THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 3681 OF 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed assailing order dated 30-06-2015 in I.A.No. 147 of 2014 in O.S.No. 32 of 2009 on the file of the Court of VI Additional District Judge (FTC), Narsapur (for short, 'the Court below'), whereby the Court below dismissed the application filed under Section 151 of the Code of Civil Procedure (for short, 'C.P.C.') refusing to collect stamp duty and penalty payable on agreement of sale dated 02-10-2004.

The petitioner-plaintiff filed suit for specific performance of agreement of sale which is written on white paper and it is unstamped and unregistered admittedly. As the defendants-respondents raised an objection as to its admissibility, the petitioner filed the above I.A. to impound the document.

The Court below upon hearing argument of both counsel concluded that the suit document cannot be taken into consideration, the suit is also not maintainable under law and thereby there is no need to send the document for collection of stamp duty and penalty.

None appeared for the respondents-defendants.

The suit document is a non-possessory agreement of sale for Rs.1,20,000/- and the suit is filed for specific performance of agreement of sale. Order XIII Rule 8 of C.P.C. deals with impounding of documents but, instead of filing a petition under Order XIII Rule 8 of C.P.C., the petitioner filed the present petition under Section 151 of C.P.C. and therefore the same is not maintainable. However, wrong quoting of provision of law is not a ground to dismiss the petition if the petitioner is otherwise entitled to claim relief.

When a document is produced before any public officer, who is competent to receive in evidence, the authority is bound to impound the document and collect stamp duty by exercising power under Section 33 of Indian Stamp Act, 1899 (for short, 'the Act'). According to Section 33 of the Act, every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same. The procedure for levying stamp duty and penalty is prescribed under Section 35 of the Act but the Court below disowned its responsibility to collect stamp duty and penalty despite request made by the petitioner-plaintiff and made a serious observation that the suit itself is not maintainable under law.

It is no doubt true that it is the duty of Court to collect stamp duty and penalty payable on a document in terms of Section 35 of the Act. If, for any reason, an application is filed under Order XIII Rule 8 of C.P.C., Court has no option except to send document to competent authority for impounding the same but the Court below erroneously declined to collect stamp duty and penalty though such power is conferred by Section 33 of the Act. Consequently, the order of the Court below is liable to be set aside and is accordingly set aside.

The civil revision petition is allowed directing the Court below to impound the document and collect stamp duty and penalty. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

Date: 12-07-2017. **_M.SATYANARAYANA MURTHY, J._**

JSK