

Karnataka High Court
Karnataka High Court
Jayalakshmi Reddy vs Thippanna And Ors. on 30 August, 2002
Equivalent citations: ILR 2002 KAR 5163, 2003 (5) KarLJ 263
Author: B Padmaraj
Bench: B Padmaraj
ORDER

B. Padmaraj, J.

1. Heard the arguments of the learned Counsel for the petitioner and carefully perused the case papers including the impugned order made by the Court below.

2. By the impugned order, the Court below has directed the petitioner herein to pay the deficit stamp duty of Rs. 1,450/- with penalty of Rs. 14,500/- for the sale agreement dated 4-11-1995 being admitted in evidence.

3. The petitioner herein is the plaintiff before the Trial Court. The suit of the petitioner-plaintiff is for the relief of specific performance on the basis of a sale agreement dated 4-11-1995 and also for the consequential relief of permanent injunction. The respondents/defendants has denied the execution of the agreement of sale in favour of the petitioner herein. During the course of the trial, when the petitioner herein was examined as P.W. 1 and wanted to mark the sale agreement in the evidence, the other side objected for the marking of the said agreement on the ground that it is unregistered and as also the same is not duly stamped. The Trial Court has upheld the objection of the respondents and passed the impugned order which reads as under:

"6. Point No. 1.--The suit schedule properties are (1) Sy. No. 59 measuring 12 guntas; (2) Sy. No. 60/1 measuring 7 guntas; (3) Sy. No. 58 measuring 17 guntas, all are wetland and bargaith land.

7. The plaintiff has filed this suit against the defendants for specific performance of contract. Suit is based on unregistered sale agreement dated 4-11-1995. The 2nd and 3rd defendants are subsequent purchasers of the suit schedule properties item Nos. 1 and 2 from the first defendant through registered sale deed dated 16-12-1998.

8. I have perused the sale agreement dated 4-11-1995. It shows that the first defendant-Thippanna has executed the sale agreement in respect of suit schedule properties for consideration of Rs. 15,000-00 and received the amount of Rs. 14,500-00. The evidence of plaintiff and sale agreement shows that, on the date of sale agreement itself, the first defendant has delivered the possession of the suit schedule properties to the plaintiff. The sale agreement written on the stamp paper of Rs. 50-00.

9. The sale agreement comes into existence after the Karnataka Stamp Act amended and came into force on 1-4-1995.

10. Article 5(e)(i) of the Schedule of Karnataka Stamp Act, 1957 states that possession of the property is delivered or is agreed to be delivered without executing the conveyance, the proper stamp duty is the same duty as a conveyance (No. 20) on the market value of the property.

11. Article 20 of the said Schedule states that, the value of conveyance exceeds Rs. 900-00, but does not exceed Rs. 1,000-00, the proper stamp duty is Rs. 100-00 and for every Rs. 500-00 or part thereof to in excess of Rs. 1,000-00, the proper stamp duty is Rs. 50-00.

It is relevant to state that the proper stamp duty is Rs. 100-00 for every Rs. 1,000-00,

12. Section 2(d) of the said Act defines conveyance as follows:

"(d) "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable is transferred inter vivos and which is not otherwise specifically provided for by the Schedule".

Section 34 of the said Act states as follows.-

"34. 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:

Provided that-

(a) any such instrument not being an instrument chargeable with a duty not exceeding fifteen paise only, or a mortgage of crop Article 35(a) of the Schedule chargeable under Clauses (a) and (b) of Section 3 with a duty of twenty-five paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(c) xxxx xxxx xxxx;

(d) xxxx xxxx xxxx".

13. The suit schedule properties are immovable properties, and the possession delivered to the plaintiff by virtue of alleged agreement. The sale consideration is Rs. 15,000-00. The proper stamp duty is Rs. 1,500-00, but the sale agreement written on the stamp paper of Rs. 50-00. The deficit stamp duty is Rs. 1,450-00. Under proviso (a) of Section 34 of the said Act, alleged agreement can be admitted in evidence if the deficit stamp duty of Rs. 1,450-00 paid with penalty of Rs. 14,500-00 i.e., 10 times of Rs. 1,450-00. Hence, I answer point No. 1 accordingly".

4. While assailing the impugned order made by the Trial Court, the learned Counsel for the petitioner has vehemently contended before me that the agreement of sale will only create contractual rights and obligations between the parties and it does not create any absolute right or interest in the immovable properties. He contended that under an agreement of sale, the title in respect of the immovable property is not transferred and hence, it does not amount to a conveyance. He also contended that a contract may be expressed or implied and if it is expressed i.e., in writing and not duly stamped, it can be admitted in evidence for establishing the contractual relationship of vendor and vendee between the parties, just like in the case of an unregistered lease deed etc. He also contended that the explanation to Clauses (e) to (h) of Article 5 of the Schedule gives an option to a party who has obtained an agreement of sale to pay the stamp duty even at the time of the sale deed and that in any event, there will be no loss of revenue to the State and hence, the stamp duty could be collected even at the time of the registration of the document of sale instead of insisting upon such stamp duty at the time of the agreement of sale. He also contended that even in the event of the suit being decreed, the petitioner will have to seek for the registration of the sale deed and in that event also, he will be required to pay the stamp duty. He therefore, contended that the Trial Court was not justified in passing the impugned order.

5. It is not in dispute that the suit agreement of sale has been executed after the Karnataka Stamp Act has been amended by Act No. 8 of 1995 with effect from 1-4-1995. To be more precise, the suit agreement is dated

4-11-1995 whereas, Clauses (e) to (i) under Article 5 came to be substituted by Act No. 8 of 1995 with effect from 1-4-1995. Hence, there could be no dispute that the said amended provisions of the Karnataka Stamp Act are clearly attracted to the document in question. Article 5(e) of the Karnataka Stamp Act prescribes, that agreement or its records or memorandum of agreement, if relating to sale of immovable property, wherein part performance of the contract, possession of the property is delivered or is agreed to be delivered without executing the conveyance, then, the stamp duty payable is the same as conveyance (No. 20) on the market value of the property. The explanation to Article 5(e) to (i) prescribes that for the purpose of Sub-clause (i) of Clause (e) and Clause (h), where subsequently conveyance or mortgage as the case may be, is executed in pursuance of such agreement or its records or memorandum, the stamp duty, if any, already paid and recovered on the agreement or its record or memorandum shall be adjusted towards the total duty leviable on the conveyance or mortgage, as the case may be. Thus, it is clear that where an agreement of sale under which the possession is delivered, it amounts to conveyance and hence, attracts stamp duty as conveyance (No. 20) on the market value of the property. That is to say the stamp duty in respect of such an agreement covered by Article 5(e) is leviable as if it is a conveyance. The conditions to be fulfilled are: if there is an agreement of sale of immovable property where in part performance of contract possession of such property is delivered to the purchaser or is agreed to be delivered without executing the conveyance in respect thereof, such an agreement of sale is deemed to be a conveyance. In the event, a conveyance is executed in pursuance of such an agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance. In the instant case, the agreement entered into between the parties, which is a basic document for claiming the relief of specific performance and for injunction, clearly provides for sale of immovable property and it also recites that the possession has been delivered. Therefore, the document in question clearly falls within the scope of Article 6(e) of the Karnataka Stamp Act and its Explanation (II). It is open to the Legislature to levy duty on different kinds of agreements at different rates. If the Legislature thought that it would be appropriate to collect duty at the stage of the agreement itself, if it fulfills certain conditions instead of postponing collection of such duty till the completion of the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled, such as an agreement if relating to sale of immovable property, where, in part performance possession of the property is delivered and what remains to be done is a mere formality of paying the balance and of execution of 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 same as a conveyance on the market value of the property, and that is exactly what has been done in the present case. Therefore, it cannot be said that the impugned order made by the Trial Court suffers from any such illegality or material irregularity so as to call for interference in revision. No doubt, it was sought to be argued by the learned Counsel for the petitioner that the said document though insufficiently stamped, may be admitted for collateral purpose. But, I am afraid that the document, which is insufficiently stamped, cannot be permitted to be used for collateral purpose in view of Section 34 of the Karnataka Stamp Act which clearly prescribes that no instrument chargeable with duty shall be admitted in evidence for any purpose. The instrument in question is an agreement of sale dated 4-11-1995 between the parties viz., the vendor and vendee, whereunder the vendor agreed to sell his immovable property for a consideration of Rs. 15,000/- and received thereunder a sum of Rs. 14,500/- and where in part performance of the contract, possession of the immovable property is delivered. Thus, the instrument in question fully satisfies the conditions of Article 5(e)(i) and hence, the stamp duty payable on conveyance is to be demanded and paid in view of the said Article 5(e)(i). The instrument covered by Article 5(e)(i) is treated as a conveyance and the proper stamp duty payable thereon is the same as a conveyance (No. 20) on the market value of the property and the Explanation (II) only says that where subsequently, conveyance is executed, the stamp duty already paid or recovered on the agreement shall be adjusted and it does not in any way gives an option to the party to pay the stamp duty subsequently. On the other hand Article 5(e)(i) clearly indicates that the proper duty is to be paid at the stage of agreement itself if it satisfies the conditions thereof. Having considered the agreement as a whole in the light of Article 5(e)(i) of the Karnataka Stamp Act, I am of the view that it can be regarded as a conveyance as the instrument in question is covered by Article 5(e)(i) for which the proper duty payable under

the Karnataka Stamp Act is the same duty as a conveyance (No. 20) on the market value of the property. In the instant case, the proper stamp duty payable under the Karnataka Stamp Act being not paid and when the document was sought to be used in evidence, the Court below was justified in passing the impugned order which cannot be found fault with. Hence, it needs no interference.

6. Therefore, having given my anxious consideration to the entire matter in issue, I am of the view that this revision petition filed by the petitioner is liable to be dismissed in limine and it is accordingly dismissed at the stage of admission itself.