

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos. 3162 and 3163 of 2013

COMMON ORDER:

The petitioners herein are the successors of the plaintiff who died on 02.01.2015. The original plaintiff filed O.S.No.368 of 2007 on the file of the V Additional District Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, seeking a declaration that she is the absolute owner of the suit schedule property admeasuring Ac.0.28 guntas in Survey No.76 situated at Madinaguda Village, Srilingampally Mandal, R.R. District, and the document of sale dated 25.10.1980 in favour of the 1st defendant and the documents in favour of the defendants 2 to 13 are not at all binding and enforceable against the plaintiff. The 1st defendant filed a written statement along with Exs.B.1 to B.35. The said written statement was adopted by the defendants 10 to 13 by filing a Memo on 13.12.2007. The 9th defendant filed a separate written statement. On 15.03.2013 the right of the defendants 1, 10 and 11 to file further documents was forfeited. Thereafter, the defendants 1, 10 and 11 filed I.A.No.101 of 2013 seeking permission to file a document i.e., agreement of sale dated 25.10.1980 on their behalf. I.A.Nos.102 and 103 of 2013 were filed to receive the said document by condoning the delay and to recall D.W.1 for the purpose of marking the said document, respectively. All the above three applications were allowed by common order dated 04.04.2013. Challenging which, the present civil revision petitions are filed.

2. The document in dispute is a zerox copy of agreement of sale dated 25.10.1980 obtained under Right to Information Act. When the said document was sought to be marked during the chief-examination of D.W.1, the same was objected by the plaintiff on the ground that it was not properly stamped and unregistered. The petitioners have not followed the procedure for receipt of secondary evidence also. The counsel for the respondents herein stated before the trial Court that the original of the unregistered sale deed dated 25.10.1980 was filed in O.S.No.126 of 2008 pending before the same Court. However, the respondents herein are stating that the original of the agreement of sale was handed over to D.2 to D.6. The trial Court

passed the following order:

"It is true as contended by the counsel for 1st respondent that the document which ought to be produced by the defendant under Order VIII Rule 1(A) (3) CPC and is not so produced, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit that the present application is filed only to receive the document in question seeking permission. It is also true that the document in question is not an original document. It is a copy obtained from the District Registrar under R.T.I. Act. As stated by him, it ought to have been filed with an application under Section 65 of Indian Evidence Act to receive it as secondary evidence, stating the reasons for not being able to obtain the original document. It is also true that the party who is in possession of the original document could have been summoned through Court to produce the document. It is further submitted by counsel for the 1st respondent the evidentiary value of a copy obtaining under R.T.C. Act is still to be settled by law. Apart from the above, the sale deed not only requires to be paid with stamp duty under Stamp Act but is also required to be registered. It appears the document in question is not a registered document but there is compliance under Stamp Act only.

It is to be further stated as stated by the counsel for respondents, a docket order is passed by this Court on 19.03.2013 forfeiting the right of the petitioners to mark further documents. It is to be stated a zerox copy of the document in question was already filed before the Court earlier to it. Now what is filed before the Court is a copy of the sale deed obtained under R.T.I. Act. Therefore, it is not a new document. It is to be stated that it is settled law that any document produced before the Court has to be received in evidence except the document which is required to be paid necessary stamp duty before receiving it. The document in question as already stated complied with the requirements of the Stamp Act. Whether the document in question has no evidentiary value for the reason that it is not registered as required in case of a sale deed of immovable property can be decided during the course of trial and arguments along with the question whether the copy of document issued under R.T.I. Act has any evidentiary value. The Court is of the opinion that at this juncture filing and marking of the document in question need not be prevented. The three petitions are accordingly allowed but in view of the circumstances on payment of costs of Rs.1,000/- payable to 1st respondent."

3. Since the document produced before the Court is only a copy of agreement of sale obtained under R.T.I. Act, the Court would not be in a position to examine whether the requirements of Stamp Act are complied with or not, and the Court has to see whether the said document can be received as secondary evidence, or whether the petitioners have taken necessary steps for calling for the original document from the record in another suit. The Court has also to consider whether the present document can be considered as secondary evidence or not. These aspects are not explained clearly in the impugned order. The trial Court assumed

that since the document produced is only a copy of sale deed and it was not a new document and since the document in question already complied with the requirements of the Stamp Act, the correctness to the extent of proof and relevancy can be considered at the time of trial and arguments. The trial Court is correct to the extent of examining proof and relevancy but not the objection to the marking of document. The objections raised by the petitioners herein have to be considered at the stage of marking the document. This Court has elaborately considered the said issue in ***G. Sudhaker Reddy Vs. M. Pullaiah***.

4. In view of the same, C.R.P.No.3162 of 2013 is allowed and the impugned order passed by the learned V Additional District Judge (Fast Track Court), R. R. District at L.B. Nagar in I.A.No.101 of 2013 is set aside and the matter is remanded to the said Court for consideration of the objections filed by the petitioners and passing fresh orders, in accordance with law, within a period of thirty (30) days, after hearing both sides. Since the issue involved is with regard to the admissibility of the document, this Court is of the opinion that no orders need to be passed in C.R.P.No.3163 of 2013 which arises out of I.A.No.102 of 2013 and, accordingly, the same is dismissed.

3. Consequently, interim order granted in C.R.P.No.3163 of 2013 is vacated and miscellaneous petitions, if any, pending in both the civil revision petitions shall stand dismissed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

12th November, 2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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