

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
CIVIL REVISION PETITION No.1714 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The petitioner herein is plaintiff in O.S.No.36 of 2011 on the file of the Court of Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar (for short, trial Court). In the said suit, the petitioner filed I.A.No.791 of 2012 under Section 38 (2) of the Indian Stamp Act, 1899 (for short, the Act) seeking to send an agreement of sale dated 08.12.1994 to the District Collector, Ranga Reddy District for impounding the same. The said agreement appears to have been an agreement of sale with possession and it was unregistered. A counter affidavit was filed in the said application stating that the issues were already framed in the suit and it is coming up for trial, and in order to avoid the cross examination, the said application was filed.

3. The trial Court observed that the petitioner has already filed chief affidavit and marked certain documents. Ultimately, the trial Court commented as follows:

“...Admittedly, the alleged document sought for impounding is said to have executed in the year 1994. Subsequently, there is a registered sale deed in favour of respondent No.2 which is registered and admittedly unregistered document do not confer any title in respect of immovable property in par with a registered document. Admittedly, this suit is filed for simplicitor injunction and not for any declaration of title or possession and in an injunction suit the plaintiff has to establish that he was in actual and lawful possession of suit property as on date of filing suit. Admittedly, trial in the suit is already commenced and when there is already a registered sale deed in favour of respondent No.2, in such case even if the present unregistered agreement of sale is sent for any regularization that would not create better title in favour of petitioner from the date of execution of the said document thereby over riding the title of respondent No.2. It is further seen that even after filing written statement by defendants No.1 & 2, the petitioner does not appear to have filed any rejoinder thereby challenging the sale deed in favour respondent No.2. In these circumstances, if the

present petition is allowed at this juncture, then it would further drag the disposal of the suit for considerably long time and even otherwise in view of the above discussed evidence, it is not felt that this is a fit case to permit the petitioner to impound the said agreement of sale and send it to the District Registrar for any collection of deficit stamp duty or other charges. In view of the above discussed evidence, it is held that the present petition of the petitioner is not maintainable at this juncture and the same is liable to be dismissed...”

Accordingly, the trial Court dismissed the said application, by order dated 23.01.2015. Challenging the said order, the present Civil Revision Petition is filed.

4. Section 38 of the Act deals with two situations. Section 38(1) provides for the cases where the document was already impounded and Section 38(2) deals with other cases. It is not clear from the impugned order whether the document, which is now sought to be sent to the District Collector, was already impounded or not. Without indicating the same, the trial Court went into the aspects and made certain observations which are not relevant for the purpose of deciding the application.

5. In the circumstances, this Court is constrained to set aside the order of the trial Court dated 23.01.2015 in I.A.No.791 of 2012 in O.S.No.36 of 2011 and it is remanded to the trial Court for passing fresh orders in accordance with law, after giving due opportunity to both the parties.

6. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 17.12.2015
TJMR