

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3476 of 2013

ORDER :

Heard Ms. Manjari S. Ganu, counsel for petitioner and Sri Damodar Mundra, counsel for respondents.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.05.02.2013 in I.A.No.226 of 2012 in O.S.No.1416 of 1997 on the file of VI Senior Civil Judge – cum – Additional Judge, City Small Cause Court, Hyderabad.

3. The petitioner herein is the defendant in the above suit, which had been filed by respondents for partition of the plaint schedule property, claiming 1/3rd share each.

4. Initially, a preliminary decree had been passed in the suit and application for passing of final decree is pending.

5. According to petitioner, the respondents had agreed on 27.12.2010 to relinquish their shares in the plaint schedule property and executed relinquishment deeds in her favour. So she filed the said documents and filed an application under Section 33 of the Indian Stamp Act, 1899 (for short, 'the Act') read with Section 151 C.P.C. to send the said documents to the Collector, Stamps and Registration, Hyderabad, for impounding. She stated that

she had filed I.A.No.110 of 2011 to receive the said documents and although the said application had been opposed by the other side, the said I.A. had been allowed on 15.11.2011. She stated that since both the relinquishment deeds are not adequately stamped as per the provisions of the Act, they need impounding, and they may be sent to the Collector, Stamps and Registration, Hyderabad for impounding.

6. Counter-affidavit was filed by respondents opposing the said application, contending that the said application is not maintainable when a preliminary decree had already been passed, and a final decree is yet to be passed. Other contentions on merits were also raised, and the execution of the relinquishment deeds was also denied. It is contended that there was no necessity to send the alleged relinquishment deeds for impounding.

7. By order dt.05.02.2013, the Court below dismissed the said application. It held that respondents had denied the execution of the relinquishment deeds and alleged that they were created by petitioner; and that since preliminary decree is passed, the present application, is not maintainable.

8. Challenging the same, the present Revision is filed.

9. The counsel for petitioner contended that the

application for passing of final decree is pending in the trial court and that if the compromise and the consequent execution of the relinquishment deeds are established, there would be no necessity to pass a final decree in the matter; and that therefore, the Court below, having allowed I.A.No.110 of 2011 and granted permission to petitioner to file the two documents, cannot now say that they need not be sent to the Collector, Stamps and Registration, Hyderabad for impounding.

10. On the other hand, the counsel for respondents contended that the respondents have denied the execution of relinquishment deeds in question; that a reading of the said documents also indicate that they only refer to an agreement to relinquish in future, and the main purpose for which these documents are sought to be filed by petitioner is to rely on them; and since they are not registered documents, they cannot be received in evidence.

11. I have noted the submissions of both sides.

12. It is not disputed that I.A.No.110 of 2011 was allowed by the Court below, and the petitioner was permitted to file the original of the relinquishment deeds allegedly executed by respondents. Once the said application is allowed, it is not open to the Court below to refuse to send the documents for impounding on the ground that a preliminary decree had been passed.

13. As rightly contended by the counsel for petitioner, if the execution of relinquishment deeds by respondents is proved, there is no necessity to pass a final decree, and therefore, the relinquishment deeds in question require to be sent to the Collector, Stamps and Registration, Hyderabad, for impounding.

14. The question of registration of the said documents has not been raised either by petitioner or by respondents in the trial court, and the said issue has also not been gone into by the trial court in its order dt.05.02.2013. Therefore, there is no need for this Court to express any opinion on the said issue at this point of time.

15. Therefore, the Civil Revision Petition is allowed and the order dt.05.02.2013 in I.A.No.226 of 2012 in O.S.No.1416 of 1997 on the file of VI Senior Civil Judge – cum – Additional Judge, City Small Cause Court, Hyderabad is set aside and the said I.A. is allowed. No order as to costs.

16. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06.08.2015

Ndr/*