

**W. P. No.4638/2014****27.10.2016**

Shri M. Aadil Usmani, learned counsel for the petitioner.

None for the respondent.

Heard.

Petitioners/Defendants No.1 and 2 take exception to order dated 21.02.2014 passed in Civil Suit no.5-A/2012; whereby, the trial Court while declining petitioner's objection against admitting an insufficiently stamped instrument has directed that 1% Stamp Duty be paid by the plaintiff before it is admitted in evidence. The instrument dated 22.02.2008 is an agreement for sale of 16 acres of agriculture land. The suit is for specific performance of part of the land (2.5 acres) out of 16 acres, as for the rest of the land the sale deed is already executed. (this fact is borne out from paragraph 6 of the plaint).

Petitioners raised objection as to admissibility of insufficiently stamped document. The trial Court vide impugned order taking into consideration the fact that

the agreement of sale of land is without possession, applied the rate applicable to such agreement as provided under Article 5 (e) (2) of Schedule I A of the Stamp Act, 1899, and in purported exercise of power under Proviso (a) to sub-section (1) of Section 35 of the Act of 1899, directed the plaintiff to deposit 1% stamp duty on Rs.1,80,000/- being the consideration towards 2.5 acres.

Petitioner takes exception to this order on the anvil of the provisions contained under Section 33 and Section 38 of the Stamp Act which mandates that on presentation of unstamped/understamped instrument the same be impounded to be sent to the Collector for its authentication. It is further contended that the trial Court ought to have relied upon the recital of the instrument rather than the pleading in the plaint and should have called upon the plaintiff to pay stamp duty on the entire amount mentioned therein i.e., Rs.21,30,000/-

Taking up the later submission first, true it is as has been held in *Omprakash v. Laxminarayan and others*: (2014) 1 SCC 618 that at the time of

considering the question of admissibility of a document it is the recital(s) therein which shall govern the issue. However, in the case at hand it being not in dispute that the agreement for sale in question was for 16 acres of agriculture land out of which sale deed of 13.5 acres was already executed and it was for remaining 2.5 acres the suit for specific performance is filed.

Article 25 of Schedule I A of Indian Stamp Act refer to conveyance with an added explanation vide proviso (c) that where an agreement to sell an immovable property is stamped with ad-valorem duty required for a conveyance and a sale deed in pursuance of such agreement is subsequently executed, the duty on such sale deed shall be the duty payable under the Article less the duty already paid, subject to a minimum of Rs.1000.

Thus, in a case as the present one wherein in furtherance to an agreement of sale, there is part performance and the suit is filed for the part not performed, the plaintiff is not liable to pay the stamp duty even for the part of agreement which has

culminated into a sale deed. Therefore, the contention that the recital in the agreement to sale ought to have been the basis for the determination of stamp duty, in the given facts of present case, cannot be accepted. Contentions therefore, fails.

Now coming to the course adhered to by the trial Court in directing the plaintiff to deposit 1% of Rs.1,80,000/- towards stamp duty Section 35 of the Act 1899 provides for that:

“35- 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 <sup>33</sup>[with a duty not exceeding ten naye paise] only, or a bill of exchange or promissory note, 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 any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) 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;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

Thus, it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall 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 penalty.

It has been held in Avinash Kumar Chauhan v. Vijay Krishna Mishra: (2009) 2 SCC 532:

“22- We have noticed heretofore that [Section 33](#) of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of [Section 35](#) of the Act.

In view whereof, the mode adhered to by the trial Court being in consonance with the provisions contained under Section 35 of the Act of 1899, no exception could be caused.

Consequently, petition fails and is **dismissed**.  
No costs.

**(SANJAY YADAV)**  
**JUDGE**

Loretta