

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4454 OF 2011

ORDER:

Heard learned counsel for petitioner/plaintiff in the revision and also the learned counsel for 1st respondent – 2nd defendant, for the notice sent to 2nd respondent – 1st defendant, even in deposit returned after seven days is a sufficient service including under Rule 27 of the General Clauses Act, thereby taken as sufficient service.

2. Perused the impugned order of the lower court and the grounds of revision.

3. It is on the application of the 2nd defendant in I.A.No.590 of 2011 in the pending suit of the plaintiff in O.S.No.301 of 2010, to refer the alleged memorandum of agreement, dated 18.10.1995, to the District Registrar for impounding under Section 35 of the Stamp Act. The contentions in the application in support of the prayer are that the plaintiff filed the suit against him and his brother for partition of the plaint schedule properties as if joint family properties but the suit property is the self-acquired property of the 2nd defendant, plaintiff and 1st defendant thereby have no right. The plaintiff and 1st defendant also executed along with their sisters the document in question on 18.10.1995 in favour of him (2nd defendant) by admitting the right title over

the property of the 2nd defendant, though it is not a registered one, it is thereby from the contention of not duly stamped is required to be impounded by the District Registrar.

4. The contention of the plaintiff mainly in opposing the petition from the counter is that as per the recitals in the documents, the other co-owners relinquished their right over the property and possession handover to the 2nd defendant on the date of execution; no such document is executed; recitals go to show it is a relinquishment deed as per the Registration Act and Transfer of Property Act, it is liable for registration and thereby inadmissible in evidence from Section 17 and 49 of the Registration Act and thereby the question of sending the document for impounding to stamp duty for cannot be looked into even for collateral purpose does not arise.

5. It is after hearing both sides, the order of the lower court reads that the document under which the petitioner claims acquired rights over the plaint schedule property is a compulsory registerable, no doubt it is also not sufficiently stamped, thereby it cannot be marked and once the plaintiff/ the party wants to send the document for impounding to cure the defect of stamp duty, it can be sent in allowing the application.

6. As held by this Court in detail in ***Budha Jagadeeswara Rao Vs. Sri Ravi Enterprises***¹, the question of impounding a document does not arise unless it is the original. What the contention raised by the counsel for revision petitioner is it is not known it is original or copy. A perusal of the order shows it is the original filed to be impounded and sought for that was allowed. If at all it is a copy, it is made clear by virtue of this order that question of impounding a copy, which is not within the meaning of 'instrument' under Section 2(14) of the Indian Stamp Act, does not arise; if it is original, it is the option of the party either for impounding by court to pay the stamp duty payable with ten times penalty or to make a request to refer the document to the District Registrar for impounding, it is for the reason that District Registrar is not bound to impose ten times penalty after estimation of the value of the document to be impounded.

7. As held in the above expression, Stamp Act scope is different from Registration Act. Collateral purpose is unknown to Stamp Act but for to the Registration Act. It is for the reason that once a document without objection even marked yet not duly stamped, the objection deemed waived, cannot be raised later, however, once an objection raised for its marking as also held by the Apex Court in ***Bipin Shantial***

¹ CRP.No.1850 of 2015, dated 23.08.2016

Panchal Vs. State of Gujarat and another², the objection has to be instantaneously be decided to impound the document, it is for the reason collateral purpose is unknown to the stamp act. However, even it is a compulsory registerable document under Section 17 of the Registration Act, by virtue of Section 49 *proviso* of the Registration Act, from clause (iii) of the *proviso*, other than for specific performance of the contract for sale and other than for doctrine of part performance covered by the clauses (i) and (ii), a document can be marked for a collateral purpose even for want of registration a compulsory registerable one. It is also answered in ***Jagadeeswara Rao case referred supra***, what is collateral purpose for marking a document for the collateral purpose for want of registration since not registered provided it is duly stamped. As referred in the above expression, the expression of the Apex Court in ***Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanapalle and another***³, once a party asks for referring the document not willing to pay the stamp duty with ten times penalty before the court to impound, even after court passing an order for impounding, court is bound to refer the document to the District Registrar. Once such is the case, there is nothing to interfere with the order of the lower court of the document is not sufficiently stamped for impounding at request of the party to refer to the District Registrar for duly

² AIR 2001 SC 1158

³ AIR 2001 SC 1321

impounding and certifying. It is only thereafter whether the document for want of registration can be marked for collateral purpose that arises.

8. Accordingly and with the above observations, this civil revision petition is dismissed, confirming the order of the lower court. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

07.11.2017
SS

DR.B.SIVA SANKARA RAO, J

