance"**. – "conveyance" includes a conveyance on sale every instrument by which property, whether moveable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I:"

15. Section 3 of the Indian Stamp Act, 1899, gives a list of instruments which shall be chargeable with duty of an amount indicated in Schedule I. But Section 3 was amended by A.P. Act XIX/1959 and a proviso was incorporated therein. As per this proviso, the stamp duty payable on the instruments indicated in Section 3, shall be as provided in Schedule I-A. Therefore, insofar as the State of Andhra Pradesh is concerned, we have to make a reference to Schedule I-A.

16. Entry 20 of Schedule I-A prescribes the rates of duty payable on instruments of conveyance of different nature. Entry 20 reads as follows:

Description of Instrument	Proper stamp duty
20. Conveyance as defined by Section 2(10) not being a sale, charged under (No.47-A) or a transfer charged or exempted under (No.53). (a) where the amount or value of the consideration for such conveyance as	 Two rupees fifty paise

	set forth therein or the market value of the property which is the subject-matter of the conveyance whichever is higher does not exceed Rs.50;	
(b)	where it exceeds Rs.50, but does not exceed Rs.1,000;	Five rupees for every one hundred rupees or part thereof.
(c)	where it exceeds Rs.1,000.	The same duty as under Clause (b) for the first Rs.1,000 and for every Rs.500 or part thereof in excess of Rs.1,000 twenty-five rupees.
(d)	Conveyance, so far as it relates to amalgamation or merger of companies under the order of High Court under Section 394 of the Companies Act, 1956. (Central Act 1 of 1956).	Two rupees for every one hundred rupees or part thereof of the market value of the property, which is the subject matter of such conveyance.

Explanation :--For the purpose of the Clause (d) the market value of the property shall be deemed to be the amount of total value of the shares issued or allotted by the transferee company, either in exchange or otherwise, and the amount of consideration, if any, paid for such amalgamation or merger.

Provided that where an agreement to sell in immovable property is stamped with the ad valorem stamp required for a conveyance on sale under Article 47-A and a conveyance on sale in pursuance of such agreement is subsequently executed, the duty on such conveyance on sale shall be the duty payable under the article less than duty already paid under Article 47A subject to a minimum of five rupees.”

17. Therefore, there cannot be any doubt about the applicability of the above provisions to the decrees of civil court, of the nature indicated therein. But the case on hand arises out of an award of the Lok Adalat. Therefore, it may be necessary to see the provisions of the relevant statute.

18. Section 21(1) of the Legal Services Authorities Act, 1987, declares that every award of the Lok Adalat shall be deemed to be a decree of a Civil Court. It also provides that where a compromise or settlement is arrived at by a Lok Adalat, in a case referred to it under Section 20(1), the Court Fee paid in such cases shall be refunded in the manner provided under the Court Fees Act, 1870.

18. Court Fee and stamp duty stand on completely different footing. The object of charging Court Fee is partly to compensate the establishment for the expenditure involved in the administration of justice and partly to ensure that there is a check on frivolous litigation. 'Fee' has always been held to be a charge for the special services rendered by Government or Government agencies. But the object of charging stamp duty is to secure revenue for the State on transactions, the consideration in respect of which, are determined by market forces created by the activities of the State. To put it simply, the activities undertaken by the State in any locality determines both the rate and the marketability of properties and hence the Indian Stamp Act, 1899 is actually a fiscal enactment charging transactions to tax.

19. The Court Fees Act imposes an obligation to pay Court Fee on litigation, but tends to promote settlement by offering refund of Court Fees in part or in full under certain contingencies. The Legal Services Authorities Act, 1987,

is one more step towards promoting an environment of settlement. This play in the joint is not available in the Indian Stamp Act, 1899. We will have to keep this distinction in mind before we attempt to find out whether a Lok Adalat award whereby a property is sought to be conveyed or declared to belong to someone, is liable to be charged with duty or not.

20. There are various types of decrees that could be passed by a Civil Court. There are decrees for recovery of money, decrees for recovery of immoveable property, decrees for possession and *mesne* profits, decrees for specific performance of a contract of sale, decrees for dissolution of partnership, decrees for accounts, decrees for partition etc. All the decrees by themselves do not convey a property to the holders of the decree, though some may create an interest in immovable property. The decrees which take shape in terms of the provisions of Order XX CPC, are executable under the provisions of Order XXI CPC. While the payment of appropriate Court Fee is taken care of most of the times at the threshold when proceedings are initiated, there are certain types of cases where the additional Court Fee becomes payable depending upon the outcome. Say for instance, the Court Fee payable in a suit for partition is fixed, when the plaintiff claims to be in joint possession. But when a final decree is granted allotting identified shares or specific items

of properties, the Court itself ensures that the final decree is engrossed on appropriate stamp papers. This contingency is also taken care of by the Code of Civil Procedure itself.

21. Let us take the example of a decree for specific performance of a contract of sale. Under Order XXI, Rule 32(1) CPC, a decree for specific performance of a contract may be enforced, by the detention of the judgment debtor in Civil Prison or by the attachment of his property or both. If a decree holder in a suit for specific performance chooses this option available under Order XXI, Rule 32(1), he does not pay stamp duty, though he would have paid Court Fee on the plaint.

22. But the holder of a decree for specific performance also has another alternative viz., that of seeking the Court itself to do either through an officer of Court or through someone else, what is liable to be done by the judgment debtor. This is under Order XXI, Rule 32(5). If the holder of a decree for specific performance takes recourse to Order XXI, Rule 32(5), and requests the Court to do what the judgment debtor is obliged to do, then the question of executing a deed of sale would arise.

23. When the holder of a decree for specific performance takes recourse to Order XXI, Rule 32(5), then the provisions of Rule 34 of Order XXI will come into play. Under sub-rule (1) of Rule 34 of Order XXI, the holder of a decree for

execution of a document, may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the Court. After inviting the objections of the judgment debtor to the draft, the Court would approve the draft with or without modifications. Thereafter, the decree holder is obliged under sub-rule (4) of Rule 34 of Order XXI to ***deliver to the Court a copy of the draft as approved by the Court, engrossed upon the appropriate stamp papers***. Once the document prepared on proper stamp papers is so delivered, the Judge or an officer appointed by the Executing Court will execute the document. Thereupon the Court is obliged to authorize an officer, under sub-rule (6) of Rule 34 of Order XXI ***to cause the document to be registered in accordance with law***.

24. Interestingly, the provision relating to stamp duty found in sub-rule (4) and the provision relating to registration found in sub-rule (6) of Rule 34 of Order XXI, are conspicuously absent in Order XXI, Rule 94. Whenever a Court orders the sale of immoveable property in execution of a decree and the sale becomes final, the Court is obliged to issue a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Order XXI, Rule 94 does not speak about payment of stamp duty and registration.

25. But when a sale certificate is issued, by a Civil Court under Order XXI, Rule 94, such a certificate would come within the definition of the expression “instrument” under Section 2(14) of the Indian Stamp Act, 1899. As a consequence, Article 16 of Schedule I-A which specifically covers a certificate of sale issued by a Civil Court will get attracted and stamp duty will become payable.

26. The Indian Stamp Act, 1899 poses a problem when it comes to awards. We have already seen that Section 2(10) of the Stamp Act, 1899 defines a conveyance to include every decree of Civil Court, by which property or any estate or interest in any property is transferred to or vested in or declared to be of any other person, the same being correlatable to Article 20, in Schedule I-A. The expression “award” is not defined in the Indian Stamp Act. But Article 12 under Schedule I-A of the Indian Stamp Act, 1899, prescribes the stamp duty payable on awards. Article 12 of Schedule I-A reads as follows:

Description of Instrument	Proper stamp duty
12. Award, that is to say, any decision in writing by an arbitration or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit--	
(a) where the amount or value of the property to which the award relates, as set forth in such award, does not exceed Rs.1,000;	The same duty as a Bottomry Bond (No.14) for such amount.
(b) it it exceeds Rs.1,000 but does not exceed Rs.5,000;	Fifty rupees

and for every additional Rs.1,000 or part thereof in excess of Rs.5,000.	Two rupees subject to a maximum of two hundred rupees.

27. There is no clarity on whether an award by which property is conveyed, would fall under Article 20 or under Article 12. Article 12 covers all awards other than those for partition.

28. Keeping these aspects in mind if we come back to the provisions of the CPC, it could be seen that there are various decrees, some of which are executable and some of which need not even be executed, say for instance mere declaratory decrees. Similarly, there are some decrees which require the documents to be taken for registration and some decrees, by themselves cannot be registered unless something is done in execution thereof. Therefore, while interpreting Section 2(10) of the Indian Stamp Act, 1899, the Court has to exercise caution.

29. Let us take for instance a decree of declaration of title or any declaration of an interest in any property. Such a decree per se is not registerable, but for the A.P. State amendment under Amendment Act 4/1999, by which Clause (f) was inserted under Section 17(1) of the Registration Act. Since such a decree also declares the right of a person in any immoveable property, it may be treated as a conveyance under Section 2(10). A decree or order of a Civil Court falling

under Clause (f) of sub-section (1) of Section 17 is excluded from the exclusion in Clause (vi) of sub-section (2) of Section 17. Sections 17 (1) (f) and 17 (2) (vi) of the Registration Act, 1908 read as follows:

> "**17(1)(f)**. Any decree or order or award or a copy thereof passed by a Civil Court, on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is inadmissible in evidence under Section 35 of the Indian Stamp Act, 1899, such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupee and upwards to or in immovable property."
>
> "**17(2)(vi)**. Any decree or order of a Court, not being a decree or order or award falling under clause (f) of sub-section (1) except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;"

30. Therefore, today after the State amendments to Section 2(10) to the Indian Stamp Act, 1899 and the State amendment to Sections 17(1) and 17(2) of the Registration Act, even a declaratory decree may not be admissible in evidence except when it is duly stamped and registered.

31. The fact that a refund of Court Fee is provided under Section 21(1) of the Legal Services Authorities Act, 1987, is no ground to extend the same benefit to the stamp duty payable under the Indian Stamp Act, 1899.

32. In ***Ayitham Venkaiah***, the learned Judge committed a mistake in trying to interpret Section 2(10) of the Stamp Act, 1899, on the basis of the statement of objects and reasons for the State amendment. In a fiscal Statute, one has to go by the plain language. If a document falls within the description, it may not be open to the Court to find out whether such a document was intended to be covered by the amendment, by looking at the statement of objects and reasons.

33. Therefore, we hold that the decision of the learned Judge in ***Ayitham Venkaiah*** does not reflect the correct position. As a consequence, the order of the Trial Court is liable to be upheld and the revision dismissed. Accordingly, the revision is dismissed. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

20th December, 2018.
Ksn/Ak

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms. JUSTICE J.UMA DEVI

Civil Revision Petition No.5658 of 2018
(per VRS, J.)

20th December, 2018.
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