

has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal".

From the aforementioned facts and circumstances it is clear that the petitioners could not and did not show that they made a demand to the respondent and that was met with refusal. Therefore, it is not possible to issue the declaration sought for or the consequential direction commanding the respondent herein to register the sale deeds proposed to be executed by the petitioners in favour of their purchasers. This view of mine gains full support from the decision of a Division Bench of this Court in D.Ratnasundari Devi vs. Commissioner of Urban Land Ceiling, 1993 (2) ALT 428.

9. For the aforementioned reasons, the writ petitions fail and are accordingly dismissed, but without costs. However, this order will not preclude the petitioners from presenting the sale deeds for registration before the respondent. In such an event, I am sure, the respondent will immediately discharge his statutory duties mentioned in Part XI of the Act and consider registerability of the sale deeds. I am also sure that in case the registration is refused, he will certainly record the reasons as enjoined by Sec.71 of the Act and furnish a copy thereof, if the petitioners apply for the same.

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1999 (3) A.P.L.J. 207 (HC)

IN THE HIGH COURT OF JUDICATURE::
ANDHRA PRADESH AT HYDERABAD
[DIVISION BENCH]

The Hon'ble Mr. Justice

P. Venkatarama Reddi

And

The Hon'ble Mr. Justice

B. Prakash Rao

BETWEEN :

B. Ratnamala

Petitioner

And

G. Rudramma

Respondent

Stamp Act 1899, Art. 47-A, Schedule 1-A – Article 47-A applies to a case where possession has been delivered to the purchaser under an agreement of sale, if it is done in pursuance of the agreement – Said Article also applies if the delivery is effected in the past and such delivery recorded in the agreement of sale – When the possession was already with the tenant – Purchaser prior to the agreement and in view of the agreement the tenant holding the possession in the capacity of a purchaser, Art. 47-A is attracted though there is no physical delivery of possession.

Held : The main question that falls for consideration is the interpretation of the expressions "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

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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 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. 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. (Para 9)

Even though there may not be a redelivery of possession as a tenant and again delivery back to the same person as a purchaser, but the factum of change of

relationship certainly leads to the inference of a change in the nature of possession, even if it were to be taken as a symbolic delivery. Therefore, it cannot be said that simply because one continued to remain in possession, though in different capacities, there is non-delivery of possession. A symbolic delivery may also amount to actual delivery in given circumstances. Thus, there was delivery of possession and the said explanation gets attracted. (Para 11)

CASES REFERRED :

1. M.A. Gafoor vs. Mohd. Jani, 1999 (1) ALD 159. (Para 1)
 2. Mekapothula Linga Reddy vs. D. Gangi Reddy, 1995 (2) ALD. (Para 7)
 3. Board of Revenue vs. Somaraju, AIR 1926 Mad. 1038 (FB). (Para 7)
 4. T. Gurappa vs. Naidu Ramana Reddy, 1993 (1) ALT 115. (Para 7)
 5. D. Ramachandra Rao vs. B. Venkata Ramana, 1996 (3) ALD 919 = 1996 (3) ALT 725. (Para 8)
 6. Veena Hasumukh Jain vs. State of Maharashtra, JT 1999 (1) SC 186. (Para 12)
- Mr. P. Nagaraja Rao, Counsel for the Petitioner.
Mr. K. Somakonda Reddy, Counsel for the Respondent.

The Court delivered the following

JUDGMENT

(Judgment of Bench delivered by
B. Prakash Rao, J.)

1. This revision is before us on a reference made by our learned brother B.S. Raikote, J., differing with the view taken by another learned single Judge of this Court in M.A. Gafoor vs. Mohd. Jani and others, 1999 (1) ALD 159, as to the interpretation of Explanation I to Article 47-A of Schedule 1A of the Indian Stamp Act (for short "the Act").

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 Art. 47-A of Schedule 1A of the Indian Stamp Act, the trial Court allowed the said application over-ruling the objection taken by the plaintiff-petitioner herein as to the permissibility of the said objection once the document is marked under Sec. 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.

3. The document recites that the possession of the Schedule mentioned property was previously delivered to the vendee. It is also stated therein that the entire sale consideration has already been received.

4. When the matter came up for admission before the learned single Judge, the Counsel for the petitioner placed reliance on the decision in M.A.Gafoor (supra) to contend that the document in question does not attract the provisions of Art. 47-A of Schedule 1A of the Act. In the said decision, the suit was filed for specific performance of an agreement of sale. On the date of the agreement, the plaintiff was a tenant under the defendant and as per the agreement, he need not pay rents thereafter and he can

also sublet the premises to others. In that factual matrix, the learned Judge held that there was no delivery of possession warranting the application of the provisions of Art. 47-A of Schedule 1-A of the Act. In the opinion of the learned referring Judge, even if there is a recital in the agreement that the possession was delivered or it is with the purchaser, it would attract Art.47-A of Schedule 1A of the Act. In view of the difference of opinion, the matter was referred to a Division Bench for an authoritative pronouncement and thus the matter is before us.

5. Before we take upon the task of answering the reference, it is pertinent to have a glance at Explanation I to Art. 47-A Schedule 1-A of the Act, which is pivotal for this reference. It reads :

Explanation I :- An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a sale under this Article :

Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in Clause (b) of Art.6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed.

6. Prior to the introduction of the aforesaid Explanation, under the amending Act 17 of 1986, Art. 20 and Art.47-A were amended. Later, under the amending Act No.21 of 1995, the said explanation was added to bring the agreements specified therein within the definition of sale for the purpose of charging stamp duty, which is self-explanatory.

7. In Mekapothula Linga Reddy vs. D.Gangi Reddy and others, 1995 (2) ALD

59, the agreement of sale was executed on a Rs.20/- stamp paper, under which certain payment was made at the time of agreement and balance was to be paid at a later date. The agreement stipulated that on payment of the balance amount, possession will be delivered to the vendee. Subsequently, the balance amount was paid, possession was delivered and the same was endorsed on the agreement of sale executed on Rs.20/- stamp paper. Interpreting Explanation I to Art. 47-A of Schedule 1-A of the Act and Sec.53-A of the Transfer of Property Act, a learned single Judge of this Court held that delivery of possession need not be immediate and that the buyer is given a right to seek possession in pursuance of the agreement of sale. Therefore, with a view to plug the loopholes in payment of stamp duty by persons invoking the theory of part performance under Sec.53-A of the Transfer of Property Act, the word "possession" has to be interpreted in tune with the explanation I to Art.47-A of Schedule 1-A of the Act as including possession pursuant to the agreement of sale and not restricted to possession that must immediately follow the execution of the agreement. The decisions relied upon by the learned Counsel for the petitioner therein Board of Revenue vs. Somaraju, AIR 1926 Madras 1038 (FB) and T.Gurappa vs. Naidu Ramana Reddy 1993 (1) ALT 115, were distinguished by the learned Judge as not relevant to the question on hand.

8. The decision in Mekapothula Linga Reddy, (supra) was subsequently relied on by another learned single Judge in D.Ramachandra Rao vs. B. Venkata Ramana, 1996 (3) ALD 919 = 1996 (3) ALT 725. In the said case, the agreement was dated 30-3-1989 and possession was given at a later date viz., in April, 1990. In view of the admitted position that the plaintiff in that

case was in possession pursuant to the agreement though possession was given at a later date, it was held that the agreement amounts to a sale liable for stamp duty as such.

5 9. While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place. As the incidence of duty is on the execution of the deed, regard must, therefore, be had only to the terms of the document. Thus the main question that falls for consideration is the interpretation of the expressions "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 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 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.

10. In Mekapothula Linga Reddy (supra), the learned single Judge sought to derive support for his conclusion as regards the applicability of stamp duty under Art. 47-A of Schedule 1A of the Act from Sec.53-A of the Transfer of Property Act. As already pointed, one need not look to any provision in other Acts especially in the interpretation of fiscal statutes like the Indian Stamp Act. In any case, Sec.53-A of the Transfer of Property Act cannot have any direct bearing on the question at issue. The scope of Sec.53-A of the Transfer of Property Act is altogether different. It contemplates protection to a transferee in possession which varies from case to case. Excepting to this extent, the conclusion arrived at by the learned Judge cannot be faulted, as the delivery of possession has been endorsed on the document therein which falls within the second limb of the explanation.

11. Mohd. Gafoor (supra) is a case

where an agreement was executed with the tenant in possession wherein it was contemplated that the purchaser (the tenant) can retain the possession and further authorised to collect the rents for himself and sublet the premises. In that context, the learned Judge held that there is no delivery of possession of property under the agreement. To put it differently, possession has not followed the agreement and it does not evidence delivery of possession. Before the learned single Judge, neither of the decisions in Mekapothula Linga Reddy (supra) and D.Ramachandra Rao (supra) were cited. No doubt, the twin situations contemplated under the Explanation I were kept in view but however, on the facts, the learned Judge came to the conclusion that there is no delivery of possession as the person in possession continued to remain therein. Basically, the learned Judge has not taken into consideration the incidence of agreement and the change in the jural relationship between the parties. Earlier, the parties were having the relationship of landlord and tenant and under the agreement, the relationship has transformed into that of a vendor and purchaser. Thus, there is a total novation of not only the situation, but also the relationship and the respective right and obligations. Even though the parties remain in the same position, the nature of their relationship can be altered. In Mohd. Gafoor (supra), certainly the tenant has catapulted into a purchaser. Even though there may not be a redelivery of possession as a tenant and again delivery back to the same person as a purchaser, but the factum of change of relationship certainly leads to the inference of a change in the nature of possession, even if it were to be taken as a symbolic delivery. Therefore, it cannot be said that simply because one continued to remain in possession, though in different capacities, there is non-delivery of

possession. A symbolic delivery may also amount to actual delivery in given circumstances. Thus in the case in Mohd. Gafoor (*supra*), there was delivery of possession and the said explanation gets attracted. 5

12. The Apex Court had an occasion to consider the provisions under the Bombay Stamp Act, 1958 in *Veena Hasmukh Jain vs. State of Maharashtra*, JT 1999 (1) SC 186. Explanation I to Article 25 of Schedule I to the Bombay Stamp Act reads as follows: 10

Explanation I :- For the purpose of this Article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly". 15 20 25

Interpreting the said explanation, it was held:

"The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are if there is an agreement to sell immovable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof, such an agreement to sell is deemed to be a "conveyance". In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to a conveyance 30 35 40

shall be adjusted towards the total duty leviable on the conveyance. Now, in the present case, the agreement entered into clearly provides for sale of an immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the scope of the Explanation I. It is open for the Legislature to levy duty on different kinds of agreement in different rates. If the Legislature thought that it would be appropriate to collect duty at the stage of agreement itself if it fulfills certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later stage itself though right, title and interest may not have passed as such. Still by reason of the fact that under the terms of the agreement there is an intention of sale and possession of the property has also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that it exactly what has been done in the present case. Therefore, it cannot be said that levy of duty is not upon the instrument but on the transaction".

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.

14. In the case on hand, there is a variation in the expressions used viz., "followed by" and "evidencing delivery of possession". As discussed above, the expression "followed by" should be read in conjunction with the earlier expression "agreement" and in the latter case, any agreement recording delivery of possession should invite the stamp duty as a sale deed, even though the possession had been delivered in the past. The expression "evidencing delivery of possession" applies to the situation with which we are concerned in the present case.

15. In the light of the aforesaid reasons, we are of the considered view, that the decision in M.A.Gafoor (supra) does not lay down the correct law.

16. The reference is answered accordingly. In view of our answer to the reference, the civil revision petition is liable to be dismissed. Accordingly, it is dismissed. No costs.

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1999 (3) A.P.L.J. 213 (HC)

**IN THE HIGH COURT OF JUDICATURE::
ANDHRA PRADESH AT HYDERABAD**

The Hon'ble Mr. Justice

I. Venkatanarayana

BETWEEN :

Doma Varalakshmi & Anr.

Appellants

And

Momidiseti Malleswara
Rao & Ors.

Respondents

Specific Relief Act 1963, Sec. 12(3)

15 – *A portion of the property decreed in favour of the third party even earlier to the suit agreement – Suit filed for specific performance even with the knowledge of the above decree claiming relief in respect of the whole suit property – Relief of part performance cannot be granted in the absence of specific pleading in the plaint.*

CASES REFERRED :

1. Sanku Balakrishnan vs. Raman Kunjikrishnan, AIR 1982 NOC 18 (Kerala).
(Para 9)

2. Bhaurao vs. Mahadeo, AIR 1979 Bom. 208.
(Para 9)

Mr. P. Sri Raghuram, Counsel for the Appellants.

Mr. P.B. Vijaya Kumar, Counsel for the Respondent Nos. 2 to 5 and 7.

The Court delivered the following

JUDGMENT

1. Plaintiffs are the appellants.
O.S.239 of 1979 on the file of the II Additional
.....
A.No. 758 of 1983 &
C.M.P.No. 8757 of 1997 Dt. 25-8-1999