THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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CIVIL REVISION PETITION No.1134 of 2015

ORDER:

The defendant Nos.1, 3, 5 and 6 in the suit are the petitioners in this revision. The 1st respondent herein was the plaintiff, who instituted the suit for injunction. The plaintiff has taken out I.A.No.63 of 2015 in O.S.No.3 of 2007 requiring the Court to send the document dated 12.08.1993 to the District Registrar, Kakinada for impounding as it was not sufficiently stamped.

It was the claim of the plaintiff, who is the petitioner in I.A.No.63 of 2015 that the document is required to be stamped properly and hence it is required to be impounded by the District Registrar, so that penalty can be paid thereon.

The objection raised by the learned counsel for the petitioners is that the document is liable to be compulsorily registered in terms of and in accordance with Section 17 of the Registration Act, 1908. With out the document being registered, it is not admissible in evidence. Therefore, so long as the document is not registered, the question of impounding the same to suffer stamp duty would not arise.

Learned counsel for the petitioner in support of his plea, has placed reliance upon the judgment rendered by this Court in ***"Golla Dharmanna v. Sakari Poshetty @ Wadoor Poshetty and others***".

It will be appropriate to notice that certain classes of documents are required to suffer the stamp duty and certain classes of documents are also liable to be compulsorily registered. They are two different and independent aspects. Merely because a document is properly stamped, it does not become automatically admissible in evidence, if such a document is also compulsorily liable to be registered. The question of registration of a document would arise only after the document has suffered proper stamp duty. This apart the Court would be examining as to whether an attempt is made to mark the document for establishing the main purpose of the controversy in the suit or for collateral purpose. That question would be examined at the relevant point of time, as was pointed out by the Supreme Court in "K.B.Saha and Sons Pvt.Ltd v. Development Consultant Ltd [2008 (6) ALD 92

(SC)].

It should be remembered that in paragraph No.12 of the judgment rendered in "Golla Dharmanna v. Sakari Poshetty @ Wadoor Poshetty and others" (referred 1 supra) the learned Judge rightly noticed the distinction between these two facets in the following words:

> "I am also unable to accept the contention of the Counsel for petitioner that because the requisite stamp duty and penalty has been paid by petitioner, in view of Section 35(a) of the Indian Stamp Act, 1899, the said document should have been admitted in evidence by the trial Court. This contention of the petitioner is misconceived because an objection as to the admissibility of a document on the ground that it is not stamped or not properly stamped in accordance with provisions of the Indian Stamp Act, 1899 is different fundamentally from an objection to the admissibility of a document on the ground that it is unregistered. Merely because stamp duty and penalty have been paid and the provisions of the Indian Stamp Act, 1899 have been complied with, it would not automatically make the said document admissible in evidence, if as per law, the said document is also required to be registered.

I am, therefore, of the opinion that there is no merit in the revision and it is accordingly dismissed. No order as to costs.

The miscellaneous petitions, if any pending in this revision, shall stand closed.

However, the Court below would examine before the document dated 12.08.1993 is received and admitted in evidence as to whether it should be compulsorily registered or not.

JUSTICE NOOTY RAMAMOHANA RAO

Date: 25-03-2015

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