

*** HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

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+ CIVIL REVISION PETITION No.3928 of 2014

% 27-02-2015

Bachu Laxmipathi s/o.Datha Rajaiah, aged 60 years,
occ: business r/o.H.No.1-2-19, Sircilla Road, Kamareddy, Nizamabad
District.

..PETITIONER

VS.

\$ Bachu Kistaiah and another.

..RESPONDENTS.

! Counsel For The Petitioner: A.Ravinder Reddy

^ Counsel For Respondents: M.Kotagiri Sreedhar

< Gist :

> Head Note :

? CITATIONS :

1. 2004 (3) ALD 66

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CIVIL REVISION PETITION No.3928 OF 2014

ORDER:

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The present revision is filed under Section 227 of the Constitution of India aggrieved by the order dated 25-09-2014 passed in I.A.No.810 of 2014 in O.S.No.10 of 2012 on the file of IX Additional District Judge at Kamareddy, wherein request to lead secondary evidence on family settlement-cum-partition deed by exhibiting photo copy of family settlement deed in evidence was dismissed.

2. Heard arguments of both sides at length in the earlier adjournment itself and there is no meaning in seeking further time by the Revision petitioner herein to submit any

legal position, for not submitted having taken time. Perused the material on record. The impugned order passed by the lower Court in dismissing the petition to receive additional evidence under Order-8 Rule (1-A) C.P.C. (by recalling the first defendant) is on the ground that the so-called documents are nothing but Xerox copies besides one of initiation to receive the Xerox copies even as secondary evidence. The documents when require the stamp duty and also registration and in particular, one is claimed as partition document and from the very recitals in the document, it is clear that rights are created by virtue of terms of the document and not a mere acknowledgment of a past transaction, same require stamp duty and registration. Once it is required to be duly stamped and not at all stamped it requires to impound. Without impounding, it is not admissible in evidence to exhibit. Further collateral purpose is unknown to the Stamp Act (for short 'the Act') being the fiscal legislation. Even there is a provision despite want of registration, under Section 49 r/w. 17 of the Registration Act to admit an un-registered document for collateral purpose, that arises only after the document is duly stamped by impounding. Importantly the question of impounding arises, when the original document is available to say it is an instrument of partition defined under Section 2 (15) of the Stamp Act equally for any other instrument under Section 2 (14) of the Act. When to call a document as an instrument, it must be the original document and not a copy. Once the original is not before the Court, the question of impounding Xerox-copy is unknown to law. Once it is not being impounded and stamp duty and penalty not collected for original not there, the copy of document when *per se* is inadmissible, the document cannot be received in evidence. The decision placed reliance upon in *Amangenti Prameela v.P.V.Reddy* has no application to the present facts supra. It is for the reason that there the document was a stamped and registered one and the original document was admittedly with defendant who did not produce despite notice to produce and thereby held secondary evidence is admissible for foundation laid to adduce secondary evidence. Here in the case on hand original is not there. There is nothing to show original document has seen light of the day. So called late Mydam Ramulu with whom original was for his son Laxminarayana stated that the same is misplaced, if so, it could not be shown how he got Xerox copy and when and without that, it is difficult to believe existence of original and as such there is no even foundation laid to adduce secondary evidence, besides the original document when liable for stamp duty and for original stated not there, question of impounding a copy of document does not arise and as such, the so-called copy of document

cannot be received by condoning delay in its filing, more particularly, when the plaintiff (first respondent) contends vehemently that these are fabricated documents recently created and introduced with said story to foment the litigation ingeniously. Having regard to the above, there is nothing to interfere with the impugned order of the lower Court.

3. Accordingly, the Civil Revision Petition is dismissed. As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27-02-2015

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LR copy to be marked-Yes.