

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

WRIT PETITION NO.38796/2014 (GM-CPC), DATED:14-02-2019

SRI N B MABEN S/ O LATE SADRACK MABEN VS. SMT RAJASHREE B NAYAK, W/ O LATE DR.K.B.NAIK

ORDER

The plaintiff in OS.No.29/2011 on the file of Principal Senior Civil Judge, Udupi, has come up in this writ petition impugning the order dated 18.6.2014 while refusing to mark the agreement of sale dated 7.10.2009 entered in to between the parties. The parties herein are referred to by their rank in the court below.

2. Admittedly, the suit in OS.No.29/2011 is filed seeking specific performance of agreement dated 7.10.2009 entered in to between the plaintiff and defendant. The recitals in the said agreement would clearly indicate that as on the date of agreement, the plaintiff was in possession and enjoyment of the property in question as a tenant, The defendant being owner of the said property had agreed to convey the same to the plaintiff tenant under the said agreement of sale. In the entire agreement, there is no reference to possession of said property being handed over to the purchaser/plaintiff. Further, there is not even a recital to indicate that from the date of agreement of sale, the plaintiff would continue in possession of the property as purchaser under the agreement of sale.

3. When that being the situation, mere reference to the plaintiff being in possession of the property as a tenant cannot be considered as as delivery delivery of possession under Section 52 of the Transfer of Property Act, 1882 and stamp duty payable should be considered under Article 5 ( e) of the Karnataka Stamp Act, 1959 ( ' the Stamp Act ' for short), consequently hold that the transaction attracts stamp duty under Article 20 of the Stamp Act and call upon the plaintiff to pay deficit stamp duty along with penalty as it was done by the trial court while refusing to mark the said document, is not sustainable.

4. In this proceedings, the learned counsel for respondent/defendant in the court below tried to rely upon the judgment rendered by the Coordinate Bench of this Court in the matter of C.K.Ravi Prasanna -US T.K.Gowramma, reported in ILR 2007 KAR 2807 in support ..... of the order impugned passed by the trial Court in directing the plaintiff to pay the stamp duty and penalty on the agreement of sale as contemplated under Article 5 ( e) of the Stamp Act.

5. However on careful perusal of the said judgment, it is seen that on facts the case on hand and the one decided in the judgment, referred to supra, is distinguishable in as much as there was clear recital in the agreement referred to and relied upon in the said proceedings, where it is seen that the nature of possession of property has changed subsequent to execution of agreement relied upon. Hence, based on the said change in the status of possession, a view is taken that his possession of the property in question is traceable to said agreement. In the instant case the possession of the plaintiff with reference to suit property is that of a tenant

which was subject to tenancy rights of the plaintiff much earlier to the date of sale agreement in question. Admittedly, there is no express change in the nature of his possession to suit property subsequent to execution of agreement of sale. Therefore, that right cannot be equated to the right under Section 52 of the Transfer of Property Act, where as if the possession of the said property is delivered to the plaintiff under the agreement of sale. Therefore, the order impugned is erroneous and the same is required to be set aside.

6. In the result, the present writ petition is allowed. The order dated 18.6.2014 passed in OS.No.29/2011 on the file of Principal Senior Civil Judge, Udupi, is hereby quashed and the trial court is directed to permit the plaintiff in the said suit to produce and mark the agreement of sale dated 17.10.2009 in the said proceedings to rely upon the said document for the suit transaction.