

Veesarapu Pad Vs. Rangineni Anith

Veesarapu Pad Vs. Rangineni Anith

SooperKanoon Citation : sooperkanoon.com/1134984

Court : Andhra Pradesh

Decided On : Oct-30-2013

Judge : C.V.Nagarjuna Reddy

Appellant : Veesarapu Pad

Respondent : Rangineni Anith

Advocate for Def. : Sri. K.Raghuveer Reddy Counsel

Judgement :

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY C.R.P. No.1013 OF2013
Date:30-10-2013 Veesarapu Padma ...Petitioner Rangineni Anitha.... Respondent
Counsel for the Petitioner: Sri K.Raghuveer Reddy Counsel for the Respondents:
Sri Mahipathi Rao HEAD NOTE: ?.Cases referred 1 1999 (6) ALD160(DB) 2 2012
(6) ALT5493 2003 (2) ALD6404 (2008) 9 Supreme Court Cases 401
HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY C.R.P. No.1013 OF2013
Date:

30. 10-2013

ORDER

: This Civil Revision Petition is filed aggrieved by order dated 11.02.2013 in O.S. No.90 of 2008 passed by the Senior Civil Judge, Suryapet, wherein the Court below overruled the objection of the revision petitioner/defendant regarding the objection taken to mark Ex.A1, agreement of sale on the ground that it requires

stamp duty and also registration, since Ex.A1 agreement of sale shows possession was delivered as on the date of execution to the respondent/plaintiff.

2. Brief facts which are necessary for disposal of the Civil Revision Petition are as follows: The respondent/plaintiff filed suit for specific performance of agreement of sale dated 21.01.2004. When the plaintiff want to mark the same in the suit as Ex.A1, the revision petitioner/defendant has taken objection stating that the document contains clause regarding delivery of possession. As such, it requires payment of stamp duty as well as registration. The said objection was overruled by the Court below on the ground that the respondent/plaintiff purchased stamp worth Rs.35,000/- for the purpose of executing the registered sale deed by the revision petitioner. Since, the revision petitioner refused to execute the registered sale deed, they have filed the suit. The Court below found that since the plaintiff has deposited Rs.35,000/- towards purchase of stamp, the Court below over-ruled the objection raised by the revision petitioner and passed order dated 11.02.2013. Against the same, the present Civil Revision Petition is filed.

3. Learned counsel for the revision petitioner contends that the agreement of sale dated 21.01.2004, which is sought to be marked as Ex.A1 contains a clause regarding delivery of possession. As such, payment of stamp duty is required under Article 47 A of Schedule IA of Indian Stamp Act, 1899 (for brevity 'the Act'). When once the document is of sale and liable for payment of stamp duty, unless necessary stamp duty and penalty is paid by impounding the document, the same cannot be received under evidence under Section 35 of the Indian Stamp Act. He also contends so far as the procedure for impounding the document under Section 33 of the Act, the Court below has not considered the effect of Sections 33 and Section 35 read with Article 47A Schedule 1A of Act and erroneously over ruled the objection raised by the revision petitioner on the ground that already an amount of Rs.35,000/- was deposited by way of challan for purchase of stamps by the respondent/plaintiff.

4. He would further contend that the issue is squarely covered by the following Judgments: B.Ratnamala v. G.Rudramma¹, Ponnampola Seetha Ramaiah v. Sanagala Sreenivasulu², Jannuchander Babu v. Manchikatla Satyanarayana and

others³ and Gopi Krishna Trivedi v. Sudama Prasad Ojha⁴.

5. Learned counsel appearing for the respondent submits that since already amount of Rs.35,000/- is deposited by way of challan for purchase of stamp papers to get the registered sale deed executed by the revision petitioner, the Court below found that there is no such necessity for impounding the document. As such, the Court below rightly over ruled the objection raised by the revision petitioner. He also contends that there is no requirement in law and in all the judgments cited by the revision petitioner, the facts are not similar, since in the present case, an amount of Rs.35,000/- is deposited towards stamp duty for the purpose of getting executed the registered sale deed.

6. In this case, admittedly, the agreement of sale dated 21.01.2004, basing on which the suit for specific performance was filed by the respondent, contains a clause regarding delivery of possession. When once the agreement of sale contains a clause regarding delivery of possession, it attracts Article 47A of Schedule I A of the Act and liable for stamp duty and same is to be paid on the said document as if it is a sale. Since the agreement of sale is on stamp paper worth Rs.100/-, fixed stamp duty along with penalty has to be paid for admitting the same into evidence, as per Section 35 of the Act. The procedure is envisaged under Section 33 of the Act where a document is to be impounded.

7. In the present case, no doubt, an amount of Rs.35,000/- is paid by way of challan for the purchase of stamps for the purpose of executing registered sale deed, but that cannot be sufficient compliance for not impounding the agreement of sale dated 21.01.2004, since the agreement of sale contains a clause regarding delivery of possession and stamp duty to be paid.

8. Section 35 of the Act reads as follows. Instruments not duly stamped inadmissible in evidence, etc.: ".No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.".

9. Section 33 of the Act reads as follows: Examination and impounding of instruments:

1. Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. 2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force [India]. when such instrument was executed or first executed:".

10. In this case, since the document is sought to be marked in evidence as per Section 35 referred to above, the document is chargeable to duty and same cannot be admitted into evidence unless it is duly stamped. Section 33 of the Act provides for procedure for impounding the said document. In this case, agreement of sale dated 21.01.2004 is not duly stamped and same cannot be admitted into evidence unless procedure under Section 33 of the Act is followed.

11. Learned counsel appearing for the revision petitioner, in support of his contention, relied on the following decisions. a) In B.Ratnamala v. G.Rudramma (supra), it is observed as under: ".2. A few facts which are germane for answering the reference are: The petitioner had filed a suit in OS No.15 of 1996 on the file of the Principal Senior Civil Judge's Court, Kurnool seeking specific performance of an agreement dated 14-11-1988 which was marked as Ex.A1 during the trial. On the objection taken by the respondent-defendant by filing an application in IA No.232 of 1988 seeking to impound the said document and levy stamp duty and penalty as a sale deed under Article 47-A of Schedule 1A of the Indian Stamp Act, the trial Court allowed the said application overruling the objection taken by the plaintiff- petitioner herein as to the permissibility of the said objection once the document is marked under Section 35 of the Act and held that the said document is insufficiently stamped and directed the plaintiff to pay the deficit stamp duty and penalty on Ex.A1 or otherwise it was held that the document becomes

inadmissible in evidence. Aggrieved by the same, the plaintiff carried the matter in revision before this Court."

13. Thus, it was a specific case where in so many words the Explanation takes in all the situations i.e., delivery of possession before the execution or at the time of execution or after the execution of an agreement and such agreements are deemed to be conveyances for the purpose of imposing stamp duty. Thus the Apex Court had approved the intention of the Legislature in equalising an Agreement on par with a conveyance in the circumstances contemplated thereunder, apparently, the object being to realise the revenue at the earliest point of time on the Agreement akin to sale deeds. Though in different words, in the instant case, the amendment brought in tries to achieve a similar object. b) In *Ponnapola Seetha Ramaiah v. Sanagala Sreenivasulu* (supra), it is observed as under: ".4. In *B. Ratnamala Vs. G. Rudramma*³, a Division Bench of this Court has considered the Explanation to Article 47-A of Schedule 1-A of the Act and held that the words "followed by or evidencing delivery of possession" therein shall be construed as having a direct nexus to the agreement. The Division Bench further held that the said Explanation covers three situations, namely, where delivery of possession has occurred prior to entering of the agreement, under the agreement, or in pursuance of the agreement. The Division Bench also further held that the delivery of possession should be intimately and inextricably connected with the agreement. For better appreciation, the relevant portion of the Judgment is reproduced hereunder: ".Thus the main question that falls for consideration is the interpretation of the expression ".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 of sale 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 of sale. 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".; 5. In the instant case, it is not in dispute that the agreement, as it was originally drafted, did not contain the recital relating to delivery of possession of the property. However, on the back of the agreement, several endorsements were made relating to receipt of money by the respondent. Two endorsements were found against the date 28-5-2005. In the later endorsement, it is stated that on that day Rs.6,19,000/- was received towards the amount under the agreement and the property was delivered. This recital would clearly show that the delivery of possession has taken place a few months after entering into the agreement and in pursuance thereof. Thus, delivery of possession is directly connected with and traceable to the agreement of sale. Hence, the ratio laid down by the Division Bench of this Court in B. Ratnamala (3-supra) clearly applies to this case.". c) In Jannuchander Babu v. Manchikatla Satyanarayana and others (supra) it is observed as under: ".5. Therefore, both the Courts below refusing to receive the receipt containing a recital recording delivery of possession of property agreed to be sold on the ground that it is not stamped as a sale deed as contemplated by Article 47-A of Schedule 1-A of Stamp Act, cannot be said to be erroneous. In all cases where a document contains a recital recording delivery of possession of property in pursuance of an agreement of sale, whether by way of an endorsement on the reverse of the agreement, or under a

separate receipt, it has to be stamped as a sale deed as contemplated by Article 47-A of Schedule 1-A of Stamp Act.". d) In *Gopi Krishna Trivedi v. Sudama Prasad Ojha* (supra) Supreme Court observed as under: ".6. The High Court, after considering the rival submissions and with reference to explanation appended to item No.5 of Schedule 1-A of Stamp Duty on Instruments in West Bengal, concluded as follows: ".The purported letter contains all the terms and conditions of an agreement for sale of immovable property. What were the terms and conditions of the alleged oral agreement are not known. There is nothing on record to show that rights and interest had been created following execution of an oral agreement. What we find is the existence of a document incorporating of terms and conditions of an agreement for sale of an immovable property and receipts acknowledging receipts of consideration amount. The agreements containing terms and conditions for transfer of an immovable property, as such, are required to be properly stamped in terms of the recent amendment of Stamp Act in West Bengal. Adequate stamp not having been paid, the trial court is not right in making the observation that the documents in question are not to be impounded. Since it is the agreement for sale, stamp duty will have to be paid in terms of Schedule 1A as amended. Right and liability having been created or purported to have been created, transferred and extended or recorded, the documents in question will come within the meaning of ".instrument". as defined in Section 2(14) of the Indian Stamp Act.". Ultimately, the High Court held that right and liability having been created or purported to have been transferred and extended or created, the documents in question come within the meaning of 'instrument' as defined in Section 2(14) of the Indian Stamp Act, 1899 (in short 'the Act'). Therefore, the revision petition was allowed and the Trial Court was directed to take steps for impounding the documents before having been the documents being marked as exhibits.".

12. In view of law laid down by this Court as well as Apex Court in the above cited decisions, I am of the opinion that the agreement of sale dated 21.01.2004 requires payment of stamp duty and accordingly, the same cannot be admitted into evidence, unless necessary stamp duty under Article 47A of Schedule IA of the Indian Stamp Act.

13. In view of the above discussion, the Civil Revision Petition is allowed and the objection raised by the revision petitioner is sustained. However, it is open for the respondent/plaintiff to get the documents impounded for admitting the same into evidence. Accordingly, the Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

_____ A.RAJASHEKER REDDY, J October, 30, 2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com