

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3475 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner under Article 227 of Constitution of India, challenging the order, dated 12-06-2017 passed in I.A.No.78 of 2017 in O.S.No.2003 of 2006 by the VI Senior Civil Judge, City Civil Court, Hyderabad, declining to mark the document styled as 'deed evidencing oral partition' written on a stamp worth Rs.100/-.

The trial Court refused to admit the document on the ground that the parties to the document were seven in number. The parties 1 to 3 and 5 to 7 alone signed on the document but the 4th party, Abid Hussain Khan (defendant No.4), did not sign on the document. Therefore, it is incomplete. The 2nd ground is that it is an insufficiently stamped document and the third ground is that it compulsorily registerable document under Section 17 of Registration Act, thereby it is not admissible in evidence.

The contentions before this Court are that the 'deed evidencing oral partition' can be admitted for limited purpose, though it was not signed by the 4th party, Abid Hussain Khan (defendant No.4), on the document. The plaintiff filed application in I.A.No.134 of 2017 in O.S.No.2003 of 2006 to send the document to the Sub-Registrar for impounding, by exercising power under Section 33 of the Stamp Act, but it was returned by the Sub-

Registrar for the reasons not known to the petitioner. Therefore, refusal to admit document on the ground of insufficiently stamped document is not available at this stage. So far as the 3rd ground is concerned, the question of registration would arise, when all parties signed. But, the document was not signed by the 4th party, Abid Hussain Khan (defendant No.4). Therefore, it is not a ground to reject admission of the document in evidence.

The document tendered before the Court for marking is an instrument of partition as defined under Section 2 Clause 15 of Indian Stamp Act as amended by Act, 1979 of 1976 w.e.f., 16-08-1986 and which reads as follows:

*“15) **"Instrument of partition"**:- "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any civil court and an award by an arbitrator directing a partition and a memorandum regarding past partition.”*

Therefore, this document will fall within the definition of instrument of partition under Section 2 Clause 15 of Indian Stamp Act and it is required to be stamped but it was written on stamp worth Rs.100/- stamp. Therefore, the plaintiff rightly filed an application to refer the document to the Sub-Registrar under Order 13 Rule 8 of Code of Civil Procedure, for impounding the document, but it was returned.

When the document is produced before a Public Officer, who is competent or authorized to receive the same in evidence and the document is found insufficiently stamped, he is bound to impound the document under Section 33 of Indian Stamp Act and must collect stamp duty and penalty in terms of Section 35 of Indian Stamp Act. But obviously, for the reasons known to the Registrar, the Registrar returned the document, on what ground he returned, was not known either to the petitioner or to any one and no letter addressed by Registrar is produced before this Court for return of the document without impounding. Therefore, the document tendered for marking is inadmissible, as the document is insufficiently stamped. The 2nd ground is that the document is required to be registered under Section 17 of Registration Act, but it was not registered and in view of bar under Section 49 of Registration Act, no document shall be received in evidence, when it is a compulsorily registerable document affecting any immovable property comprised therein, or conferring any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. But one exception to Section 49 of Registration Act is that such document may be received as evidence of a contract in a suit for specific performance or to prove collateral transaction. But here the plaintiff need to prove the earlier partition in suit for partition which disentitle the plaintiff in a suit for partition. Therefore, it is not intending to prove collateral transaction. That apart, the document

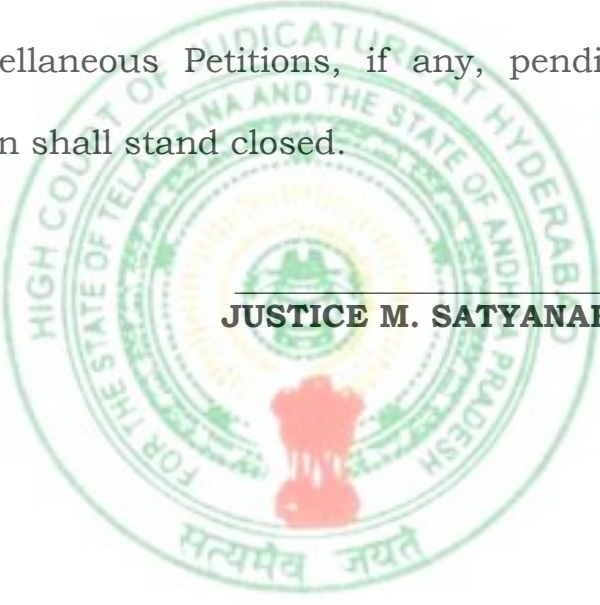
is incomplete as it was not signed by 4th party to the document Abid Hussain Khan (defendant No.4) as such the trial Court rightly refused admission in evidence. Therefore, I find no ground to interfere with the finding recorded by the trial Court by exercising the power under Article 227 of Constitution of India, thereby the revision is devoid of merits and liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed at the admission stage. There shall be no order as to costs.

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

July 21, 2017

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