THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5296 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 16.09.2015, passed in Original Suit No.96 of 2011 by the Additional Senior Civil Judge, Anakapalle, Visakhapatnam District, whereunder the objection raised by the learned counsel for the 1st defendant, petitioner herein, was turned down and marked the same as exhibit, holding that the letter proposed to be marked does not create any interest over the immovable property.

2. The only dispute before this Court is that the letter is required to be stamped and registered as it is an assignment. Admittedly, the trial Court took a view that it will not create any interest in the property, but no reason was assigned by the trial Court to arrive at such conclusion. Therefore, the order passed by the learned Additional Senior Civil Judge at Anakapalli, is bereft of any reasons. When there is a dispute with regard to marking of a document on the ground of want of registration and insufficient stamp duty paid on the document etc., the Court is bound to decide the stamp duty payable on the document before admitting the document in evidence while postponing the other objections regarding

registration. The Apex Court in Bipin Shantilal Panchal v. State of Gujarat and another[1], held as under:

> "It is an archaic practice that during the evidence – collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection. Such practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.
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> When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course.
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> However, if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."

Thus, in view of the directions issued by the Full Bench of the Apex Court, the Court is bound to decide the stamp duty payable on the document taking into consideration the nature of the documents and the nature of the dispossession if any made in the document

[1] (2001) 3 SCC 1

tendered in evidence for marking and for all other purposes like want of registration etc., the Court can mark the document tentatively and at the end of the trial, Court has to decide the objection with regard to admissibility of any other ground except on the ground of non-payment of stamp duty. Thus, it is clear from the law declared by the Apex Court that the Court is bound to decide the admissibility of a document on account of non-payment of stamp duty at the stage of admitting the document itself.

3. But, here in this case, the trial Court did not decide whether the document creates any interest in the immovable property or otherwise except arriving at a conclusion that the document did not create any interest in the immovable property without any reasoning.

4. In view of the above, the impugned order, dated 16.09.2015, passed by the trial Court, in Original Suit No.96 of 2011 is liable to be set aside, directing the trial Court to decide the nature of right created under the document i.e., letter dated 11.04.2002 executed by plaintiff No.2 in favour of plaintiff No.1 and collect stamp duty if any payable on the said document and the other objections regarding admissibility for want of registration etc., shall be considered at the end of trial, not at this stage.

5. With the above direction, the Civil Revision Petition is allowed setting aside the order dated 16.09.2015, passed in Original Suit No.96 of 2011 by the Additional Senior Civil Judge, Anakapalle,

Visakhapatnam District and the matter is remanded to the trial Court to decide the nature of dispossession under letter and whether it is liable for penalty and stamp duty, exercising power under Sections 33 and 35 of the Indian Stamp Act, pass reasoned order, in accordance with law.

Miscellaneous Petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

M.SATYANARAYANA MURTHY,J

Date:20.06.2017
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