

THE HON'BLE SRI JUSTICE S.V. BHATT

CRP No.3560 of 2017

Date: 16-10-2017.

BETWEEN:

Boya Ranga Swamy

...Petitioner.

AND

Boya Chenna Rayudu and others.

...Respondents.



THE HON'BLE SRI JUSTICE S.V. BHATT

CRP No.3560 of 2017

ORDER:

Defendant No.1 in O.S.No.115 of 2011 is the revision petitioner. The revision petitioner challenges order dated 21-04-2017 in I.A.No.170 of 2016 filed by the revision petitioner herein under Section 38 of Stamp Act to send Memorandum of Partition Deed dated 23-05-2002 to the Collector-cum-District Registrar under Stamp Act for collecting stamp duty and penalty.

2. The revision petitioner tried to mark a Memorandum of Partition Deed dated 23-05-2002 and the first respondent herein has taken objection on the admissibility and also deficiency of stamp duty on Memorandum of Partition Deed dated 23-05-2002. The trial Court, after hearing the counsel appearing for the parties and considering the precedents relied up on by both the sides, upheld the objection that the Memorandum of Partition Deed cannot be marked without payment of due stamp duty and penalty and requires registration. The revision petitioner thereafter filed I.A.No.170 of 2016 praying for sending Memorandum of Partition Deed dated 23-05-2002 to the Collector-cum-District Registrar under Indian Stamp Act, Kurnool for collecting stamp duty and penalty. The concluding portion of the order dated 21-04-2017 reads thus:

“Henceforth, the present memorandum of partition deed requires both stamp duty and registration so as to receive the same on record and admitted as evidence on behalf of the defendant side and therefore, without proper stamp duty and registration, the same cannot be admitted in evidence. Henceforth, the purpose of filing the present petition will not cure the defects in the said document as rightly put forth by the

counsel for the respondent herein. Accordingly, the point is answered.”

Hence, the Civil Revision Petition.

3. On 28-07-2017, notice before admission was ordered to the first respondent herein and proof of service of notice is filed through U.S.R.No.6124 of 2017. The first respondent, in spite of receipt of notice, is not represented by a counsel.

4. Mr. Raghuveer challenges the findings in the order impugned that the learned trial Judge failed to appreciate the distinction between a curable defect and incurable defect. To point out that the defect under Stamp Act is a curable defect, he draws the attention of the Court to the order dated 28-01-2016 namely; *‘the said memorandum of partition cannot be marked without payment of due stamp duty and penalty’*. Therefore, according to him, the revision petitioner is not precluded from getting this curable defect attended to and thereafter, take steps for bringing the document as evidence. At that stage, this Court purpose whether primary or collateral would arise and therefore, recording findings even on admissibility of document without getting the stamp duty and penalty collected by the District Registrar is unsustainable in law. He goes that part to contend that if the revision petitioner is prepared to pay the stamp duty and thereafter stand before the Court refusing such request amounts to failure to exercise the jurisdiction cast on the trial Court and prays for setting aside the order impugned and in the revision and send Memorandum of Partition Deed dated 23-05-2002 for collecting stamp duty and penalty from the revision petitioner. I have perused the record and also noted the

contentions urged by Mr. Raghuveer. This Court is now required to consider the legality and propriety of the findings recorded by the trial Court more fully excepted above. The consideration of purpose and nature for which the document is sought to be brought on record has been taken up ahead of its turn and a finding is recorded. The document once sent to the District Registrar, the District Registrar considers the nomenclature contents purpose and collect stamp duty from the petitioner. For getting that defect cured, the petitioner at that stage, if heard on other objections, it would be proper and correct. Pronouncing final opinion, while considering the request of the petitioner for sending the document for expert, in the considered view of this Court, is untenable and illegal.

5. For the above reasons, the order impugned in the revision is set aside. The trial Court is directed to send Memorandum of Partition Deed dated 23-05-2002 to the Collector-cum-District Registrar under Section 38 of Stamp Act. After the stamp duty as decided by the competent authority is paid, it is open to the petitioner to introduce the document in the suit and at that juncture, the nomenclature contents etc., can be considered all the claims and objections in this behalf are referred for consideration by the trial Court at this stage of the matter.

6. Mr. Raghuveer relied on the following decision on the defect being curable under Stamp Act.

7. Civil Revision Petition is ordered.

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

JUSTICE S.V. BHATT

Date: 16-10-2017
mrh

