HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4890 of 2015

ORDER :

Heard learned counsel appearing for the petitioners. In spite of service of notice, there is no representation on behalf of the respondent.

The defendants in O.S. No.30 of 2012 on the file of the Senior Civil Judge, Huzurabad, preferred the present Revision under Article 227 of the Constitution of India, assailing the order dated 17.08.2015 passed in I.A.No.177 of 2015 in O.S.No.30 of 2012, wherein and whereunder an application filed by the plaintiff to send the un-registered agreement of sale and receipts to the District Registrar for impounding the same and for collecting stamp duty and penalty as contemplated under Section 38 of Indian Stamp Act was allowed.

The respondent/plaintiff filed O.S. No.30 of 2012 for specific performance of the agreement of sale basing on an un-registered agreement of sale dated 01.05.2009 executed by the defendants in favour of the plaintiff. During the course of trial, the plaintiff filed I.A.No.177 of 2015 to send the un-registered agreement of sale and receipts to the District Registrar for impounding the same and for collecting stamp duty and penalty as contemplated under Section 38 of the Indian Stamp Act.

The petitioners herein opposed the said petition by filing counter stating that defendant No.1 did not execute the alleged agreement of sale and did not issue the alleged receipts and prayed to dismiss the petition. After considering the rival submissions, the trial Court allowed the said petition and the documents are ordered to be sent to the District Registrar, Karimnagar, on payment of process, for the purpose of impounding and collecting stamp duty and penalty. Challenging the same, the defendants preferred the present Revision.

The main argument advanced by the learned counsel for the petitioners is that the petitioners denied the execution of the suit agreement and no purpose would be served for impounding the said agreement. She further submits that unless and until the truthfulness and genunity of the document is proved, there is no justification to send the disputed document for impounding.

Before proceeding further, it would be relevant to refer to Section 38 of the Indian Stamp Act, which reads as under:

> Section 38 of the Indian Stamp Act, 1899. (1) When the person impounding an instrument under Section 33 has, by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector, an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect of thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.
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> (2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

The language employed in Section 38 of the Stamp Act clearly indicates that in case where the instrument is required to be admitted, and if a party files a petition seeking directions from the Court to send the instrument to the Collector for impounding for collection of stamp duty, then such petition has to be allowed, for it would not cause any prejudice to the other side as no instruction was given by the Court to the Collector or authority as to the admissibility of the instrument in evidence, and more so when it is always open to the opposite party to take objections, if any, with regard to the admissibility of such document at the time of marking the same in evidence.

The suit is based on the un-registered agreement of sale. If the said document was not available to the plaintiff, there could not have been either any suit. Therefore, when this document is the very foundation for institution of the suit, such a document has to be more carefully dealt with before arriving at a conclusion as to whether the same is admissible or not. A perusal of the agreement of sale clearly indicates that the petitioner was put in possession of the property as he was asked to commence agricultural operations from the rainy season of 2009. The issue as to genuineness or admissibility of the document is concerned, this Court in ***Sai Motors v. K.Raja Reddy***[1] held as under:

> "It is relevant to note that the Court below has not gone into the question relating to the genuineness or admissibility of the document in question and the said issue has not been decided at all. It is a question to be decided after hearing both the parties at appropriate time. So far as the collection of deficit stamp duty and penalty are concerned, the order passed by the Court below is in terms of Section 38 (2) of the Indian Stamp Act. In the circumstances, I do not find any infirmity in the order under revision warranting interference of this Court. It is made clear that it is open to the defendant/revision petitioner to raise the objection as to the genuineness and admissibility of the document in question at appropriate time in which event the Court below will decide the same in accordance with law."

In **Nalajala Jagannadham vs Veerepally Mangamma**[2] this Court held as under:

> "The question of admitting the document in evidence will arise only after the same is impounded when it was found to be not properly stamped by collecting the duty payable on the instrument along with the penalty contemplated under law. In this case the stage of admitting the document has not yet arisen and it is still at the stage of impounding the same by collecting proper stamp duty with penalty. Unless that process is completed the same cannot be admitted in evidence. 9. A reading of Section 38 says that if the party who filed the document wants it to be admitted in evidence then only the Court shall collect the stamp duty and penalty and then admit the instrument in evidence. But if the party instead of requiring the document to be admitted in evidence merely wants the Court to send it to the Collector to be dealt with Under Section 40 the Court has no option but to send it to the Collector as provided in Section 38 (2)."

In view of the judgments referred to above, this Court is of the view that the order of the trial Court in sending the document to the District Registrar, Karimnagar District, for the purpose of impounding and collecting stamp duty and penalty warrants no interference.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stands closed.

C.PRAVEEN KUMAR,J

26.04.2016
gkv

[1] (2004) 2 APLJ 69 (HC)

[2] 1997 (1) ALT 725