**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.2611 of 2015**

**ORDER** :

Heard both sides and perused the grounds urged in the revision and the impugned order of the lower Court.

2. The question of impounding a not duly stamped including insufficiently document unless a original is produced does not arise for a copy not an instrument within the meaning of Section 2 of sub-section 14 of the Indian Stamp Act, 1899. So far as the original document concerned, if at all it is in the custody of the other side, notice to produce can be sought as contemplated under Order VIII Rule 8 C.P.C. in the format or otherwise showing it is in the custody of the other side as contemplated by Order XI Rule 14 C.P.C. by petition. The procedure in such case is undoubtedly after the other side produced the document not willing for impounding, the person who sought for has to pay, the stamp duty with penalty and cause substitute on exhibition a certified copy to it, to return the original. Here, it is not the case, as on notice to produce issued Under Order XII Rule 8 C.P.C. and the plaintiffs stated that there is no such document in existence. No doubt, in the course of hearing the revision, learned counsel for the revision petitioner submits that the very document stamp paper purchased way back in the year 1998 in the name of the wife of the 1st plaintiff, by name, Subba Raju and the scribe is no other than Clerk of that 1st plaintiff and once it is being

exhibited in so far as the proof concerned, the evidence in relation to it can be draw into and it is premature for the lower Court to say document is not relevant and not admissible. In fact, Court is entitled while considering admissibility also relevancy including from the very wording of Section 136 of the Indian Evidence Act. Leave it as it is, it is not a case of the plaintiffs including for the notice to produce of they are in possession of the document. At best, it is shown original in existence and in the custody of the other side and not produced as held by the Three Judge Bench of the Apex Court in **Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others[1].** It is premature to go into that and on the scope of law including to draw any inference as contemplated by Section 114 of the Evidence Act as a foundation has to be laid during trial about its existence, then the question of production or withholding arises to consider even to draw such inference.

3. Having regard to the above, as collateral purpose is unknown to the Stamp duty, but for to the Registration Act including from combined reading of Section 17 read with 49 of the Registration Act and the third part of the proviso to Section 49 from want of even of registration of a compulsorily registerable document when the very document most of the terms show fixing of the terms to enforce by virtue of the contents that once to be exhibited is to be duly stamped and once not duly stamped, and original not in existence, question of

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[1] AIR 1968 SC 1413

impounding the copies since does not arise, unless it is duly stamped, question of admitting for a collateral purpose of a compulsorily registerable document also does not arise.

4. Having regard to the above, there is nothing to interfere with the conclusion of the lower Court though the order of the lower Court is otherwise not sustainable.

5. Accordingly and with these observations, the civil revision petition is disposed of, by left open all available defences under law.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

**Dr. B. SIVA SANKARA RAO, J**

21st November 2017.

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