THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3389 of 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner is directed against the order dated 03.09.2014 of the learned II Additional Rent Controller-cum-XIV Junior Civil Judge, Hyderabad passed in I.A. No. 251 of 2014 in R.C.No.275 of 2012.

2. I have heard the submissions of the learned counsel for the revision petitioner. I have perused the material record.

3. The petitioner, who is the respondent in the said Rent Control case, having served a notice on the respondent herein to produce the lease agreement dated 30.08.1995, had produced a copy of the same into the Court as the respondent had failed to produce the original lease agreement despite of issuance of a notice dated 19.08.2013 served upon him to produce the same before the Court below. The Court below received the said copy of the document on file, obviously subject to proof, admissibility and relevancy. When the said document was sought to be tendered in evidence, an objection was raised by the respondent herein that the said document is not admissible in evidence as it is not sufficiently stamped. Therefore, the revision petitioner wanted to pay the stamp duty and penalty on the copy of the said lease agreement, which is received on file by the Court below. The said attempt of the petitioner to pay the stamp duty and penalty on the copy of the document was resisted by the respondent herein on the ground that no stamp duty and penalty can be collected on a copy of a document and a copy of a document cannot be received in evidence after collecting the stamp duty and penalty. In support of the said contention, the respondent had relied on the decision of this Court in ***C.Sreedhara Raja Vs. Vittoba Rao***[1].

4. The Court below, having accepted the submissions on behalf of the respondent herein, held that the petitioner cannot be permitted to pay the stamp duty and penalty on a copy of the lease agreement, as such a course is impermissible in law.

5. At the hearing, the learned counsel for the revision petitioner would submit that the landlord/respondent herein is having possession of the original lease agreement, which, if produced before the Court, would evidence the fact that a huge sum of advance was paid by the revision petitioner to the landlord/respondent herein and that inspite of a notice served on him to produce the same, the same was not produced by the landlord/respondent herein and that therefore, the petitioner is constrained to file a copy of the same and that in view of the facts peculiar to the case, it would be in the interest of justice to direct the Court below to collect the stamp duty and penalty on the copy of the document (i.e., the copy of the lease agreement dated 30.08.1995), as such a course would meet the ends of justice.

6. The learned counsel for the revision petitioner fairly concedes that to his knowledge, there is no precedent which ordains or empowers the Court below to collect stamp duty and penalty on a copy of the document. Conversely, the settled legal position does not support the case of the petitioner.

7. The question whether or not stamp duty can be collected on a copy of a document is no longer *res integra*. In **Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao**[2], the Supreme Court emphatically held that stamp duty cannot be collected on a copy of document, if the original was not subjected to stamp duty at all. The ratio in this cited decision is as follows:

> **"The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents**

of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instalment for the purpose of Section 35. 'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

If Section 35 only deals with original instruments and not copies, Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words 'an instrument' in Section 36 must have the same meaning as that in Section 35. The Legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding."

In the said decision, the Supreme Court quoted and approved the judgment of the Privy Council in **Raja of Bobbili v. Inuganti China Sitaramaswami Garu**[3]. The same principle was followed by this Court in **Akkam Laxmi v. Thosha Bhoomaiah**[4]. Thus, the law is well settled that stamp duty and penalty, if any, payable are collectable only on the original document, i.e., primary evidence but not on a copy of the document, i.e., secondary evidence. In view of the settled legal position, the order assailed by the petitioner in this civil revision petition brooks no interference.

8. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M. Seetharama Murti, J

15th February, 2016
Bvv

[1] AIR 2005 AP 322

[2] AIR 1971 SC 1070

[3] (1900) ILR 23 Madras 49

[4] 2002 (4) ALD 808 .