THE HON'BLE SRI JUSTICE K.C. BHANU

CIVIL REVISION PETITION No.3424 OF 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the Order, dated 18.06.2013, in Original Suit No.48 of 2009 on the file of the Principal Junior Civil Judge, Repalle, whereunder and whereby an unregistered gift deed, dated 19.12.2003, sought to be marked as exhibit was rejected as it is inadmissible in evidence.

2. Learned counsel for the petitioner contended that unregistered document can be looked into for collateral purpose and therefore, it is admissible in evidence and the relevancy and admissibility of the document can be decided at appropriate time, therefore, he prays to set aside the impugned order.

3. On the other hand, learned counsel for the respondent contended that the trial Court after considering the rival submissions, rightly rejected the document as inadmissible in evidence and the document, which is sought to be proved as a primary purpose, is not admissible under law, therefore, he prays to dismiss the same.

4. The unregistered gift deed, dated 19.12.2003 when sought to be marked as a document, which on behalf of the petitioner, the objection of the defendant was upheld and the claim of the petitioner was rejected. When a document, which is compulsorily registerable, but not registered, can be used for collateral purpose merely for proving possession of the property in terms of proviso to Section 49 of the Registration Act, 1908. Whether the

document now sought to be marked as exhibit is for primary purpose or for collateral purpose is left open to be decided by the trial Court. But, Section 49 of the Registration Act is subject to control by Section 35 of the Stamp Act, 1899, which reads as follows:

> "35. **Instruments not duly stamped inadmissible in evidence, etc**.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:
>
> Provided that—
>
> (a) any such instrument [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
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> (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;
>
> (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
>
> (d) nothing herein contained shall prevent the

> admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);
>
> (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of [the [Government]] or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

From the above provision, it is clear that a document, which is not duly stamped, cannot be received as evidence for any purpose whether it is collateral purpose or primary purpose. Unless stamp duty and penalty is paid, a document cannot be received as evidence.

5. However, at the threshold, rejecting the claim of the petitioner is not proper and correct. Hence, the impugned order is liable to be set aside.

6. Accordingly, the Civil Revision Petition is allowed setting aside the Order, dated 18.06.2013, in Original Suit No.48 of 2009 on the file of the Principal Junior Civil Judge, Repalle. The trial Court is directed to receive the document after payment of stamp duty and penalty. However, relevancy and admissibility of the document can be decided at the appropriate time. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C. BHANU

Date:20.02.2015
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