HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3490 of 2017

ORDER:

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

As per the settled law a document nomenclature or title is not decisive, but for the Court or the authority who has to impugn if at all any stamp duty required to determine from the contents of the document as to the nature of the document. Leave it apart, without attestation the compliance with the requirement of Section 63 of the Indian Succession Act does not arise, an unregistered even holograph document with recitals to create a right to take affect in future after death of the executant cannot be styled as a will making bequeath in relation to the properties. Then it is to determine the nature of the document from which any rights are created including to avoid any future disputes among the persons who will take affect of rights over the properties as a family arrangement or otherwise as the case may be. Any document over which rights are created or rights will dwell in future is liable for registration of a property worth above Rs.100/-. Once such is the case, an unregistered document can be received from the combined reading of Section 17 r/w 49 of the Registration Act from its proviso for collateral purpose other than possessory sale agreement pursuant to the amended Central Act No.48/2001 dated 24.09.2001, not in a suit relating to specific performance to receive as evidence. Thus, only for a collateral purpose, leave it as to what is a collateral purpose with relation to nature of facts covered by the contents of the document to be let in with reference to it. The document once required to be duly stamped and unstamped or not duly stamped as the case may be, it is liable to be impounded. The impounding is when document produced before the Court or other authorities who receives it and the party not willing for the impounding to pay with the stamp duty and 10 times penalty as the case may be still require to refer the document to the District Registrar concerned to impound for the reason where the question of payment of 10 times penalty does not arise for discretion lies on even the original stamp duty. However the fact remains that to impound with stamp duty a document must satisfy the requirement of instrument defined in Section 2(14) of Indian Stamp Act and it is the settled law that a copy of the document is not an instrument as such, when original is not in existence question of impounding a document does not arise. Once such is the case, the document which requires stamp duty and even for want of registration can be admitted for collateral purpose and once duly impounded and stamp duty paid either by the Court or other authority or the District Registrar as the case may be, the defect cures as if the document originally stamped, but for to say question of impounding by any authority does not arise when the original instrument is not before the Court for impounding as held in **Buddha Jagadeeshwara Rao Vs. Sri Ravi Enterprises**[1]. As such, the lower Court is right in not receiving the document and if it is an original, it is always left open to the party to invoke the assistance of the Court to impound such original with stamp duty and penalty if willing to pay before the Court or to require the Court to refer the document

[1] (2017) 2 ALT 736

to the District Registrar to certify after duly impounding then to mark if at all to mark for want of registration for collateral purpose. Registry to send the document to the trial Court if received and lies with in the revision.

Accordingly and in the result, the Civil Revision Petition is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 26.12.2017
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