

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.3038 OF 2015

ORDER :

Heard learned counsel for the revision petitioner and learned counsel for respondents 1, 2 and 8. Respondents 3, 4, 5 and 7 refused to receive notice. So far as respondent No.6 is concerned notice unserved as no such addressee. Perused the material on record.

2. Impugning the docket order of the trial Court dated 23.06.2015, present revision is filed.

3. The plaintiff is the revision petitioner. It is in relation to the exhibiting of the unregistered partition deed dated 09.04.1981 not even duly stamped. O.S.No.135 of 2004 was filed on the file of Junior Civil Judge, Tadipatri by the sole plaintiff against seven defendants. The suit, after contest by the defendants, ended in dismissal for the relief of partition and separate possession vide judgment dated 22.07.2013 and the plaintiff preferred A.S.No.13 of 2013 on the file of VI Additional District Judge, Gooty, Ananthapur District and the appeal was allowed to the extent of setting aside the trial Court's dismissal decree by remanding the matter for disposal afresh, after affording opportunity to both sides to adduce evidence including evidence regarding the partition between the parties and with liberty to mark the documents by the parties subject to admissibility and relevancy and proof without need of filing any application to receive those documents, which are already on the file either of the trial Court or of the appellate Court pursuant to the remand. It is in the course of PW.1's further examination pursuant to the remand order of the appellate Court, very restoration of the suit and to proceed further as taken up by the trial Court on 23.06.2015, the unregistered partition deed, dated 09.04.1981 not duly stamped was chosen to mark in the evidence of PW.1 and the defendants 2 and 8 raised objection for its marking saying besides not filed the document with application to condone the

delay in receiving, even there is a remand order to receive the documents already filed without application except subject to proof and relevancy, when it is neither registered nor duly stamped, not admissible to mark even otherwise relevant. Repelling said contentions, it is his submission that registration not required for the same is only family settlement and regarding stamp duty the plaintiff prepared to pay the stamp duty with any penalty and impounding. The lower Court observed therefrom that the said document cannot be received even for a collateral purpose, as the suit is for partition and thereby rejected application for marking the same. It is further observed in the impugned order that it is the duty of the Court to impound insufficiently stamped documents and thereby the partition deed supra is impounded and not marked while rejecting the request for marking having marked other documents as Ex.A.3 and A.4 and directed to proceed for further cross examination of PW.1. It was no doubt, posted to 10.07.2015 at request of other side for cross examination. The same is now impugned in the revision.

4. It is important to say that Section 2(14) of the Stamp Act defines an 'instrument' and Section 2(15) defines 'instrument of partition' specifically as per the A.P. Amendment to it with effect from 16.08.1986, incorporating within the meaning of instrument of partition, even an acknowledgment of the oral past partition by later reduced into writing. Thus, whether it is a partition contemporaneous from the terms of the document or even acknowledgment of past partition by virtue of the amendment, it is within the meaning of the 'instrument of partition' liable for stamp duty as a partition. It is needless to say even a partition brought under the guise of family settlement, which may include to create rights among the family members, having no right, by virtue of the terms of such settlement, either oral or in writing, and once it is a contemporaneous transaction reduced into writing though styled as family settlement, that requires registration, but for oral past family settlement reduced into writing not within the meaning of instrument of

partition, if at all not required registration. Section 17 of the Registration Act deals with a document, which requires registration. A compulsorily registrable document, however, by virtue of proviso to Section 49 of the Registration Act, even a document not registered is admissible for collateral purpose to mean a purpose other than main purpose, without effecting the main purpose from contents of the document. In the facts to say at best not for character but for nature of possession, if at all the said instrument of partition can be marked. As referred supra from the document clearly shows not only from the nomenclature which is not decisive, but also from the contents an instrument of partition, which includes acknowledgment of a past partition, for nothing to show other than those who are entitled to share were given by virtue of settlement by any family settlement of disputes, within the meaning of family settlement to bring it as a family settlement if at all shown a family settlement past transaction later reduced to writing or effected orally, same is not required to be registered and even required to be registered for non-registration can be looked into only for the collateral purpose.

5. From the above, coming to stamp duty, the instrument of partition is liable to be impounded. The impounding of the document by the Court is while tendering in evidence or in the course of receiving the same in evidence. No doubt, the document when sought to be marked, the law is fairly settled more particularly from the expression of Apex Court in **Bipin Shantilal Panchal v State of Gujarat and another**^[1] that but for stamp duty and registration to decide instantaneously, while tendering the document for evidence, all other objections can be deferred by marking subject to objection to decide at the final hearing of the suit or during final disposal. Thus, it is the duty of the Court to decide instantaneously not only the requirement of registration, but also the requirement of stamp duty. Once it is not sufficiently stamped and liable for deficit stamp duty, it is liable to be impounded by the Court. Though it is observed as if impounded there

is nothing to say what is the stamp duty payable and directed to be paid and what proof of paid for such impounding. In fact, the Court though got a power to impound, once there is a request to send the document to the District Registrar for impounding, the Court is bound to consider.

6. A perusal of the impugned order of the lower Court clearly shows that there has been a request to send the document for impounding to the District Registrar. However, it was not considered even duty bound. It is for the reason, if it is to be impounded by the Court, it is on the document liable for stamp duty deficit with 10 times penalty as per Section 35 of the Stamp Act. Whereas, if it is to be impounded by the District Registrar, he can reduce the 10 times penalty and it is the concession of the party to avail from the combined reading of Sections 38 to 42 of the Stamp Act. That is in fact what is laid down in the expression of the Apex Court in **Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanapalle and another**^[2].

7. Having regard to the above, the order of the lower Court rejecting the request for marking even for collateral purpose saying it cannot be admitted after impounding even for collateral purpose or even rejecting the request to send the document to the District Registrar in ordering to impound is unsustainable and thereby set aside by allowing the revision petition to the extent of directing the lower Court to send the document as requested by the party to the District Registrar for impounding and once duly impounded by the District Registrar and returned the original with certificate since conclusive and not even open to Court to say anything on sufficiency of stamp duty, except only for the limited purpose of admitting from non-registration for any collateral purpose as to nature of possession for not being admissible to main purpose being the instrument of partition within the meaning of Section 2(15) of the Stamp Act read with Section 17 and 49 of the Registration Act. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the revision shall stand closed.

Dr.B.SIVA SANKARA RAO,J

02.08.2016

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) AIR 2001 SC 1158

[\[2\]](#) 2001 SC 1321