

HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.1220 of 2015

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Date: May 01, 2015

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Between:

Suram Pratap Reddy. ... Petitioner

and

1. Rayapuri Sambaiah & 9 others. ... Respondents

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HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.1220 of 2015

ORDER:

The petitioner is the plaintiff in O.S.No.1114 of 2009 on the file of the learned II Additional Junior Civil Judge, Warangal. The said suit was filed for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. The suit was decreed *ex parte* on 30.08.2010. No appeal seems to have been filed against the said judgment and decree. While so, the petitioner/plaintiff filed I.A.No.495 of 2013 in the suit

under Order XIII Rule 9 C.P.C. seeking return of the original documents marked in evidence in the said suit as Exs.A-1 to A-5 and Ex.A-8. By order dated 12.04.2013, the Court below directed return of Exs.A-1 to A-5 on substitution of certified copies thereof, but however declined to return Ex.A-8 partition deed dated 30.07.1989 on the ground that it had to suffer stamp duty and penalty. Aggrieved thereby, the petitioner/plaintiff is before this Court under Article 227 of the Constitution.

2. Notice having been ordered in the matter, the learned counsel for the petitioner/plaintiff was also permitted to take out notice to the respondents by registered post with acknowledgement due and file proof of service. The learned counsel accordingly took out notice and filed a memo on 27.04.2015 along with the material received from the postal authorities. Perusal thereof reflects that 3 of the respondents received the notice, duly evidenced by their acknowledgement cards, while the remaining 7 respondents refused to receive the notices. This is borne out by the endorsement of the postal authorities on the returned envelopes. Such refusal would amount to deemed service. Thus, as matters stand, there is no representation on behalf of the respondents, served and deemed to have been served.

3. Perusal of the decree dated 30.08.2010 passed by the Court below in O.S.No.1114 of 2009 demonstrates that the partition deed dated 30.07.1989 was marked in evidence as Ex.A-8. There is no indication that steps were taken under Section 33 of the Indian Stamp Act, 1899 (for brevity, the Act of 1899), for impounding the said document on the ground that sufficient stamp duty had not been paid thereon. In terms of Section 36 of the Act of 1899, once an instrument is

already admitted in evidence such admission cannot be called in question at any later stage in the same suit or proceeding on the ground that the instrument has not been duly stamped, except as provided in Section 61. Section 61 has no role to play in the present case, as no appeal seems to have been filed by the defendants in O.S.No.1114 of 2009 against the *ex parte* decree passed therein.

4. Further, the provisions of Order XIII Rule 9 C.P.C. make it clear that unless a document already placed on record in the suit proceedings is impounded under Order XIII Rule 8 C.P.C., it is liable to be returned to the person who produced it. This is of course subject to the condition that the Court should be satisfied that the time for preferring an appeal has elapsed and that no appeal was preferred or it so preferred, it has been disposed of. In the present case, the suit was decreed in August 2010 and the subject application under Order XIII Rule 9 C.P.C. was filed in March 2013 specifically stating that no appeal had been preferred against the judgment and decree passed in the suit. That being so, the Court below ought to have taken note of the aforestated facts and as no order had been passed under Order XIII Rule 8 C.P.C. impounding Ex.A-8 and as no steps had been taken at the appropriate stage under Section 33 of the Act of 1899, it ought to have allowed the petition. It was too late in the day for the Court below to wake up to the fact that it ought to have exercised jurisdiction under Section 33 of the Act of 1899 and impounded the document. Once the document was admitted in evidence, Section 36 of the Act of 1899 came to the rescue of the petitioner/plaintiff and no objection could have been raised in that regard at a later stage in the suit proceedings.

5. The order passed by the Court below refusing return of Ex.A-8 is therefore unsustainable in law and the said order is

accordingly set aside. The Court below shall return Ex.A-8 to the petitioner/plaintiff upon an authenticated copy thereof being substituted.

6. The civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J.

Date: May 01, 2015.

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HON’BLE SRI JUSTICE SANJAY KUMAR

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