

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

Civil Revision Petition No.2129 of 2022

O R D E R:

The present revision is filed aggrieved by the orders dated 26.07.2022 in O.S.No.245 of 2020 on the file of Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Karimnagar, whereby the court below has overruled the objections raised by the petitioners herein.

2. Mr. K. Mohan, learned counsel for the petitioners submits that the respondent No.1/plaintiff has filed the suit seeking the relief of specific performance of Agreement of sale dated 05.02.2020 and to declare the sale deeds executed in favour of petitioners/defendant Nos.2 and 3 as null and void. It is submitted that during the course of trial before the court below, the petitioners have raised objections with regard to marking of Agreement of sale dated 05.02.2020 as Ex.A1 by the plaintiff on the ground that as per recitals of the said document, there is delivery of possession of property and as per Article 47-A of Schedule IA of Stamp Act, it shall not be admissible in evidence without the same being registered.

3. Learned counsel for the petitioners has relied on the judgement passed by the Hon'ble Division Bench of this court in

B. Ratnamala vs G. Rudramma¹, in which it was held as follows:

“..... 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”.

4. Learned counsel for the petitioners submits that as per the document which was sought to be marked by the plaintiff, the possession was delivered to him, but the court below has rejected

¹ 1996 (6) ALT 59 (DB)

the objection raised by the petitioners and hence the order under revision is liable to be set aside.

4. Mr. Ravi Kumar Vadlakonda, learned counsel appearing for the respondent No.1/plaintiff did not deny the fact that possession was delivered to the plaintiff under the said document.

5. In the light of the law laid down by the Hon'ble Division Bench of this court in ***Ratnamala's case (stated supra)***, without expressing any opinion on merits, the Civil Revision Petition is disposed of, remanding the matter to the trial court with a direction to decide the same on merits in accordance with law after giving opportunity of hearing to both parties. There shall be no order as to costs.

The miscellaneous applications, if any shall stand automatically closed.

7th February, 2023
gvl

LALITHA KANNEGANTI, J