

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.226 of 2019

ORDER:-

This Revision is filed by the petitioners assailing Order dt.11.12.2018 in I.A.No.854 of 2018 in O.S.No.465 of 2018 of the XXVI-Additional Chief Judge, City Civil Court, Hyderabad.

2. Petitioners are defendants in the said suit.

3. The respondents filed the said suit against the petitioners for specific performance of an agreement of sale dt.31.03.2018 allegedly executed by the petitioners in favour of respondents for sale of an apartment No.401 on 4th floor in B-Block of "YRS Residency" at Barkatpura in Hyderabad (the suit schedule property).

4. It is admitted by the respondents that the petitioners had been inducted into possession of the said property as tenants from 01.05.2016 and thereafter a rental deed was also executed by the 1st petitioner in favour of the 1st respondent on 31.03.2016. According to the respondents, the suit agreement of sale came to be executed on 31.03.2018 under which the respondents paid Rs.11,00,000/- to the petitioners through various cheques/demand drafts on 29.03.2018 and the balance sale consideration of Rs.74,00,000/- was agreed to be paid at the time of execution of the sale deed.

5. Apart from the relief of specific performance, the respondents also sought a prayer for perpetual injunction restraining the petitioners from alienating or creating any third party interest or

charge in favour of third party in respect of the suit schedule property.

6. It is stated by the Counsel for the petitioners that the respondents had filed I.A.No.798 of 2018 under Order XXXIX Rules 1 and 2 CPC for temporary injunction pending suit restraining the petitioners from alienating the suit schedule property and without filing a regular counter, a formal counter was filed taking a plea that the suit agreement of sale is insufficiently stamped and required to be impounded under the provisions of the Indian Stamp Act, 1899.

7. Petitioners also filed I.A.No.854 of 2018 contending that the suit agreement of sale is a fictitious document and in any event, it is insufficiently stamped and is also unregistered, and therefore it ought to be impounded as per Section 35 of the Indian Stamp Act, 1899. Reliance was placed on several judgments of this Court including the Division Bench judgment of this Court in **B.RATNAMALA v. G.RUDRAMMA**¹.

8. Counter affidavit was filed by the respondents stating that such application is not maintainable and was only filed to delay the disposal of I.A.No.798 of 2018. A plea is also raised that the issue of impounding can be considered by the Court below only when the respondents want to exhibit the said document in evidence, which stage has not yet come.

9. By Order dated 11.12.2018 the Court below dismissed the said interlocutory application observing that according to Section 49 of the Registration Act, 1908 the respondents are exempted

¹ AIR 2000 A.P., 167 (DB)

from filing a registered agreement of sale and that the stamp duty of Rs.100/- is sufficient because it was a suit filed for specific performance of agreement of sale. It further observed that the document cannot be sent to the District Registrar for impounding since the recitals in the document clearly show that petitioners are tenants and are already residing in the suit schedule property, that later there was an understanding between the parties and the suit agreement of sale came into existence.

10. Assailing the same, this revision is filed.

11. Counsel for the petitioners contended that the Court below erred in relying on provisions of Registration Act, 1908 while considering the contention of the petitioners based on the provisions of the Stamp Act, 1899. He also contended that the view taken by the Court below is contrary to the Division Bench Judgment of this Court in **B.Ratnamala's case (1 supra)**. He also contended that objection as to insufficiency of stamp duty paid on a document can be raised not only during trial but also in interlocutory proceedings and relied upon the decisions reported in **BURRA ANITHA v. ELAGARI MALLAVVA AND OTHERS²** and **UPPULA RAMESH v. ELAGANDULA HARINATH AND OTHERS³**.

12. Counsel for the respondents refuted the said contentions and supported the orders passed by the Court below. According to him, there is no necessity to decide the objection about stamp duty because trial has not commenced and the respondents were not seeking to mark the document during the course of the trial.

² 2010(5) ALD 438

³ 2014(1) ALD 1

13. But he does not dispute the principle laid down in **BURRA ANITA's case (2 supra) and UPPULA RAMESH's case (3 supra)** that objection as to insufficiency of stamp duty paid on a document can be raised in interlocutory proceedings also.

14. That apart, the Court below had not postponed the decision on the impounding of the agreement of sale in question to a later stage, but has categorically held that it need not be impounded at all.

15. This view also is erroneous in view of Explanation-I to Article 47-A of Schedule I-A of the Stamp Act, 1899 which states that an agreement of sale followed by or evidencing delivery of possession of property agreed to be sold shall be chargeable as a sale under the said Article.

16. The said provision has been interpreted by the Division Bench of this Court in **B.RATNAMALA's case (referred 1 supra)**. The Division Bench held that the expression *followed by or evidencing delivery of possession* occurring in the said Explanation cannot be read in isolation. It observed as under:-

“..... 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 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 served 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."

17. It also considered the case where an agreement was executed with the tenant in possession and held that even in such an event, there is an inference of change in the nature of possession and it cannot be said that simply because the tenant continued to be in possession, though in a different capacity, there is non-delivery of possession. It held that the expression *followed by* should be read in conjunction with the earlier expression *agreement* and in the later case, any agreement regarding delivery of possession should invite the stamp duty as a "sale deed", even though possession has been delivered in the past.

18. In the instant case, clause (9) of the agreement of sale between the parties states that the possession of the petitioners is accepted by the respondents.

19. Therefore, the agreement to sell in question clearly falls within the ambit of Explanation-I to Article 47-A Schedule I-A of the Act and the stamp duty of Rs.100/- thereon cannot be said to be adequate. Therefore, it cannot be received in evidence, unless it

is impounded under the provisions of Sections 33 and 35 of the Stamp Act, 1899.

20. Accordingly, Civil Revision Petition is allowed; and order dt.11.12.2018 in I.A.No.854/2018 in O.S.No.465 of 2018 of the XXVI-Additional Chief Judge, City Civil Court, Hyderabad, is set aside and the said I.A. is allowed. No order as to costs.

Consequently, miscellaneous petitions if any pending in the Civil Revision Petition shall stand dismissed.

1st August, 2019
smr

M.S.Ramachandra Rao, J

**Note: L.R.Copy to be marked
(B/o.)**

