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**(2010) 07 AP CK 0003**

**Andhra Pradesh High Court**

**Case No:** Crp No.4035 of 2009

Dudekula Allauddin

APPELLANT

Vs

G. Sivaramakrishna and others

RESPONDENT

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**Date of Decision:** July 13, 2010

**Acts Referred:**

- Stamp Act, 1899 - Article 47A

**Citation:** (2011) 5 ALD 702

**Hon'ble Judges:** G. Bhavani Prasad, J

**Bench:** Single Bench

**Advocate:** K. Lakshman, for the Appellant; Minnikanti Laxmi Prasad, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

G. Bhavani Prasad, J.

The civil revision petition is directed against the order passed by the Senior Civil Judge, Siddipet in OS No.119 of 2007 during the course of examination of PW1 on 27.7.2009 holding the agreement of sale dated 15.2.2006 to be admissible in evidence.

2. When the said agreement was attempted to be marked as Ex.A1 by the Counsel for the plaintiff, the Counsel for the 1st defendant objected to the same contending that there was delivery of property under the agreement consequently requiring payment of stamp duty as per amended Stamp Act, by which Explanation I to Article 47-A of Schedule I-A was introduced and as the document was not accordingly stamped, it is inadmissible in evidence and cannot be marked. The learned Counsel for the 1st defendant before trial Court referred to two precedents, in answer to which the learned Counsel for the plaintiff placed reliance on three precedents referred to in the impugned order. The trial Court passed the impugned order after perusing the document in question, which recited that the vendor gave permission

to the vendee for development activities, which cannot be said to be delivery of possession of the entire property to the purchaser. Following [Pullella Lakshminarayana and Another Vs. Maddimsetti Mukteswara Rao and Another](#), the trial Court concluded the document to be admissible in evidence.

3. The 1st defendant seeks to challenge the said order in this revision contending that the contents of the agreement of sale, dated 15.2.2006 were not considered as a whole by the trial Court, which failed to appreciate that all the rights in the property were given to the 1st defendant for making any transaction with prospective purchasers and though the document is styled as an agreement of sale, possession was delivered to enable the land being developed into plots, to lay roads, to negotiate with prospective purchasers and to enter into agreements. As such, the document was liable to stamp duty as contended by the revision petitioner and the trial Court failed in appreciating the principles laid down by this Court in the precedents cited.

4. Sri K. Lakshman, learned Counsel for the revision petitioner and Sri Minnikanti Laxmi Prasad, learned Counsel for the 1st respondent/plaintiff are heard.

5. The point for consideration is whether the admission of the agreement of sale dated 15.2.2006 into evidence by the trial Court is, ex facie, improper or illegal ?

Point:

6. Sri K. Lakshman, learned Counsel for the revision petitioner referred to [B. Ratnamala Vs. G. Rudramma](#), It was also brought to the notice of the trial Court before it passed the impugned order. The Division Bench was rendering the decision with reference to the amended provision of the Stamp Act, on which reliance is placed now, and referred to the earlier precedents on the aspect to consider in what cases possession can be considered to have been delivered. The Division Bench pointed out that the plain language of the section as per its natural meaning is the true guide and therefore, the main question that falls for consideration is the interpretation of the expressions "followed by or evidencing delivery of possession", which expressions cannot be read in isolation. The Division Bench opined that the true meaning has to be found out by reading the entire Explanation, more so in conjunction with the earlier expression "agreement". The expression "followed by delivery of possession" was, therefore, held to necessarily have a direct nexus to the agreement and the delivery of possession should, therefore, be through the agreement. The Division Bench explained that the delivery of possession should be intimately and inextricably connected with the agreement. The Division Bench distinguished the cases where there was no delivery of possession of the property under an agreement or in other words, possession has not followed the agreement and also the cases where the change in the jural relationship between the parties was also to be taken into account. The Division Bench further referred to the Explanation in question in the Statute taking in all the

situations arising in the circumstances and concluded that any agreement recording delivery of possession should invite stamp duty as a whole.

7. This decision was under consideration of a learned Single Judge of this Court in [S. Vijayalakshmi Vs. Boyapali Santhamma and Another](#), which is relied on by Sri M. Laxmi Prasad, learned Counsel for the 1st respondent and the learned Judge distinguished the case before His Lordship from the case before the Division Bench. The case before the learned Judge was involving an agreement of sale under which the vendee was permitted to make plots and lay roads on the land in question. The power to execute sale deeds in favour of the purchasers was still vested with the vendors and the learned Judge refused to consider such recitals in the agreement of sale as signifying delivery of possession and observed that mere placing of the land in the hands of the vendee for the purpose of dividing it into plots and to lay roads would not constitute handing over of the absolute possession of the land in question and distinguished the decision in *B. Ratnamala v. G. Rudramma* (supra).

8. Keeping these principles laid down by this Court earlier in mind, the examination of the agreement of sale in question does not, in any manner, show the interpretation given by the trial Court to the document to be improper or incorrect. The agreement of sale, dated 15.2.2006 clearly recites that it was only an agreement to sell the land covered by it at a particular price and it clearly further recited that the vendee or any nominee of the vendee is permitted from that day to make the land into house plots and to lay any roads or to indulge in any other development works. Permitting the vendee or his nominees to so plot the land or to lay the roads or to make any other development activities cannot be extended to mean or convey any impression that the possession in full was delivered to the vendee under the document. Even the further recital that the vendee can enter into agreements of sale with any other purchasers in pursuance of this agreement of sale, for which purposes, all the rights relating to the land in question were given by the vendor to the vendee, cannot be considered as dispensing with the necessity of the vendor having to execute a registered sale deed in favour of the vendee or his nominees to convey any valid title over the land. The document itself specifically states about the liability of the vendor to register the land in favour of the vendee clearing any disputes about the title or possession, etc., at his own expense. Therefore, when the right to register the land to convey the title of the land was still reserved with the vendee and what was given to the vendee was only the right to develop the land by dividing it into plots and laying roads, which cannot be considered to be conveying absolute possession, and in the absence of any strong reasons, the principles laid down by the learned Judge in *S. Vijayalakshmi v. B. Santhamma* (supra), cannot be deviated from, which also explains the situations the decision in *B. Ratnamala v. G. Rudramma* (supra) referred to.

9. Sri M. Laxmi Prasad, learned Counsel for the 1st respondent also referred to *N. Sailaja Devi v. District Registrar, Nalgonda District*, 2007 (6) ALD 264, with reference

to the incapacity of the person, who denied the execution of the document, to question the stamp duty payable on that particular document, but if the document, on the face of it and the plain reading of it, is liable to a particular stamp duty, probably it would be the duty of the Court to determine what exact stamp is liable to be paid on the document and what may be the effect of non-payment of such stamp duty and/or penalty on admissibility of the document into evidence. Therefore, it is considered unnecessary to go into that question in depth herein, in view of my other conclusion that the document cannot be considered to be an agreement of sale coupled with delivery of possession liable to stamp duty under the amended provision of the Stamp Act.

10. In view of the above discussion, I find no reason to interfere with the impugned order in exercise of the restricted revisional jurisdiction of this Court and the revision has to fail. Accordingly, the civil revision petition is dismissed. No costs.