THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.R.P.Nos.2754 AND 2755 OF 2015

ORDER:

The revision C.R.P.No.2754 of 2015 is filed by the defendants in O.S.No.231 of 2012 on the file of the Prl.Junior Civil Judge, Proddutur against the plaintiff impugning the order dated 11.06.2015 in O.S.No.231 of 2012 while the revision C.R.P.No.2755 of 2015 is filed by the plaintiff in O.S.No.214 of 2012 in the same Court against the defendant (who is 2nd plaintiff in O.S.No.231 of 2012) impugning the order dated 11.06.2015 in O.S.No.214 of 2012.

2. Since both the suits on the file of the trial Court are same subject matter both are taken up to pass common order.

3. Heard the learned counsel for the respective petitioners in both the revisions before admission and before notice to the respective respondents and perused the material on record.

4. The revisions are maintained impugning the order of the lower Court while recording the chief–examination deposition of the D.W.1 in continuation of chief examination affidavit of the said witness D.W.1-2nd defendant taken on oath. In the chief examination affidavit running in six pages of the witness V.Chinnakka(2nd defendant in O.S.No.231 of 2012) referred two documents, one is certified copy of agreement of sale dated 24.09.2012 and the other is certified copy of registered sale deed No.8465 of 2012 dated 17.10.2012 and in the further chief examination dated 11.06.2015, certified copy of the registered sale deed which is the document No.2 dated 17.10.2012 is marked as Ex.B.2. In fact in the chief examination end, it is referred as Ex.B.2. The contract for sale (possessory) dated 24.09.2012 (not the original but claimed certified copy) which is the document No.1 in the list of the chief examination affidavit when wanted to be exhibited in the course of recording the further chief examination, there was objection raised rightly by the other side for the purpose of marking stating that the so called contract for sale

(possessory) no way made reference in the sale deed and further the sale consideration mentioned in the possessory sale agreement is not correlating the sale consideration mentioned in the sale deed supra. The counsel for the plaintiff themselves relying upon the expression in **V.Dharma Rao Vs. S.Hari Ram**[1] in which is it is held that "*Whenever the stamp duty is collected on an agreement of sale, the same is taken into account at the time of levying stamp duty on sale deed. The effort is to ensure that the stamp duty on the entire transaction does not exceed the prescribed limit. Where, however, the entire stamp duty is collected on the sale deed, levy of stamp duty on an agreement of sale, which preceded the sale deed, under any pretext, would result in subjecting the transaction for stamp duty, over and above what is prescribed under law. Such a course of action is impermissible*." Before the learned Judge observed that there is no dispute of the proposition in the judgment but for to say here the sale agreement is mentioned for a consideration of Rs.95,000/- (possessory) dated 24.09.2012 whereas the sale deed it is mentioned only of Rs.31,000/-(Ex.A.1=B.2) and thereby the same is liable for deficit stamp duty with penalty. Even from the said proposition what the law laid down is the outer limit of the value prescribed in the agreement as well as sale deed must be impounded and it was not exceeded outer limit value. When such is the case, other than sale deed when the parties want to rely for whatever the purpose, it is not duly stamped as a possessory sale agreement liable for stamp duty as conveyance i.e. sale deed the stamp duty from the law is very clear that once the sale deed stamp duty is paid as the possessory sale deed can be engrossed of Rs. 5 stamped. Here that is not the case for not duly stamped. Explanation II to Article 47-A in schedule-I-A of the Indian Stamp Act, is also very clear in this regard. Thus, the trial Court was right in refusing the exhibit the so called possessory sale agreement. In fact, there is a further important aspect that requires consideration under Section 2(14) of the Stamp Act, defines 'instrument' Section 2(15) defines 'instrument and parties' specifically. As per the Section 2(14) leave about

215, it is the original document that is to be called as instrument. The stamp duty to be impounded on the instrument. The original possessory sale agreement not even filed. Even filed, it can be impounded, if not filed once it is not instrument, the question of impounding does not arise. Collateral purpose is unknown to the Stamp Act but for by virtue of Section 49 of the Registration Act for unregistered document relating without nature of possession etc. When such is the case, even the certified copy or copies whatever it may be which is not an original, it cannot be allowed to be exhibited without production of original for impounding and without impounding or even without any request to refer the document to the District Registrar for impounding as if it is impounding for the Court on the original document say levying 10 times penalty on the stamp duty payable as per the face value of the agreement with original stamp deficit and if paid to collect and engross and mark a copy of the same to the District Registrar for information and if sought for referring to the District Registrar instead of paying stamp duty before this Court. The Court has to send the original document to the District Registrar and the District Registrar has to collect the stamp duty without even impounding with any 10 times penalty but for within the discretion who reduces and wants certified as stamp duty collected that is the end of that Court has no right to even reopen. The law is very clear in the expression of the Apex Court in **Chilukuri Gangulappa Vs. RDO, Madanapalle**[2] of it is not even the case that the original is in the custody of the 3rd party to be summoned. It is stated that the original is filed in the another suit. When such is the case, the remedy is to file an application to send for the document from the another suit record where original stated lying for the purpose of impounding for not a case that it was impounded in another suit to obtain certified copy and exhibit herein.

5.Having regard to the above, an unstamped and insufficiently stamped document when cannot be allowed to be exhibited, the lower Court is right in refusing to exhibit the same.

6. Having regard to the above, there is no irregularity or illegality in the order of the lower Court in refusing to exhibit the unstamped/insufficiently stamped possessory sale agreement with a face value of Rs.95,000/- merely because a subsequent sale deed is obtained with a value of only Rs.31,000/- without preparing to pay the deficit stamp duty for Rs.64,000/- with respective penalty as the case may be.

7. Accordingly, both the C.R.P.Nos.2754 and 2755 of 2015 are disposed of Consequently, miscellaneous petitions, if any, pending in these revisions shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:17.07.2015
Vvr.

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[1] 2004(6) ALT 802

[2] 2001(4) SCC 197