

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2229 OF 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 15.02.2016, in I.A. No.3 of 2013 in O.S. No.1196 of 2011, passed by the V Senior Civil Judge, City Civil Court, Hyderabad, whereby the petition was allowed to send the unregistered mortgage agreement dated 20.02.2009 to the District Registrar, Hyderabad for the purpose of impounding on payment of process.

02. The ranks given to the parties in interlocutory application will hereinafter be adopted through out the order, for reference.

03. The petitioner filed I.A. No.3 of 2013 under Section 38(2) of the Indian Stamp Act, 1899 (for short, 'the Act') to send "mortgage agreement dated 20.02.2009" to the District Registrar for impounding, on the ground that it is insufficiently stamped and deficit stamp duty is required to be paid on it before it is received in evidence.

04. The respondent filed counter denying the material allegations made in the affidavit while contending that the document does not bear the signature of the respondent on the stamp paper and the signature on the third page of the document does not belong to him and the said document is bogus, fabricated, etc., and the same cannot be impound as it is inadmissible in evidence.

05. The trial court, upon hearing argument of both the counsel, placing reliance on Judgments of this Court in **MOHD JANIMIYA @ KHAJA MOINUDDIN JANI v. KORIGINJA (VARALA) RAMESH AND ANOTHER**^[1] and **MOHD. QAMRUDDIN v. MASULA NARSIMHULU**^[2], ordered to send the document i.e. unregistered mortgage agreement dated 20.02.2009 to the District Registrar for

impounding to collect deficit stamp duty following the procedure under the Act.

06. The contention of the counsel for the revision petitioner/respondent is that the document cannot be send to the District Registrar for impounding the document to collect deficit stamp duty and penalty, since it is inadmissible in evidence, and therefore the order is erroneous and it would not serve any purpose and prayed to set aside the order under challenge.

07. The petition was filed under Section 38 of the Act which deals with impounding of an instrument. But there is a provision in CPC i.e. Rule 8 of Order XIII, which permits the Court if sufficient cause is shown to direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the court, for such period and subject to such conditions as the court thinks fit. But curiously the present petition was filed under substantive law of the Stamp Act. Mere wrong quoting of provision of law is not a ground.

08. According to Rule 8 of Order XIII of CPC, it is the duty of the Court to send the document for impounding, if satisfied, that it is not sufficiently stamped, otherwise it amounts to depriving the State to collect revenue. The admissibility of the document can be decided only when it is tendered in evidence, but not at the stage of impounding it, as held by this Court in **BALAJI ADITHI v. B.**

CHANDRA REDDY^[3]. Therefore, at the stage of sending the document to the District Registrar for impounding, the admissibility of the document cannot be looked into and it shall be considered only when the document is tendered for marking as exhibit. Therefore, it is premature to contend that the document is inadmissible at the stage of impounding the document to the District Registrar for collection of deficit stamp duty and penalty under Section 38 of the Act.

09. In **NALAJALA JAGANNADHAM v. VEEREPALLY**

MANGAMMA^[4] this Court held that the Court cannot compel a party to pay stamp duty when it wanted to send a document to Collector under Section 38(2) of the Act. In **CHINTALAPUDI ANNAPURNAMMA AND ANOTHER v. ANDUKURI PUNNAYYA**

SASTRY AND OTHERS^[5] this Court held that when the party does not want to pay the duty and penalty as determined by court, it is open for him to ask the document to be sent to the collector but till the duty and penalty is determined by collector and paid by the party the document cannot be admitted in evidence.

10. In view of law declared by this Court, the court cannot refuse to send the document to the District Registrar or the Collector for impounding the document when the document is not properly stamped, for collection of deficit stamp duty and penalty and the admissibility in evidence needs no consideration at the stage sending the document for impounding, by exercising power under Rule 8 of Order XIII of CPC. Hence, the contention of the counsel for the petitioner that the document is inadmissible in evidence is not relevant at this stage, but the petitioner is permitted to raise such objection, at appropriate stage, when the document is tendered for marking as exhibit before the trial court. Hence I find no illegality in the order passed by the trial court. Consequently, the revision petition is devoid of merits and deserves to be dismissed.

11. In the result, the revision petition is dismissed. However, liberty is given to the revision petitioner to raise objection as to admissibility of the document, when it is tendered for marking, during evidence of any witness. No costs.

12. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26.08.2016

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[\[1\]](#) 2009(1) ALD 732
[\[2\]](#) (LAWS (APH)-2008-6-13)
[\[3\]](#) 2004(2) ALD 507
[\[4\]](#) 1997(1) ALT 725
[\[5\]](#) 2000(3) ALT 159