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**(1997) 06 AP CK 0008**

**Andhra Pradesh High Court**

**Case No:** CRP No. 2365 of 1997

M.A. Gafoor

APPELLANT

Vs

Mohd. Jani and others

RESPONDENT

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**Date of Decision:** June 29, 1997

**Acts Referred:**

- Stamp Act, 1899 - Article 47

**Citation:** (1999) 1 ALD 159 : (1999) 1 ALT 596

**Hon'ble Judges:** R. Bayapu Reddy, J

**Bench:** Single Bench

**Advocate:** Mr. Mohd. Osman Shaheed, for the Appellant; Mr. Shaik Mahmood Ali, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. This revision is filed by the plaintiff in OS No. 101 of 1991 on the file of the VII Additional Judge, City Civil Court, Hyderabad, questioning the impugned order dated 11-4-1997 passed in IASR No. 1074 of 1997 holding that the suit agreement of sale dated 10-4-1990 is liable to be stamped as a sale-deed as contemplated under Article 47-A of Schedule I-A of the Indian Stamp Act (for short the "Act").

2. The petitioner/plaintiff filed the suit agreement in OS No. 101 of 1991 against the respondents/defendants seeking the relief of specific performance of the suit agreement of sale dated 10-1-1990 said to have been executed in his favour by the 3rd defendant, who is the father of defendants 1 and 2. During the course of his evidence, the plaintiff as PW1 sought to mark the suit agreement as exhibit. Objection was taken for such marking on the ground that it is not duly stamped as contemplated under Article 47-A of the Act for treating the same as a sale-deed. In view of the delivery of possession of the property effected under the said document, the learned VII Additional Judge upheld such objection and treated the document as liable for stamp duty as a sale-deed under Article 47-A of the Act. Questioning the

said order, the present revision is filed by the plaintiff.

3. Heard the learned Counsel for both sides.

Explanation 1 to Section (sic Article) 47-A of Schedule I-A of the Act is as follows:-

"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."

It is clear from the said Explanation 1 that the document even though it is styled as agreement of sale, is liable for Stamp Duty as a sale-deed if (i) such agreement is followed by delivery of possession of the property; or (ii) if such document by itself evidences delivery of possession of the property to the vendee. It is to be seen from a perusal of the evidence in this case whether any of these conditions have been satisfied regarding delivery of possession in the present case.

4. The suit agreement of sale refers in the last para just above the schedule of the property that it was agreed between the parties that the purchaser can retain and collect rent from the schedule property after the agreement of sale of the property and the vendor will in no way interfere or object for the same even if the purchaser sub-lets the premises and collects the rent. It is clear from this recital contained in the agreement that the plaintiff who was already the tenant of the building was specifically permitted to retain the possession and collect the rent from the schedule property subsequent to the execution of the agreement and he was also authorised to sub-let the premises. The agreement does not speak anywhere that delivery of possession of property was effected for the first time under the agreement and as such it does not evidence such delivery of possession. Therefore, the second clause mentioned in Explanation 1 to the effect that the agreement shall evidence delivery of possession of the property to the vendee is not satisfied.

5. With regard to the first aspect as to whether the agreement is followed by delivery of possession, it is to be seen, as stated above, that the disputed agreement of sale does not state anywhere that the delivery of possession followed execution of the agreement. Apart from this, it is the specific case of the respondents themselves that the plaintiff was in possession of the property even prior to the said agreement of sale dated 10-4-1990 as their tenant and committed default in payment of rent and as such they filed RC No.836 of 1990 seeking eviction on the ground of wilful default in payment of rent. When once the tenancy of the petitioner/plaintiff in the suit property even prior to the execution of the sale agreement dated 10-4-1990 is admitted it clearly means that the plaintiff was already in possession of the property even before the agreement was executed as a tenant, and as such in the present case delivery of possession did not follow the execution of the sale-deed.

6. The lower Court appears to have relied upon a declaration said to have been given by the vendor at the time of the execution of the agreement to come to the

opinion that delivery of possession was effected under the agreement. But on perusal of the said declaration, it is nowhere stated that actual physical delivery of possession was effected in pursuance of the said agreement of sale. What is contained in the said declaration is that the vendor delivered vacant and physical possession of the house to the vendee. But the time of alleged delivery of physical possession is not mentioned in the declaration. Apart from that it is specifically mentioned in the said declaration that the vendee, who is the present plaintiff, was the tenant of the building and he shall not, however, pay monthly rent subsequent to the agreement of sale. These averments in the declaration given by the vendor also reveal that the plaintiff was already in possession of the building as tenant and as such the question of delivering of physical possession of the property under the agreement could not have arisen. Evidently, the delivery which is spoken to in the said declaration is only notional delivery after execution of the agreement inasmuch as the plaintiff was already in actual possession of the property as tenant of the building even prior to the agreement. The learned Counsel for the respondents tried to refer to the evidence of the plaintiff who examined as PW1 in part in OS No.101 of 1991 in this connection. But the evidence so far given by the plaintiff does not reveal that physical possession of the building was obtained by him under the said agreement as it was not his case and also not the case of the respondents/defendants. What is stated by him in his evidence by PW1 is that along with the sale agreement the 3rd defendant, who is the vendor, executed a declaration and in that declaration it was mentioned that he should not pay the rent with effect from 10-4-1990 which is the date of agreement. This evidence of PW1 so far given also refers to the payment of rent which was to be given only upto 10-4-1990 which is the date of agreement but not subsequently. The recital about the payment of rent also clearly reveals that he was already staying in the premises as a tenant thereby being in possession of the property.

7. The allegations in the plaint, no doubt, refer that delivery of possession was effected under the agreement. But in the present case, the plaintiff has already filed a petition seeking amendment of plaint in that regard so as to plead that actual delivery of possession was not effected under the agreement. So, under these circumstances, much reliance cannot be placed on such recitals averred in the plaint regarding delivery of possession as it is the specific case of the defendants themselves as well as the plaintiff that the plaintiff was already in possession of the property as tenant and that delivery of physical possession did not follow the execution of the agreement for the first time. So, under the circumstances, Article 47-A, Schedule-I-A of the Act is not attracted in the present case and the lower Court has clearly erred in directing the document to be stamped as a sale-deed. In the circumstances, the impugned order of the lower Court is set aside and the disputed document is not liable for Stamp Duty as a sale transaction as contemplated u/s 47-A of Schedule-I-A of the Act.

8. Accordingly, the revision petition is allowed. No costs.