

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.R.P.No.3639 OF 2015

ORDER:

This Civil Revision Petition is filed by the defendants in O.S.No.58 of 2011 on the file of the Junior Civil Judge, Nandalur, Kadapa district, against the plaintiffs impugning the order dated 23.07.2015 in I.A.No.168 of 2014 in O.S.No.58 of 2011.

2. Heard the learned counsel for the petitioners before admission and before notice to the respondents i.e.the plaintiffs of the suit as well as the co-defendants 5 to 7 i.e. State of Andhra Pradesh represented by the District Collector, Kadapa, Revenue Divisional Officer, Rajampeta and the Tahasildar Pulampeta, and perused the impugned order of the trial Court i.e. dated 23.07.2015 in I.A.No.168 of 2014 filed under Section 35 of the Stamp Act by the plaintiffs which allowed thereunder.

3. The suit filed by the plaintiffs against the defendants supra is for specific performance of the contract for sale. It is pending the suit after settlement of issues and at the commencement of trial when plaintiffs wanted to exhibit the suit sale agreement dated 11.09.1998 unregistered and not duly stamped, the Court wanted to impound the same under Section 35 of the Stamp Act with 10 times penalty in addition to the original stamp value of the deficit stamp duty. At this stage, the plaintiff filed an application I.A.No.168 of 2014 seeking to send the document to the District Registrar, Kadapa for impounding. The contention of the defendants-petitioners herein in the suit as well as in opposing the I.A. 168 of 2014 is that the plaintiffs are not entitled to the specific performance of the contract for sale of the so called agreement as it is an assigned land hit by the Provisions of the A.P.Act, 1977 and once it is an assigned and unalienable land, the question of specific performance of the contract for sale does not arise thereby the suit is liable to be dismissed and the document cannot be admitted in evidence and when such is the case, the question of sending the document to the District Registrar for impounding does not arise. After hearing both sides, the

learned Junior Civil Judge, allowed the application supra, for sending the original document to the District Registrar for impounding.

4. The unstamped and insufficiently stamped document is required to be duly stamped for the exhibiting in evidence. Court got power to impound and the impounding is besides the deficit stamp duty with ten times penalty and the Court has no discretion. The procedure contemplated by Section 35 to 42 of the Stamp Act are that if the impounding is by the Court, a copy of the impounding of document along with stamp duty collected under the relevant head with challan to be forwarded to the District Registrar or District Collector, as the case may be, for their entering the same in the records. However, so far as the impounding by the District Collector/District Registrar concerned, it is not compulsory of 10 times penalty to be impounded but for at their discretion and once the District Collector/District Registrar duly impounded the document and the stamp duty penalty collected and certified on the original document as duly stamped, it is not open to the Court to sit against. In this regard, the Apex Court in **Chilukuri Gangulappa Vs. RDO, Madanapalle** ^[1] settled the law. It is clarified that, even after the Court passed an order for impounding with ten times penalty and original stamp duty, the party can ask the Court for referring to the District Collector (now the District Registrar) for impounding by expressing unwillingness to pay the stamp duty with ten times penalty impounded by the Court, so as to decide by the District Collector/District Registrar.

5. It is needless to say that impounding is only for the purpose of exhibiting the document in evidence if otherwise relevant and admissible. So far as the document registration concerned, even the A.P. Amended Act w.e.f.01.04.1999 amended Registration Act by incorporating Section 17(f) for compulsory registration of the sale agreements. There is however a saving provision by Section 49 of the Act, till there is an amendment by the Central legislation which came into force w.e.f. 24.09.2001. The agreement is prior to that date thereby for specific performance of the contract for sale, even though required to be registered, unregistered by

virtue of the erstwhile provision as on the date of agreement, there is no bar for therefrom admissibility.

6. The other question raised which is the core aspect that is to be answered by the trial Court is that the land is assigned land or not. It is premature for this Court at this stage or for trial Court to decide, but for after full-dressed trial from evidence on record by perusal of original patta therein and the conditions therein of alienability if any.

7. Having regard to the above by virtue of the provisions of the law and the proposition laid down in Chilukuru Gangulappa(supra), the lower Court is right in referring the document, at the request of the plaintiffs, to the District Registrar for impounding. It is made clear that the nature of the land is left open as it is before the trial Court for arriving a decision on merits as to the specific performance of the contract for sale can be granted or not, including from nature of the land.

8. Accordingly, the Civil Revision Petition is disposed of for no grounds to admit. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:08.09.2015

Vvr.

[\[1\]](#) 2001(4) SCC 197