

The High Court of Madhya Pradesh
MP 80/2020
[Rajendra Kumar Agrawal vs. Anil Kumar and Anr.]
Gwalior, dtd. 22/01/2020

Shri B.D. Jain, Counsel for the Petitioner.

Shri S.K. Shrivastava, Counsel for the respondent no.1.

Heard finally.

This Petition under Article 227 of the Constitution of India has been filed against the order dated 2-12-2019 passed by 13th A.D.J., Gwalior in Civil Suit No.(106-A/2013) C.S.No.21-A/2014 by which the objection filed by the petitioner regarding the execution of agreement to sell on an insufficiently stamped paper has been rejected.

(2) The necessary facts for the disposal of the present petition in short are that the respondent no.1 has filed a suit for specific performance of contract. When the Plaintiff tried to exhibit the agreement to sell in his evidence, then an objection was raised with regard to the admissibility of the document on the ground that it is insufficiently stamped.

(3) The Trial Court by the impugned order dated 2-12-2019 has rejected the objection raised by the petitioner.

(4) Challenging the order passed by the Trial Court, it is submitted by the Counsel for the petitioner, that although in the cause title, it is mentioned that the agreement to sell is without possession, but in fact, it is incorrect to say that the agreement to sell was without delivery of possession. By referring to page 3 of the agreement to sell, it is submitted by the Counsel for the petitioner, that since, it is specifically mentioned that after the execution of the agreement to

sell, the status of the respondent no.1 of a tenant would come to an end and the respondent no.1 would become the owner, therefore, it is submitted that the nature of possession of the respondent no.1 was altered after the execution of the agreement to sell, and therefore, it cannot be said that merely because the respondent was already in possession of the property in dispute in the capacity of tenant, therefore, no possession was given at the time of execution of the agreement to sell.

(5) *Per contra*, it is submitted by the Counsel for the respondent no.1, that the respondent no.1, was already in possession of the property in dispute in the capacity of a tenant, and the relationship of the landlord and tenant would not come to an end even after the execution of the agreement to sell, it cannot be said that the possession of the property in dispute was handed over to the respondent no.1. It is further submitted that since, the petitioner has also filed a suit for eviction, therefore, it is clear that the petitioner is still treating the respondent no.1 as his tenant.

(6) Heard the learned Counsel for the parties.

(7) The moot question for determination is that whether the possession of the property in dispute was handed over to the respondent no.1 at the time of execution of agreement to sell or not?

(8) The undisputed fact is that the respondent no.1 was already in possession of the property in dispute in the capacity of the tenant. Agreement to sell (Annexure P/4) was executed on 4-1-2012 for a consideration amount of Rs.25,00,000/-. An advance of Rs.2,00,000/- was paid and the remaining

amount of Rs. 23,00,000/- was payable at the time of agreement to sell.

(9) The cause title of the agreement to sell reads as under :-

**लिखतम विक्रय अनुबंध पत्र
(कब्जा रहित)**

However, para 3 of the agreement reads as under :-

यह कि पक्षकार क्रमांक 2 विरुद्ध पक्षकार क्रमांक 1 ने निष्कासन का वाद न्यायालय त्रयोदशम् व्यवहार न्यायालय वर्ग 2 ग्वालियर के समक्ष मे प्रस्तुत कर रखा है उक्त वाद मे पक्षकार क्रमांक 1 राजेन्द्र कुमार अग्रवाल विक्रय अनुबंध पत्र हो जाने से वापस ले लेगा। पक्षकार क्रमांक 1 विक्रय अनुबंध पत्र हो जान से पक्षकार क्रमांक 2 से किराया जो अनुबंध के पूर्व लिया जा रहा था अनुबंध दिनांक से प्राप्त नही कर सकेगा और किराये का अधिकार पक्षकार क्रमांक 1 के समाप्त हो गये है पक्षकार क्रमांक 2 भवन स्वामी मे परिर्तित हो जायेगा।

(10) Thus, by executing the agreement to sell, the intention of the parties was to terminate the relationship of landlord and tenant. Therefore, the nature of possession of the respondent no.1 also got altered because the relationship of landlord and tenant was terminated and it was also observed that the respondent no.1 shall not be liable to pay rent and the status of the respondent no.1 would be that of owner.

(11) The Supreme Court in the case of **D.S. Parvathamma v. A. Srinivasan**, reported in **(2003) 4 SCC 705** has considered the question as to whether the landlord tenant relationship would come to an end after the execution of agreement to sell or not and has held as under :

"9. Secondly, the appellant has failed to allege and prove that he was delivered possession in part-performance of the contract or he, being already in possession as lessee, continued in possession in part-performance of the agreement to purchase i.e. by mutual agreement between the parties his possession as lessee ceased and commenced

as that of a transferee under the contract. On the contrary, there is a finding recorded in the earlier suit that in spite of his having entered into a contract to purchase the property he had not disowned his character as lessee and he was treated as such by the parties. The judgment dated 1-9-1999 in the civil suit notes the conduct of the plaintiff inconsistent with his conduct as a vendee-in-possession. When a person already in possession of the property in some other capacity enters into a contract to purchase the property, to confer the benefit of protecting possession under the plea of part-performance, his act effective from that day must be consistent with the contract alleged and also such as cannot be referred to the preceding title. The High Court of Madhya Pradesh had occasion to deal with the facts very near to the facts before us in *Bhagwandas Parsadilal v. Surajmal*. A tenant-in-possession entered into an agreement to purchase the house forming the subject-matter of tenancy. However, he failed to show his nature of possession having altered from that of a tenant into that of a transferee. In a suit of ejectment based on landlord-tenant relationship, the tenant sought to protect his possession by raising the plea of part-performance as against the subsequent purchaser of the property. Referring to Section 91 of the Indian Trusts Act, the High Court held that a subsequent purchaser of the property with notice of an existing contract affecting that property must hold the property for the benefit of the person in whose favour the prior agreement to sell has been executed to the extent it is necessary to give effect to that contract. But that does not mean that till a final decision has been reached the contract creates a right in the person-in-possession i.e. the tenant, to refuse to surrender possession of the premises even if such possession was obtained by him not in part-performance of the contract but in his capacity as a tenant. Having entered into possession as a tenant and having continued to remain in possession in that capacity he cannot be heard to say that by reason of the agreement to sell his possession was no longer that of a tenant. (Also see *Dakshinamurthi Mudaliar v. Dhanakoti Amma* and *A.M.A. Sultan v. Seydu Zohra Beev.*) In our opinion the law has been correctly stated by the High Court of Madhya Pradesh in the abovesaid decision."

(Underline applied)

The Supreme Court in the case of **H.K. Sharma v. Ram Lal**, reported in (2019) 4 SCC 153 has held as under :

22. The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.

23. In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.

24. In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease — whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.

(Underline applied)

(12) If the above referred clause of the agreement to sell is considered, then it is clear that there was a clear intention of the parties to terminate the landlord tenant relationship and the possession of the respondent was altered from that of tenant to that of transferee under the contract. Thus, it is held that although the agreement to sell was termed as **without possession** but in fact the possession of the property in dispute was delivered to the respondent no.1 in the capacity of transferee under contract.

(13) Now, the next question which arises for consideration is that whether 1% stamp duty would be payable on the agreement to sell or the agreement to sell is a conveyance with delivery of possession.

(14) The above mentioned question is no more *res integra*.

(15) This Court in the case of **Narendra Patel and others Vs. State of M.P. And others** by order dated 10-4-2019 passed in W.P. No. 1777 of 2019 has held as under :

“Conveyance” has been defined in Section 2(10) of Indian Stamp Act, which reads as under :

"(10) Conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule 1 or by Schedule 1-A, as the case may be."

A Division Bench of this Court in the case of **Umesh Vs. Rajaram** reported in (2010) 2 MPLJ 104 has held as under :-

"16..... If the agreement is in relation to the property or sale of the same, then ordinarily the stamp duty payable would be Rs. 50/-, but in case, the document contains a recital that the possession of the property has been already been transferred or handed over to the proposed purchaser, without executing a conveyance or it shall be handed over to the purchaser without execution of the conveyance in future, then the document shall come out of the definition of an 'agreement', but would become a 'conveyance', as provided under Article 23 of Schedule 1-A.

(Emphasis supplied)"

Thus, this Court is of the considered opinion, that the Collector Stamps did not commit any mistake in holding that where the agreement to sell contains the recital that the possession of the property is already with the intending purchaser then the document would come out of the definition of agreement and would become a conveyance and hence is chargeable under Article 5(e)(i) of Schedule 1-A of Stamp Act.

(16) In the present case since, the possession of the respondent no.1 was altered from that of tenant to that of transferee under contract, therefore, this Court is of the considered opinion, that the agreement to sell would be a conveyance and hence, it was insufficiently stamped. Merely because the agreement to sell is a registered document, therefore, it does not mean, that the sufficiency of the stamp duty cannot be looked into by the Court.

(17) Accordingly, it is held that the agreement to sell is a conveyance and is chargeable under Article 5(3)(i) of Schedule 1-A of Stamp Act.

(18) Resultantly, the order dated 2-12-2019 passed by 13th A.D.J., Gwalior in Civil Suit No.(106-A/2013) C.S. No.21-A/2014 is hereby set aside.

(19) The petition succeeds and is hereby **Allowed**.

(G. S. Ahluwalia)
Judge