

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.37 of 2014

ORDER:

Plaintiff in O.S.No.74 of 2005 on the file of the Court of Senior Civil Judge, Peddapally, Karimnagar District is the petitioner in the present revision filed under Article 227 of Constitution of India.

This revision challenges the order, dated 04-10-2013 passed by the said Court, dismissing I.A.No.1814 of 2012 filed by the petitioner herein under the provisions of Section 35 of the Indian Stamp Act r/w.151 of the Code of Civil Procedure.

Heard Sri Ram Chander Rao Vemuganti, learned counsel for the petitioner and Sri G. Madhusudhan Reddy, learned counsel for the respondent No.2 apart from perusing the material available before this Court.

The petitioner herein filed O.S.No.74 of 2005 seeking following reliefs:

1. *Decree directing defendants, to execute registered sale deed in favour of the plaintiff in respect of suit schedule house and suit land by stipulating time limit. If the defendant fails to do so the Hon'ble Court may be pleased to execute the registered sale deed by itself in favour of the plaintiff.*
2. *Decree directing the defendants perpetually restraining them from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule house and land.*
3. *Costs of the suit.*
4. *Alternative relief if any, available to the plaintiff may be awarded to him in the circumstances of the case U/s.7 Rule 7 of C.P.C.*

The suit schedule property is an extent of Ac.0-07 gts., of land, consisting of house bearing No.2-11 of Odela Village and mandal, Karimnagar District. In the said suit the plaintiff/petitioner herein filed I.A.No.1814 of 2012 under the provisions of Section 35 of the Indian Stamp Act r/w.151 of C.P.C. seeking to impound the un-registered sale deed, dated 12-09-2004 by treating the same as mere agreement of sale without delivery of possession but not as out and out sale deed. The learned Senior Civil Judge by virtue of impugned order dismissed the said application.

Calling in question the validity and legal sustainability of the said order passed by the learned Senior Civil Judge the present revision has been filed.

It is contended by the learned counsel for the petitioner that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit and object of provisions of Section 35 of the Indian Stamp Act r/w.151 of C.P.C. It is further contended by the learned counsel that had the contents of the affidavit filed in support of the present application been considered from proper perspective, order impugned in the present revision would not have emanated. It is further contended by the learned counsel that the learned Senior Civil Judge grossly erred in not considering the application and the order impugned in the present revision is contrary to the principles laid down in various pronouncements.

To bolster his submissions and contentions, learned

counsel for the petitioner placed reliance on **CHERYALA SRINIVAS V. MOOLA SUJATHA AND OTHERS**^[1], **E. PADMA RAO @ VADLA PADMA RAO AND OTHERS V. VIJAY KUMAR AND ANOTHER**^[2] and **KARUMURI RAMATHEERTHAM AND ANOTHER V. TIPPAVATHI SESHACHALAM (DIED) BY LRS.**^[3].

On the contrary, it is argued by the learned counsel for the second respondent that the Court below is perfectly justified in dismissing the application and there is no illegality nor any jurisdictional error in the order passed by the Court below and in the absence of the same the present revision filed under Article 227 of the Constitution of India is not maintainable.

It is further contended by the learned counsel that having failed to question the order, dated 03-08-2005, ordering impounding of the document by the Court below, it is absolutely not open for the petitioner herein to file the present application and the present application is only an attempt to drag on the proceedings to the extent possible.

Learned counsel for the second respondent in support of his submissions and contentions, takes the support of judgments in **OMPRAKASH V. LAXMINARAYANA AND OTHERS**^[4] and **AMBARI MOHINI (DIED) AND ANOTHER V. PEDDIREDDY BHAGYAMMA**^[5].

In the above background now the issues that emerge for consideration in the present revision are:

1. *Whether the order under challenge suffers from any infirmity?*
2. *Whether the order under challenge warrants any correction by this Court under Article 227 of the Constitution of India?*

A perusal of the material available before this Court candidly discloses that the petitioner herein instituted O.S.No.74 of 2005 on the file of the Court of the learned Senior Civil Judge, Peddapally for a direction to the defendants to execute a registered sale deed and also for perpetual injunction to restrain the defendants from interfering with the peaceful possession and enjoyment over the suit house and the land.

It is also clear from the material on record that the learned Senior Civil Judge on 03-08-2005 passed an order, impounding the subject document by fixing an amount of Rs.90,816/-. It is also an admitted fact that the petitioner herein did not question the said order, dated 03-08-2005, wherein the learned Senior Civil Judge ordered impounding of the document. It is also an admitted reality that the petitioner herein filed the present revision on 24-12-2013 when the suit was coming up for trial.

There is absolutely no dispute with regard to the principles laid down in the judgments cited by the learned Advocate, appearing for the petitioner as well as the second respondent. But the fact remains that the above said order, dated 03-08-2005 passed by the learned Senior Civil Judge has never been challenged by the petitioner herein.

A perusal of the order impugned further discloses that the

Court below categorically observed that the petitioner is at liberty to challenge the impounding done by the Court under due process of law. It is a settled preposition of law that unless the order impugned suffers from jurisdictional error, the jurisdiction of this Court under Article 227 of the Constitution of India is not available. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the order under challenge in the present revision does not suffer from any infirmity, which warrants interference of this Court under Article 227 of the Constitution of India.

For the aforesaid reasons and having regard to the findings and the reasons and the observations recorded by the Court below, the Civil Revision Petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SETHA SAI, J

February 18, 2015

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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[\[1\]](#) 2010 (1) ALD 246

[\[2\]](#) 2013 (2) ALT 413

[\[3\]](#) 2012 (1) ALD 612

[\[4\]](#) 2014 (1) ALD 83 (SC)

[\[5\]](#) 2014 (6) ALD 229