

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.614 OF 2012

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 16.11.2011 in O.S.No.62 of 1996 on the file of the Court of the Senior Civil Judge, Tanuku.

2. The contention of the learned counsel for the petitioner is two fold: (1) the document in question will not fall within the ambit of Section 17 of the Registration Act, 1908; therefore, the finding of the trial Court is liable to be set aside; and (2) the trial Court committed grave error while refusing to mark the document in question.

3. *Per contra*, the learned counsel for the respondents submitted that the trial Court considered the recitals of document in right perspective and declined to mark the same.

4. A perusal of the record reveals that the first respondent herein filed O.S.No.62 of 1996 on the file of the Court of the Senior Civil Judge, Tanuku, against the petitioner and respondent Nos.2 to 15 for partition and separate possession of the suit schedule property. Pending suit, the petitioner and respondent Nos.2 to 6 and 11 filed I.A.No.597 of 2011 in O.S.No.62 of 1996 seeking permission of the Court to allow them to adduce secondary evidence by receiving the letter dated 19.11.1994 executed by the first respondent/plaintiff and the same was allowed. They also

filed I.A.No.596 of 2011 in O.S.No.62 of 1996 to recall DW.1 for marking of the said letter and the same was allowed.

5. In order to appreciate the rival contentions, I have carefully perused the recitals of the letter as well as the impugned order. The trial Court arrived at a conclusion that the first respondent herein relinquished his right in the immovable property by executing the letter in question.

6. Learned counsel for the petitioner in the trial Court cited eight decisions. The trial Court simply stated those decisions are not applicable. While deciding the interlocutory applications, the Court ought not to have expressed any opinion touching the merits of the main case. It is the duty of the Court to consider the decisions cited by both parties and arrive at a conclusion whether those decisions are applicable to the facts of the case on hand or not. The Court cannot simply say the decisions cited by the parties are not relevant. In the instant case, the trial Court has not properly considered the recitals of the document in dispute with reference to case laws.

7. In view of the peculiar facts and circumstances of the case, I am of the considered view that it is a fit case to remand the matter to the trial Court to consider the above aspect afresh.

8. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 16.11.2011 in O.S.No.62 of 1996 on the file of the Court of the Senior Civil Judge, Tanuku and the matter is remitted to the trial Court to consider the case afresh and pass

appropriate orders in accordance with law after giving a reasonable opportunity to both parties. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 30.01.2017

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