HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

C.R.P.NO.3768 OF 2014

O R D E R:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the plaintiffs/revision petitioners, against the orders
dated 07.11.2012 of the learned Junior Civil Judge, Wanaparthy passed in Memorandum vide C.F.R.No.1546 of 2012 in O.S.No.80 of 2006 filed by the defendants through their counsel, along with DW2's affidavit filed in lieu of his examination in chief.

2. I have heard the submissions of learned counsel for the revision petitioners/plaintiffs and the learned counsel appearing for the defendants/respondents, except 5th respondent who is not yet served with notice. In the facts and circumstances of the case, since the document is tendered to be exhibited in the evidence of DW2 and he is represented by a counsel before this Court, this Court is of the considered view that no notice is necessary to be served on
the 5th respondent, a co-defendant of DW2.

3. I have perused the material record.

The facts, as borne out from the material record and as per the submissions of the learned counsel for both sides, in brief, are as follows:

A Suit for perpetual injunction is filed by the plaintiffs in respect of various extents of properties in various survey numbers i.e., a total extent of Ac.05-05 guntas. During the course of trial, that is, at the stage of adduction of evidence on the side of the defendants, one of the defendants/DW2, along with his affidavit filed, in lieu of examination-in chief, had tendered the original memorandum of partition dated 13.04.1958 and also the original private sale deed dated 16.02.1961 for being exhibited on his side.

4. Dealing first with the second document, i.e., the original private sale deed dated 16.02.1961, it is to be noted that the said document is said to have been validated by the revenue authority concerned and the said aspect is not in dispute as per the submissions made at the hearing. Therefore, the question in regard to further payment or collection of any stamp duty and penalty on the said document does not arise for consideration in this revision. Be that as it may, whether or not the said document is compulsorily registerable is a question which the trial Court will have to consider at an appropriate stage, if any objection in that regard is raised. This Court is not recording any findings on the said aspect in this order. Since the said second document is validated by collection of stamp duty and penalty and as the question of requirement of registration of the said second document is not germane for consideration in this revision, the said question is accordingly left open for consideration at an appropriate stage by the Court below, if necessary. Even otherwise, the value of the property covered by the said second document finds a mention in the very document; therefore, the Court below may either collect the stamp duty and penalty, if the party is willing to pay, or may send this document to the Stamp Duty Collector, if necessary, and if any such request is made to so send it to the Collector concerned for collection of the required stamp duty and penalty, if it is ultimately found that the said document is not validated by any revenue authority.

5. This takes us to the aspects concerning the first document i.e., the original memorandum of partition dated 13.04.1958. This document of the year 1958, which is a memorandum of partition, does not contain in its recitals the value of the property, which is the subject matter of the said document. However, the defendants concerned filed an application before the Sub-Registrar concerned for ascertaining the valuation and issuing a valuation certificate in respect of the land covered by the said document, which is of the year 1958. However, the Sub-Registrar concerned had returned the application with information that valuation Registers are available in the Sub-Registrar office from 16.08.1985 onwards and, no information is, therefore, available in regard to the valuations of the properties during the year 1958. On that, the defendants who are not able to obtain the valuation certificate in respect of the property covered by the first document viz., memorandum of partition, had filed the present memorandum, which is the subject matter of the present revision. In the said memorandum filed by the defendants before the Court below, it is stated that the above said two documents pertain to the properties in the same survey number/s and as such the valuation of the property mentioned in the second document can be taken into consideration for assessing the market value of the property in the first document for the purpose of the collection of the stamp duty and penalty, if any, payable on the first document. Finally, a request was made in the memorandum to direct the Superintendent of the Court to collect the stamp duty and penalty on the first document accordingly. The plaintiffs resisted the said request of the defendants made in the memorandum by filing objections stating that the document has to be sent to the District Collector for fixing and collecting the stamp duty and penalty, if any, payable and collectable on the said document and that the Sub-Registrar is not competent to either furnish the value of the property, which is the subject matter of the document, or for collecting the stamp duty and penalty, if any, payable. In view of the information furnished by the Sub-Registrar, Wanaparthy, which is extracted supra, and having found that the first document cannot be permitted to be exhibited in evidence, even for collateral purpose, unless the stamp duty and penalty collectable on the said document are collected, the trial Court had held in the impugned docket orders as follows:

> **A perusal of the simple sale deed reflects that it pertains to the year 1961 all most a contemporary document its value is assessed by the Sub-Registrar, Wanaparthy. The land covered under the simple sale deed and the memorandum of**

> **partition pertains similar Survey numbers of the land. So this Court of the considered view that, market value given by the Sub-Registrar can be taken as the basis to asses the stmap duty and penalty to be collected in respect of the alleged memorandum of partition deeds. The defendants are permitted to get memorandum of partition deed to be assessed on the basis of the valuation fixed by the Mandal Revenue Officer in respect of the land covered in the simple sale deed for the purpose of collection of deficit stamp duty and penalty. In the result, the defendants are permitted to pay stamp duty and penalty on the memorandum of partition deed to be assessed on the of document given by the Sub-Registrar, Wanaparthy in respect of the sale deed.**
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> **[Reproduced verbatim]**

The plaintiffs, who are aggrieved of the said orders, filed this revision petition.

6. Be it noted that the trial Court accepted the request of the defendants and ordered that the market value of the property covered by the memorandum of partition of the year 1958 shall be ascertained for the purpose of collection of stamp duty and penalty on the basis of the value of the property covered by the simple sale deed of the year 1961 as both the said documents of the year 1958 and 1961 are more or less of a cotemporaneous period and the properties covered by the two documents though different are covered by the same survey numbers.

7. At the hearing, the learned counsel for the revision petitioners/plaintiffs would submit that the order of the trial Court in directing that the assessment of the valuation of the property covered by the memorandum of partition of the year 1958 shall be made on the basis of the valuation fixed by the MRO in respect of the land covered by the simple sale deed of the year 1961 is incorrect and that said authorities (MRO/Sub-Registrar) had no jurisdiction to either fix the valuation for the purpose of payment of stamp duty and penalty or for collection of the stamp duty and penalty on any document and that one document is of the year 1958 and the other is of the year 1961 and that the properties covered by the two documents are distinct and different and that the directions issued by the Court below on the assumption that the values of the properties covered by the two documents are identical is erroneous and that in the present context, the only competent officer is the District Collector (Stamp Duty Collector) and that he alone is competent to fix the valuation of the property covered by the memorandum of partition and collect the stamp duty and penalty, if any payable.

8. On the other hand, learned counsel for the respondents/contesting defendants supported the orders of the trial Court.

8.1 As already noted, this Court is not dealing with the document No.2 original private sale deed dated 16.02.1961 in these orders, as it is represented by the learned counsel for the contesting defendants herein that the said document was already validated and the necessary stamp duty and penalty are collected by the concerned revenue authority. It is trite to mention once again for abundant caution that the trial Court will have to consider the question of the requirement of registration of the said second document (simple sale deed) at the appropriate stage, if necessary and if any objection is raised in regard to the compulsory requirement of registration of the said document.

9. Now, dealing finally with the original memorandum of partition dated 13.04.1958, it is apt to note that the Sub-Registrar, Wanaparthy had already furnished information that there is no record regarding the valuation of the property covered by this document of the year 1958, as the valuation Registers are being maintained in the Sub-Registrar office

from 16.08.1985 onwards. It is pertinent to observe that unless the valuation of the property as on the date of the execution of the subject document is first ascertained, it is not possible to collect the stamp duty and penalty collectable on the said document. In the present context of the matter neither the MRO nor the Sub-Registrar are the competent officers to determine the valuation of the property for the purpose of the collection of the stamp duty and penalty. Further, the valuation of a different property that was mentioned in some other document of a different later year cannot be made the basis for the determination of the market value of the property covered by the memorandum of partition of the year 1958 for the purpose of the collection of the stamp duty and penalty on the transaction covered by the subject document. Therefore, in the well considered view of this Court, the District Collector/Stamp Duty Collector is the proper and competent authority to determine the valuation of the property as on the date of its execution and then collect the stamp duty and penalty, if any, payable, on the said document. Whenever any document which is stampable, but is either unstamped or insufficiently stamped, is brought before the Court, the Court is empowered to impound/seize the said document and direct the party concerned to pay the stamp duty/deficit stamp duty, which is collectable and also the penalty payable on the said document. However, if the party who is liable to pay the same makes a request to send the document to the Stamp Duty Collector/District Collector empowered in that regard, for collection of the same, the Court has no option but to send the document to such Collector for collection of the stamp duty/deficit duty and penalty payable on the said document. Section 38 of the India Stamp Act deals with – "Instruments impounded how dealt with" and section 40 deals with – "Collector's power to stamp instruments impounded". In the case on hand, the document does not contain the value of the property as on the date of its execution and there is no reliable material before the Court in regard to the market value of the property and hence, the Court below is not in a position to ascertain and arrive at the market value and call the party to pay the stamp duty/deficit duty and penalty. Therefore, the best course open is to send the impounded document to the Collector concerned as per the procedure to take a decision on the sufficiency or deficiency of the stamp duty and collect the deficit stamp duty and penalty, if any, payable and collectable on the subject memorandum of partition. Therefore, in the well considered view of this Court, the order impugned calls for interference. Viewed thus, this Court finds that there is acceptable merit in the revision and the order impugned deserves to be set aside.

10. In the result, the order impugned is set aside with a direction to the trial Court to send the original memorandum of partition dated 13.04.1958 to the District Collector/Stamp Duty Collector concerned to take a decision on the sufficiency or deficiency of the stamp duty with reference to the value of the property as on the date of the transaction and collect the deficit stamp duty and penalty, if any, payable and collectable on the subject memorandum of partition in accordance with procedure established by law. It is made clear that in case no authenticated information is available with the said Collector in regard to the value of the subject property covered by the document of the year 1958, he shall be at liberty to ascertain the value of the subject property by referring to the sale deeds of the same month and year or year in respect of more or less similar/identical properties similarly/identically situated either in the same survey number/s or adjoining survey number/s. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this CRP shall also stand closed.

JUSTICE M. SEETHARAMA MURTI

21-03-2016
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