

HON'BLE SRI JUSTICE M.S.K. JAISWAL

Civil Revision Petition No.364 of 2016

ORDER:

The Civil Revision Petition is filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 28-12-2015 in O.S.No.155 of 2015 passed by the Senior Civil Judge, Bobbili, Vizianagaram District, ordering to collect and remit stamp duty and penalty in respect of unstamped documents filed by the respondents/defendants.

The revision petitioner/plaintiff filed the suit for partition of suit schedule properties into four equal shares and to allot one such share to the plaintiff and also for rendition of accounts yielded from the suit schedule properties. When the suit is coming up for trial, the 1st defendant filed his chief-affidavit along with a list of documents, which are sought to be marked as exhibits out of which some of the documents are unstamped documents. When marking of those documents, the petitioner/plaintiff raised an objection for marking those documents on the ground that as they are unstamped documents, they need to be impounded and levied stamp duty and penalty. The revision petitioner/plaintiff also filed a Calculation Memo asserting the necessity of levying of stamp duty and payment of 10 times penalty for those documents as per the Indian Stamp Act. It appears that the learned Senior Civil Judge simply ordered collect and remit as per the note put up by the office of his Court. Challenging the said order dated 28-12-2015, the present Civil Revision Petition has been filed.

Heard Sri Vedula Venkataramana, learned senior counsel appearing for the revision petitioner/plaintiff and Sri S. Sridhar,

learned counsel for the respondents/defendants.

The main grievance of the revision petitioner/plaintiff is that though a specific objection was taken and also filed a calculation memo specifying the details of payment of stamp duty and penalty for marking of those documents, the same was not properly considered and the learned Senior Civil Judge has simply ordered collection and remittal of the stamp duty and penalty as per the office note and that the learned Senior Civil Judge erred in ordering the same. In support of his contention, the learned senior counsel relied on a decision reported in **Midia Ansuyamma and another v. Choppela Lakshamma**^[1], wherein a Division Bench of this Court has laid down the procedure to be followed in the event of a document to be impounded and clearly held that it will be the penalty payable on the date of presentation of the document, but not on the date of execution of the document.

A perusal of the office note put up by the office of the Court below, apparently no specific order has been passed with regard to collection of stamp duty and payment of penalty in tune with the calculation memo filed by the petitioner/plaintiff and the objection raised by the plaintiff. It also does not show whether the calculation memo filed by the plaintiff was considered or not?

In view of the above facts and circumstances and the submissions made by the learned senior counsel, I am of the view that before deciding the issue of collection of stamp duty and payment of penalty imposed, the calculation memo filed by the petitioner/ plaintiff needs to be properly considered.

In the circumstances, the order dated 28-12-2015 passed

on the note in O.S.No.155 of 2015 on the file of Senior Civil Judge, Bobbili, Vizianagaram is set aside and the matter is remitted back to the said Court, with a direction to consider the Calculation Memo filed by the petitioner/plaintiff with regard to stamp duty and penalty, keeping in view the objection taken by the petitioner/plaintiff as well as the dicta laid down by this Court in **Midia Ansuyamma and another v. Choppela Lakshamma** (stated supra) and pass appropriate orders in accordance with law.

With the above observation, the Civil Revision Petition is disposed of. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M.S.K. JAISWAL, J

Date: 29-01-2016

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[\[1\]](#) 1991 (1) ALT 430