

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4257 OF 2016

ORDER:

The Civil Revision Petition is filed against the order dated 10.08.2016 passed in O.S. No.46 of 2013 by the Junior Civil Judge, Thungathurty.

2) Heard learned counsel for the revision petitioners and learned counsel for respondent. Perused the material on record.

3) The revision petitioners herein are defendants and respondent herein is plaintiff, who maintained O.S. No.46 of 2013 for partition and separate possession of suit schedule properties against the defendants supra. The Trial Court from the defendants contest impugning the entitlement of partition, pursuant to the issues settled for trial and after evidence of the plaintiff, in the course of evidence of the defendants, witness was called to give evidence on behalf of defendants with reference to a document and the same is a non-possessionary sale agreement dated 16.02.2007 executed by 1st defendant and her husband in favour of husband of defendant No.6—DW.6 in respect of Ac.2.00 gts in S.No.456/2/2 of Thimmapuram Revenue Village of Nalgonda Judicial District.

4) When the witness though not summoned to produce the documents and to give evidence, when on voluntary request came forward and when wanted to exhibit through his evidence in chief, objection was raised by the plaintiff saying the same is required to be impounded for want of deficit stamp duty as stamped only with Rs.10/- and requires stamp duty of Rs.100/- and it also requires registration under A.P. Amendment Act 4 of 1999 w.e.f., 01.04.1999 to the Indian Registration Act of making

sale agreements compulsorily registerable in erstwhile composite State of A.P.

5) It is after hearing, the impugned docket order passed by the trial Court on 10.08.2016, reads as under:

“Heard both counsel of simple sale deed, as it required stamp duty and Registration. Hence it can't be admitted in evidence. DW.6 absent, for cross as last chance for both sides. 19.08.2016.”

6) The observation supra is now impugned in the revision saying the lower Court went wrong in so observing though it is only a non-possessory sale agreement and not a possessory sale agreement. Such a difference required to consider is only on stamp duty. So far as registration concerned, the sale agreement possessory or non-possessory makes no difference by the A.P. Amendment Act 4 of 1999 w.e.f., 01.04.1999 since made compulsorily registerable document. For said amendment to Section 17 incorporating clause (g), there is no equal amendment to Section 49 of the Act, even the provisio of it says the unregistered sale document which is compulsorily registerable even otherwise can be admitted for collateral purpose, leave about, in a suit for specific performance, the unregisterable document can be received as evidence. Here it is a partition suit and not a specific performance suit. Thus, if it is the duty to impound by the Court unless party requests to send to the District Registrar for impounding. Once it is impounded in either way, it is as good as originally duly stamped to admit, for collateral purpose is unknown to the Stamp Act to admit any insufficiently or unstamped document but for on such compliance and then to consider for a

collateral purpose for not registered. The distinction is not drawn by the lower Court. No doubt, the lower Court directed the office to cause impound as duty bound said original document for no request made to refer the same to the District Registrar for impounding and certifying. What is meant by collateral purpose is like nature of possession as laid down in the expression of this Court in C.R.P. No.1850 of 2015 on 23.08.2016. C.R.P. Nos.749 and 798 of 2015, dated 29.07.2016, in so far as possessory sale agreement in C.R.P. No.864 of 2016 dated 22.09.2016 and C.R.P. No.158 of 2016 dated 09.08.2016.

7) Thus, the trial Court is duty bound to cause to impound the document and after duly impounding on payment of stamp duty can admit for only collateral purpose within the meaning of proviso (2) of Section 49 of the Registration Act of any compulsorily registerable document from combined reading of Section 17 read with 49 of the Registration Act.

8) Coming to other contention raised by the counsel for the respondent/ plaintiff, in the course of hearing the revision of an application to receive the document is required is negated, as a witness can be called to give evidence orally or with reference to any document in the custody of the witness by production and once the document is in the custody of a witness called for to produce and to exhibit as document of the said witness, the parties have no control over the document much less to say any reason for earlier non-filing and as such not required by petitioner to ask to receive. Thereby any requirement of petition of any party under Order VII Rule 14-A or Order VIII Rule 1-A C.P.C not necessary, for

it makes no difference when witness is summoned to produce the document and give evidence or orally asked to produce the document and give evidence.

9) Accordingly, the revision is disposed of. No order as to costs.

10) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.15.11.2016
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