

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.R.P No.1694 of 2016

ORDER:

This revision is preferred questioning order dated 14.12.2015 in I.A.No.2770 of 2015 in O.S.No.56 of 2013 on the file of Principal District Judge, Kadapa, YSR Kadapa District.

2. Revision petitioner herein is plaintiff in O.S.No.56 of 2013, who filed suit for partition of suit schedule properties. In the said suit, the above referred I.A is filed under Order XIII Rule 8 of CPC requesting the Court to send the unregistered agreement of partition deed, dated 05.06.1986 to the District Registrar, Kadapa for impounding and for collection of stamp duty and penalty. Trial court on consideration of contentions and rival contentions of both parties dismissed the application holding that the document sought to be sent for impounding is not admissible in evidence even for collateral purpose in view of the bar under Registration Act. Questioning said order, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that trial Court ought to have held that the document dated 05.06.1986 is absolutely necessary for proving the case of plaintiff and ought to have given opportunity to plaintiff to pay stamp duty and penalty required under law. He submitted that non-payment of stamp duty and penalty is a curable defect, and by collecting penalty, the document cannot be impounded, which would have helped plaintiff in substantiating his claim over the suit schedule properties. He submitted that earlier order dated 11.08.2015 is only with regard to the admissibility of document and it is no way concerned with the present relief claimed in the application in I.A.No.2770 of 2015. He

submitted that the trial judge committed error in not sending the document for impounding, therefore, the same is liable to be set aside.

5. On the other hand advocate for respondents submitted that the very same document was tendered in the evidence, and at that time, a detailed order is passed on 11.08.2015 regarding the admissibility of the document and it was recorded that the same cannot be taken even for collateral purpose, and that order has become final, and the plaintiff has not challenged that order, and to overcome that, the present application is filed, and the trial Court has rightly dismissed the application, and that there are no grounds to interfere.

6. Now the point that would arise for my consideration in this revision is:

Whether the order in IA No.2770 of 2015 in O.S.No.56 of 2013 dated 14.12.2015 on the file of Principal District Judge, Kadapa, is legal, proper and correct?

POINT :

7. There is no dispute with regard to the order dated 11.08.2015, which is in respect of very same document. As seen from the impugned order, this document was tendered in the evidence, and other side raised objection and arguments were heard from both sides as to the admissibility of the document and recorded a finding that as the document is a partition deed, which requires registration, plaintiff is not entitled to get the document marked. It is also recorded in the order dated 11.08.2015 that the document even cannot be looked for collateral purpose for want of registration. That order has become final as the plaintiff has not challenged the same either by way of revision or appeal in any superior court and the same is recorded by trial court in the

impugned order.

8. As seen from the record, the document was not admitted on two counts, firstly for want of stamp duty and secondly for want of registration. Advocate for revision petitioner contended that the objection is a curable defect therefore the plaintiff ought to have been given an opportunity to cure the defect. No doubt, the first one i.e., collection of stamp duty and penalty is a curable defect, but the second aspect namely registration is not a curable defect. There is a specific bar under Section 49 of the Registration Act to admit the unregistered document into evidence, which requires registration. From the findings of the court below, it is clear that the recitals in the document would indicate that it is a partition deed itself, therefore, it is a compulsorily registerable document but not registered therefore court below did not admit it in evidence.

9. Now the present petition is filed requesting the Court to send the document for collection of stamp duty and penalty. When the document requires registration such document is not admissible in evidence for want of registration, therefore, even if, penalty and stamp duty is collected, no purpose would be served.

Therefore, the court below has rightly negated the request of plaintiff.

10. On a scrutiny of the material, I am of the considered view that trial Court has not committed any error in negating the request of plaintiff and that there are no grounds to interfere with the findings recorded by the trial court.

11. For these reasons, the appeal is devoid of merits and liable to be dismissed.

12. Accordingly, this Civil Revision Petition is dismissed. No costs. Miscellaneous petitions, if any pending, in this Revision

shall stand closed.

Date: 22-06-2016.

gvl

S. RAVI KUMAR, J