HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1289 of 2016

ORDER:

The present revision is filed by the plaintiff in O.S.No.20 of 2013 and respondent in I.A.No.106 of 2015 on the file of the learned Junior Civil Judge, Jammalamadugu, Kadapa district, impugning the order dated 10.06.2015 in I.A.No.106 of 2015 which was filed by the defendants(revision respondents) under Order VIII Rule 3(1) of C.P.C. to condone the delay in filing of the sale agreement dated 19.08.1995 and receive and mark the same.

2. Heard the learned counsel for Revision Petitioner before admission and before notice to respondents/defendants and perused the material.

3. In the suit filed by the plaintiff, he claims for declaration of title and delivery of vacant possession. The contest of the defendants is that from one of the defendants, other defendants purchased the plaint schedule property through registered sale deed and the source of title of the vendor is a possessory sale agreement wayback of 1995.

4. The document can be received or not is the core issue to decide. As can be seen either from the revision grounds impugning the order of the trial Court and what is reflecting from the counter contest before the trial Court, it is not that it is not even duly stamped and requires to impound to decide thereafter in marking. The trial Court rightly observed that it is premature to decide but for while exhibiting the document of any stamp duty and registration requirement etc., as it is only a stage of receiving, which is different from admitting and all objections are left open. Once such is the case, practically the revision is no way maintainable to sit against the impugned order. In fact, the trial Court categorically observed to raise objection while marking since left open. It is referring said submissions that once the very document itself is

inadmissible being a possessory sale agreement of 1995, liable for stamp duty as if a sale from the amendment to the Indian Stamp Act by Act 25 of 1995 w.e.f. 01.04.1995, apart from that the very agreement requires to be registered as per Section 17(g) as per amendment w.e.f.01.04.1999 by Act 4 of 1999 the trial Court could not have been received the same. As already explained in the order of the trial Court itself that receiving document is different from marking and plaintiff is at liberty to raise any objection at the time of marking. The law is fairly settled in this regard by the expression of the Apex Court in **Bipin Shantilal Panchal Vs. State of Gujarat**[1] that the other objections, other than stamp duty and registration, can be postponed while marking subject to objection, however, in relation to stamp duty and registration that must be decided instantaneously while marking and that concession is undisputedly provided by the order of the trial Court. In fact, Schedule-IA of the Article 47-A explanation pursuant to the amended Act 21 of 1995 w.e.f. 01.04.1995 is crystal clear that a possessory sale agreement is required with stamp duty as a regular sale deed as conveyance and the subsequent stamp duty at the time of registration of sale deed to be paid is only Rs.5/-. If it is not duly stamped, it is liable to be impounded with ten times penalty by the Court for marking as collateral purpose is unknown to stamp Act, being a fiscal legislation. So far as compulsory registerable document unregistered to exhibit concerned, that can be for the collateral purpose as contemplated by Section 49 of the Registration Act regarding nature of possession, or regarding passing of consideration if it is duly stamped or duly impounded and paid. Here there is no law as on the date of the possessory sale agreement dated 19.08.1995 of the sale agreement is a compulsory registerable one as the amendment to Section 17(g) of the Registration Act is only w.e.f.01.04.1999 and it is not even shown of with retrospective operation. When such is the case, the tenable objection is on requirement of stamp duty. Needless to say in this regard from what is held by the Apex Court in **Chilukuru Gangulappa Vs.**

Revenue Divisional Officer, Madanapalli[2], that if the party is not willing to pay from the order of impounding the deficit stamp duty with ten times penalty, the only remedy is to make an application referring to the District Registrar for impounding and on duly impounding and certifying and getting back to exhibit. In view of the same, once such remedies are left open including any objection to raise while marking for such compliance to be made of what is referred supra, there is nothing more to answer in the revision further.

5. Having regard to the above, the Revision is disposed of before admission. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:07.04.2016
Vvr

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[1] AIR 2001 SC 1158

[2] (2001) SCC 1321