

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.790 of 2010

ORDER :

This Revision is filed challenging the order dt.18.12.2009 in O.S.No.228 of 2005 on the file of Chief Judge, City Civil Court, Hyderabad.

2. The suit was filed by petitioners against respondents for recovery of a sum of Rs.13,60,000/- with interest at the rate of 12% per annum from the date of filing of the suit till realization of costs.

3. Respondent nos.1, 3 and 5 were set *ex parte*.

4. The 2nd respondent engaged a counsel. No written statements were filed by any of the respondents.

5. Issues were framed. Affidavit-in-lieu of examination of PW.1 was filed. At that stage, the petitioner's counsel sought to mark a Memorandum of Understanding dt.06.06.2002 and an agreement of sale dt.10.10.1996 on behalf of petitioners.

6. The court below, by the impugned order, refused to mark those documents. In the said order it mentioned that at the time of numbering of the suit, the Office of the Chief Judge had taken an objection with regard to stamp duty and penalty on these documents on 06.06.2005, and

without paying the same, the counsel is intending to mark them by raising the plea that stamp duty and penalty are not payable on these documents, and this cannot be permitted.

7. A memo was filed before the Court below pointing out that at the time when objection was taken by the Office of Court about stamp duty and penalty, the petitioners had stated that if the documents required duty and penalty they would pay it. But they contended that the agreement of sale is properly stamped and no stamp duty or registration fees is required to be paid therein. They also relied on **Javvadi Koteswara Rao v. Sonti Sambasiva Rao**^[1], **Pechitti Ramakrishna v. Nekkanti Venkata Manohara Rao**^[2] and **Dhumthi Ekambareswarappa v. T. Shambulingappa and another**^[3] in support of their above plea.

8. However, the court below did not consider this memo and held that there was no question of setting aside its earlier order dt.06.06.2005 directing petitioners to pay the stamp duty and penalty on both these documents.

9. There is no dispute that at the time when a suit is to be numbered, the court below is supposed to ensure that proper court fee is paid on the relief claimed in the suit. Documents would be filed by the plaintiff along with

the plaint. But, at that stage, the Court is not supposed to go into the adequacy of stamp duty on the documents sought to be filed along with the plaint or into the question whether the said documents require registration or not.

10. Therefore, the order dt.06.06.2005 passed on the Office objection of Court below directing stamp duty and penalty to be paid on these documents is totally without jurisdiction. Merely because such an order was passed at the time of numbering of suit, the Court below cannot refuse to consider the question whether the said documents, in fact, are insufficiently stamped or not at the time when they are sought to be marked in evidence. The impugned order also does not indicate on what basis the Court below had come to the conclusion that the documents sought to be marked by petitioners are insufficiently stamped and that deficit stamp duty and penalty are payable thereon.

11. In this view of the matter, the order dt.18.12.2009 as well as the order dt.06.06.2005 passed by the Chief Judge, City Civil Court, Hyderabad in O.S.No.228 of 2005 is set aside.

12. The Court below is directed to apply its mind to the question whether the documents in question sought to be marked by petitioners are adequately stamped as per the provisions of the Indian Stamp Act, 1899 or not and if it is of the opinion that they are not properly stamped, it shall

pass a reasoned order after considering the objections raised by petitioners in the suit. The said exercise shall be completed within a period of four (04) weeks from the date of receipt of a copy of this order. Accordingly, the Revision is allowed. No order as to costs.

13. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-06-2015

Ndr/*

[\[1\]](#) 2004 (1) ALD 629

[\[2\]](#) 2004 (1) ALD 557

[\[3\]](#) AIR 2008 AP 161