**IN THE HIGH COURT FOR THE STATE OF TELANGANAAT: HYDERABAD**

**CORAM:**

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

**<u>+ CIVIL REVISION PETITION No.1265 OF 2022</u>**

**% Delivered on: 06-07-2022**

**<u>Between</u>**:

\# Anumandla Janardhan .. Petitioner

Vs.

$ Keshapaka Mallaiah, died per L.Rs. .. Respondent

! For Petitioner : Mr. G.L. Narasimha Rao

^ For Respondents : ----

< Gist :

> Head Note :

? Cases Referred :

1. AIR 2010 SC 1654
2. (2014) 1 SCC 618

**HON'BLE SRI JUSTICE K. LAKSHMAN**

**CIVIL REVISION PETITION No.1265 OF 2022**

**ORDER**:

Challenging the order dated 21.03.2022 in O.S. No.828 of 2012 passed by the learned II Additional Senior Civil Judge at Warangal, the petitioner herein has filed the present revision.

2. Perusal of the record would reveal that the petitioner herein had filed a suit vide O.S. No.828 of 2012 against the respondents herein for specific performance of contract. The said suit was founded on an unregistered document termed "House Sale Deed" dated 16.03.2011. Vide impugned order dated 21.03.2022, learned Judge has directed the petitioner herein - plaintiff to pay deficit stamp duty and penalty prevailing as on the date of execution of the said document as per Article - 47A (i) of the Indian Stamp Act, 1899 (for short 'Act, 1899) on the sale consideration of Rs.5,25,000/- before the Court or to take steps to send the document to the District Registrar, Stamps and Registration Department for collection of deficit stamp duty and penalty failing which the said document shall stand rejected.

3. Heard Mr. G.L. Narasimha Rao, learned counsel for the petitioner, and perused the record.

4. Referring to the subject document, learned counsel for the petitioner would submit that under the subject document, possession was not delivered and, therefore, there is no need of payment of stamp duty. It is agreement of sale, but not sale deed. Therefore, the Court below erred in directing the petitioner herein to pay the deficit stamp duty. He has also placed reliance on the decision in **S. Kaladevi v. V.R. Somasundaram**[1].

5. As discussed above, the aforesaid suit was filed for specific performance of contract. It was founded on the above referred house sale deed which is unregistered. In the said document, there is a specific mention that the deceased respondent being the owner of the suit schedule property i.e., House No.11-7-131 including open space admeasuring 200 square yards sold to the petitioner herein for total sale consideration of Rs.5,25,000/-. He had received the said total sale consideration. From the said date, neither the deceased respondent, nor his heirs have any right over the said property.

[1]. AIR 2010 SC 1654

Admittedly, there is no mention about the delivery of possession in the said document, but it is titled as a House Sale Deed. Total sale consideration was paid by the petitioner herein to the deceased respondent. He had received the entire sale consideration. Therefore, it cannot be treated as agreement of sale and in fact it is house sale deed. Thus, the petitioner herein has to necessarily pay deficit stamp duty in terms of the Act, 1899 more particularly, as per Article - 47A (i) of the Act, 1899 which deals with instruments of conveyance etc., undervalued, how to be, dealt with, failing which, it is inadmissible.

6. In **S. Kaladevi**[1], the Apex Court has relied upon its earlier judgment in **K.B. Saha & Sons Private Limited v. Development Consultant Limited [(2008) 8 SCC 564]**. In the said judgment, the Apex Court has culled out certain principles which are as under:

> "1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
>
> 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

> 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
>
> 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
>
> 5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

7. Referring to the above principles, in **S. Kaladevi**[1], the Apex Court has added one more principle, i.e., *a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.*

8. It is relevant to note that in **Omprakash v. Laxminarayan**[2], the Apex Court had an occasion to deal with the provisions of the Act, 1899 and admissibility of document and also the question as to whether the admissibility of a document produced by the party would depend upon the recital in the document or the plea of the adversary in

[2]. (2014) 1 SCC 618

the suit and whether the document in question is “conveyance” as defined under the Act, 1899 and is duly stamped. In the said decision, suit for specific performance of contract was founded on the unregistered agreement to sell dated 27.12.2000. Considering the question of admissibility of document, the Apex Court held that it is the recital therein which shall be decisive. Whether the possession in fact was given or not in terms of the agreement to sell is a question of fact which requires adjudication. But, at the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue. It does not mean that the recital in the document shall be conclusive but for the purpose of admissibility, it is the terms and conditions incorporated therein which shall hold the field. The said agreement to sell therein is squarely falls in the definition of ‘conveyance’ within the meaning of Section - 2(10) of the Act, 1899. Thus, the Apex Court held that the provisions of Section 47-A of the Act, 1899 shall apply *mutatis mutandis* to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section. Therefore, the stamp duty as per the provisions of the Act, 1899 needs to be paid.

9. Referring to Sections - 2 (10) and 35 of the Act, 1899, the Apex Court further held that the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The Court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty, as required, has not been paid and, hence, the trial Court rightly held the same to be inadmissible in evidence.

10. The Apex Court has also referred to the decision in **Avinash Kumar Chauhan v. Vijay Krishna Mishra [(2009) 2 SCC 532]**, wherein it was held as under:

> "21. It is not in dispute that the possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in or over the land in question. We are not concerned with the enforcement of the said agreement. Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Registration Act, 1908.
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> 22. We have noticed hereto before that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to

> receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act."

The correctness of the judgment in **Laxminarayan v. Omprakash [2008 (2) MPLJ 416]** came up for consideration before a Division Bench of the High Court of Madhya Pradesh in Writ Petition No. 6464 of 2008 in the case of **Man Singh (deceased) through legal representatives Smt. Sumranbai & Ors. v. Rameshwar** and the Division Bench of Madhya Pradesh High Court held as follows:

> "8. A document would be admissible on basis of the recitals made in the document and not on basis of the pleadings raised by the parties. In the matter of Laxminarayan (supra), the learned Single Judge with due respect to his authority we don't think that he did look into the legal position but it appears that he was simply swayed away by the argument that as the defendant was denying the delivery of possession, the endorsement/recital in the document lost all its effect and efficacy.
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> 9. It would be trite to say that 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. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not

> required to be registered then we don't think that the Court would be entitled to admit the document because simply the parties say so. The jurisdiction of the Court flows from Sections 33, 35 and 38 of the Indian Stamp Act and the Court has to decide the question of admissibility. With all humility at our command we over-rule the judgment in the matter of Laxminarayan (supra)."

Referring to the said principle, the Apex Court in **Omprakash**[2] held that it agreed with the conclusion of the High Court.

11. Thus, the Court has to consider the recitals of the document not the pleadings. As discussed supra, the subject document is 'house sale deed'. It is not an agreement of sale. Therefore, the said unregistered document is inadmissible in evidence unless and until deficit stamp duty is paid. The Court below considering the said aspects, vide impugned order dated 21.03.2022, directed the petitioner herein - plaintiff to pay the deficit stamp duty and penalty prevailing as on the date of its execution as per Article - 47A (i) of the Act,1899 on the sale consideration of Rs.5,25,000/- before the Court below or to take steps to send the document to the District Registrar, Stamps and Registration Department for collection of deficit stamp duty and penalty failing which the said document shall stand rejected. The said order is a reasoned order. There is no error in it to interfere by this

Court by invoking its superintending jurisdiction under Article - 227 of the Constitution of India. In view of the same, the revision is devoid of merits and the same is liable to be dismissed.

12. The present Civil Revision Petition is accordingly dismissed confirming order dated 21.03.2022 in O.S. No.828 of 2012 passed by the learned II Additional Senior Civil Judge at Warangal.

As a sequel, the miscellaneous petitions, if any, pending in the revision shall stand closed.

**K. LAKSHMAN, J**

**6th July, 2022**

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