

2011 SCC OnLine AP 434 : (2011) 5 ALD 710 : (2012) 109 AIC
498 : (2012) 115 RD 252 : (2011) 6 ALT 237

In the High Court of Andhra Pradesh at Hyderabad
(BEFORE B. SESHASAYANA REDDY, J.)

Rajoli Siva Rami Reddy

Versus

Malepati Subba Rangaiah and others

CRP No. 1210 of 2011

Decided on August 10, 2011



Page: 711

ORDER

1. This revision is directed against the order dated 23.9.2010 passed in IA No. 1241 of 2008 in OS No. 116 of 2007 on the file of the Senior Civil Judge, Proddatur, whereby and whereunder, the learned Senior Civil Judge dismissed the application filed by the petitioner-plaintiff seeking a direction to the 3rd respondent to deposit 100 bags of paddy crop into the Court.

2. Background facts, in a nutshell, leading to filing of this revision by the plaintiff in OS No. 116 of 2007, are:

The petitioner herein filed OS No. 116 of 2007 on the file of the Senior Civil Judge, Proddatur for specific performance of an agreement of sale dated 28.2.2007 and also for injunction. According to him, respondents 1 and 2 are owners of the suit schedule property and they agreed to sell the property for Rs. 2,31,600/- and accordingly, executed an agreement of sale dated 28.2.2007. The petitioner-plaintiff filed IA No. 1241 of 2008 under Section 151 CPC seeking direction to the 3rd respondent to deposit 100 bags of paddy. According to the petitioner-plaintiff, respondent No. 3 cut the standing crop in the suit schedule property and taken away the entire crop and thereby, he interfered in the civil disputes between the petitioner on one hand and respondents 1 and 2 on the other hand. For better appreciation, I may refer paragraphs (3) and (10) of the affidavit filed in support of IA No. 1241 of 2008, which reads as hereunder:

“(3) I submit that the respondents 1 and 2 came to me on 28.2.2007 offering the schedule properties for sale stating that they have got the right, title and possession over the schedule property under a registered partition deeds, bearing Nos. 50 and 58 of 1998 dated 14.10.1998, for which I have accepted their offer to purchase the schedule properties, while the mediators namely (01) *Malkigari Bashamia* and (02) *Marthala Jayarami Reddy* negotiated the issue and fixed the sale consideration for Rs. 80,000-00 per acre and Rs. 2,31,600-00 for entire extent of schedule properties, while myself and the respondents agreed for the sale consideration fixed by the mediators, then I have paid the entire sale consideration of Rs. 2,31,600-00 to both of the respondents on the very same day. In turn, the respondents have received the sale consideration in the presence of above said mediators and scribe namely *B.P. Kullayappa Yadav* and executed an agreement of sale in my favour on the very same day acknowledging the receipt of total sale consideration and delivered the schedule property into my possession on the very same day, the respondents further agreed to execute a regular registered sale deed in my favour at my risk and costs on my demand as and when I demand. As such the part performance is over.

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10. I submit that the crop of 100 bags of paddy raised and harvested by me are with the custody of respondent No. 3, the said crop has to be recovered from the possession of respondent No. 3 or its worth from the respondent No. 3, the value of the paddy of 100 bags is Rs. 1,00,000/- for which the respondent No. 3 has to deposit the cash



Page: 712

to the worth of the crop or paddy of 100 bags with the Honourable Court, I am entitled to receive the said paddy of 100 bags or cash of Rs. 1,00,000-00, however the Honorable Court has to enquire the matter and adjudicate whether I am entitled to receive the same or not. Till then the paddy or amount has to be kept with the custody of Honorable Court. Hence this petition.”

Respondents 1 and 2 filed counter resisting the application. They denied of execution of the agreement of sale dated 28.2.2007.

3. The learned Senior Civil Judge, on considering the material brought on record and on hearing the Counsel appearing for the parties,

and placing reliance on the decision of this Court in *B. Ratnamala v. G. Rudramma*, 1999 (6) ALD 160 (DB) : 1999 (6) ALT 59 (DB) and the decision of the Supreme Court in *Avinash Kumar Chauhan v. Vijay Krishna Mishra*, 2009 (1) ALD 109 (SC) : (2009) 2 SCC 532 : AIR 2009 SC 1489, proceeded to dismiss the petition on the ground that the agreement of sale dated 28.2.2007 is not properly stamped, by order dated 28th September 2010. Paragraph (11) of the order passed in IA No. 1241 of 2008 need to be noted and it is thus:

“When we consider the case of the petitioner in the light of the above law stated by the Hon'ble Apex Court and also the Hon'ble High Court of Andhra Pradesh, the petitioner cannot claim any relief in this case, since the suit agreement of sale dated 28.2.2007 as evidenced by its recitals about the delivery of possession of the suit schedule property to the petitioner which was agreed to be sold by the respondents 1 and 2. Therefore the said agreement of sale dated 28.2.2007 is inadmissible in evidence and it cannot be looked into for any purpose unless the petitioner pays stamp duty and penalty. It is immaterial for this Court about the *prima facie* case and balance of convenience in favour of the petitioner unless he pays stamp duty and penalty on the said agreement of sale”.

Hence this revision.

4. Notice to respondents came to be ordered on 11.4.2011. The respondents entered appearance through a Counsel.

5. Learned Counsel appearing for the petitioner submits that the relief sought for is against the 3rd respondent and the 3rd respondent is not a party to the agreement of sale and therefore, the application filed by the petitioner seeking a direction to the 3rd respondent to deposit 100 bags of paddy or its equivalent value is maintainable. The claim of the petitioner-plaintiff is that he purchased the suit schedule property under an agreement of sale dated 28.2.2007 from respondents 1 and 2.

6. Respondents 1 and 2 have denied execution of the agreement of sale in the counter and stated that until and unless the suit agreement is marked, there is no material to substantiate the case of the petitioner-plaintiff regarding his possession over the suit schedule property.

7. A Division Bench of this Court in *B. Ratnamala v. G Rudramma* (supra) has held that where an agreement of sale contains a specific recital or indicating delivery of possession, it is liable for stamp duty as a sale, under Explanation 1 to Article 47-A of the Indian Stamp Act.

8. The apex Court in *Avinash Kumar Chauhan's case* (supra), held that the unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. The Court, therefore, was empowered to pass an order in terms of Section 35. It was further held that—

"It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral



Page: 713

purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever by the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence".

9. Indisputably, the agreement contains a recital regarding, delivery of possession. The petitioner-plaintiff claims that he has been put in possession of the suit property under an agreement of sale dated 28.2.2007 executed by respondents 1 and 2. Until and unless the petitioner pays stamp duty and penalty on the agreement of sale, it cannot be looked into. The trial Court is, therefore, justified in dismissing the application. However, the petitioner is at liberty to move an application for impounding the agreement of sale. After payment of the stamp duty and penalty, the petitioner is at liberty to make a fresh application seeking the relief as sought for in IA No. 1241 of 2008, in which event, such an application has to be considered uninfluenced by any of the observations made earlier.

10. In that view of the matter, I find no error in the order impugned in the revision warranting interference of this Court in exercise of powers under Article 227 of the Constitution of India and accordingly, the revision is dismissed. No order as to costs.

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