

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.4054 of 2015

ORDER:

The petitioner is the plaintiff in O.S.No.57 of 2002 on the file of the learned Senior Civil Judge, Tadepalligudem. The said suit was filed for partition of the suit schedule properties. He filed I.A.No.726 of 2015 in the said suit under Order VII Rule 14(3) C.P.C. to condone the delay in filing certain documents and to receive the same and mark them as exhibits on his behalf. By order dated 23.07.2015, the trial Court allowed the I.A. insofar as the marking of the document at Serial No.1 of the petition was concerned and with respect to marking of the documents at Serial Nos.2 to 8, the I.A. was dismissed. Aggrieved by such dismissal, the petitioner/plaintiff is before this Court by way of this revision filed under Article 227 of the Constitution.

Respondent Nos.1, 3 and 4, despite service of notice, did not enter appearance before this Court either in person or through learned counsel. Respondent No.2 is shown to have expired, while respondent No.5 is a proforma party.

Perusal of the order under revision reflects that the documents at Serial Nos.2 to 8 of the I.A. were discharged promissory notes. The only ground for refusing to accept these documents was the trial Court's opinion that they were invalid documents as they were not properly stamped. Reference in this regard was made to Section 118 of the Negotiable Instruments Act, 1881. As regards stamping, Section 118 (f) clearly states that a lost promissory note, bill of exchange or cheque shall be presumed to have been duly stamped. This provision therefore had no application whatsoever. That apart, photocopies of the documents at Serial Nos.2 to 8 are placed before this Court and they reflect that the discharged promissory notes bear blank spaces in the signature portions, where, obviously, stamps had been affixed earlier.

As rightly pointed out by Sri M.P.Chandramouli, learned

counsel for the petitioner/plaintiff, upon discharge of the promissory note, the revenue stamp affixed thereon is either struck off by pen or is physically removed. In the documents in question, the stamps seem to have been physically removed and in some, the vestige of the stamp partially removed still remains. In that view of the matter, the finding of the trial Court that these documents were not stamped properly is not borne out. That apart, the petitioner/plaintiff is not seeking enforcement of these negotiable instruments and they are only sought to be marked in evidence in a partition suit. Therefore, the trial Court ought not to have shut out these documents on untenable grounds.

The order under revision is therefore unsustainable on facts and in law and is accordingly set aside.

The Civil Revision Petition is allowed directing the trial Court to accept the discharged promissory notes mentioned at Serial Nos.2 to 8 of the I.A. as the delay in production thereof has already been condoned in the context of the document at Serial No.1 of the said I.A., which has been accepted in evidence.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:28.10.2015
GJ