

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.32957 OF 2016

ORDER :

The case of the petitioner is that in a partition suit filed by one of his brother, being OS No.23 of 2005 on the file of XI Addl. District and Sessions Judge, Gudivada, Krishna District, he got his share of property from out of the joint family property and in an interlocutory application filed by him being IA No.520 of 2014 in OS No.23 of 2005, an advocate commissioner was appointed and the commissioner divided the property be metes and bounds.

2. Grievance of the petitioner is that when he presented the document for registration in respect of his share of properties by enclosing a copy of the order passed in IA No.520 of 2014, the 3rd respondent refused to receive and register the same on the ground that the stamp duty payable on such document must be 5% on the market value. Petitioner states that in respect of partition deeds, where the deed relates to partition of properties among the family members, the stamp duty payable on such document is 1% on the market value. Hence, this writ petition.

3. Heard learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue.

4. Learned counsel for the petitioner states that the document presented by the petitioner is a partition deed among family members and in view of GO Ms.No.1129, dated 01-07-2005, the stamp duty payable is 1 % on the market value and there is rationale on the part of the 3rd respondent in insisting to pay 5 % stamp duty on the market value. Learned counsel relied on the decision of this Court in ***Poduri Satyavathi vs. District***

Registrar, East Godavari District at Rajahmundry (2007 (5) ALT 166) in support of his contention.

5. This Court in **Poduri Satyavathi's** case (supra) had a occasion to consider a case in similar facts situation as the one on hand and held that when once property being divided among legal heirs and none of the parties to the document are outside the family, the deed cannot be treated as settlement deed and the stamp duty leviable thereon in view of GO Ms.No.1129, dated 1-7-2005 would be 1% on the market value.

6. In view of the same, it is open for the petitioner to present the document in question before the 3rd respondent and on receipt of such a document, the 3rd respondent is directed to receive and register the document, if the same is in order as per provisions of Indian Stamp Act and Registration Act and the rules made thereunder and if he wants to refuse to register the same, he shall record reasons under Section 71 of the Registration Act and communicate the same to the petitioner.

7. With the above direction, the writ petition is disposed of. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

Dated: 16-02-2017
NRG

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