HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.4723 of 2016

ORDER:

This Civil Revision Petition is filed against the docket order dated 12-08-1997 in O.S.No.13 of 2010 passed by the Court below on the objections of the revision petitioner/defendant No.2 stating that the simple sale deed dated 12-08-1997 filed by the 1st respondent/plaintiff is not admissible in evidence on the ground that it requires stamp duty and penalty.

The brief facts, which are necessary for disposal of this revision, are that the 1st respondent herein filed O.S.No.13 of 2010 for declaration of title and injunction. During the course of trial, when the document dated 12-08-1997 is sought to be marked by the 1st respondent/plaintiff counsel, the revision petitioner took objection as stated above and the Court below after considering the rival contentions held that the document dated 12-08-1997 is not chargeable to duty. Hence, the objection raised by the revision petitioner was overruled.

Sri V.Ravi Kiran Rao, learned counsel for the revision petitioner submits that the Court below referred to Section 4 of the Indian Stamp Act (for short "the Act"), but erroneously held that the said document is not chargeable to stamp duty. He submitted that even for collateral purpose, the document is to be stamped and unstamped document cannot be admitted into evidence. He relied on the judgments of **Pranit Projects (P) Limited, Hyderabad** v. **Goundra Yadaiah**[1], **K.Anand Kumar** v. **State of A.P. represented by its Secretary, Consumer Affairs, Food and Civil Supplies**[2], **Guntupalli Venkata Ramaiah** v. **Guntupalli Purnachandra Rao**[3] and **Kapu Anasuyamma** v. **K.Malla Reddy**[4]

On the other hand, Sri M.Raja Malla Reddy, learned counsel appearing for the respondents submit that the subsequent document dated i.e. registered sale deed dated 11-08-2008 is already registered and stamped, as such the document dated 12-08-1997 does not require stamp duty. He also admits that as per Section 4 of the Act, though the document is chargeable, but not as principal document, since principal document dated 11-08-2008 is already charged to stamp duty. In support of his contentions, he relied on the judgment of **Maharaj Someshar Dut** reported in AIR 1915 Allahabad 198. Both counsel say that sub-section 4 of the Act is applicable for deciding the chargeability of the document dated 12-08-1997.

Section 4 of the Indian Stamp Act reads as follows:

[1] 2014(6) ALD 232
[2] 2012(3) ALT 626
[3] 2010(6) ALT 511
[4] 2012 (3) ALT 625

Several instruments used in single transaction of sale, mortgage or settlement.—

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument: Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

In the judgment of cited (3 supra), this Court held as under:

"Therefore, the order in I.A.No.701 of 2006 in O.S.No.1598 of 2005 on the file of the II Additional Junior Civil Judge, Guntur, dated 05-01-2007 is set aside and it is declared that the documents dated 05-03-1993 in the nature of partition deeds are inadmissible in evidence for any purpose without payment of the requisite stamp duty and penalty and will become admissible in evidence for a collateral purpose on payment of such stamp duty and penalty and it is for the trial Court to determine on merits in accordance with law whether the said documents are being tendered into evidence for any

> collateral purpose or otherwise at the stage of such tender after payment of required stamp duty and penalty. The civil revision petition is ordered accordingly without costs."

In the judgment of Kapu Anasuyamma cited (4 supra), this Court held as under:

> " The law is settled that an unregistered document which requires registration is admissible in evidence under Section 49 of the Registration Act, 1908, for collateral purpose (See Chinnappareddigari Pedda Muthyalareddy v. Chinnappareddigari Venkatreddy and others(1) AIR 1969 AP 242 and Rosham Singh v.Zile Singh (2) AIR 1988 SC 881), whereas an unstamped or insufficiently stamped document cannot be admitted into evidence for any purpose including for collateral purpose in the face of bar under Section 35 of the Indian Stamp Act, 1899."

In view of ratio laid down in above case, unstamped document cannot be admitted into evidence even for collateral purpose but the issue in the present case is stamp duty to be payable on document dated 12-08-1997 in terms of Section 4 of the Act not as a principal document as document dt.11.08.2008 is already charged to duty. As per Section 4 of the Act when several documents are employed for completing the transaction, the principal document alone is chargeable for stamp duty as prescribed in schedule-1 of Indian Stamp Act and each of the other instruments shall be chargeable with a duty of one rupee instead of duty prescribed for it in that schedule. But the Court below after referring to Section 4 of the Act felt that document dt.12.08.1997 it is not chargeable to duty which is erroneous, which in my view is incorrect and the Court below failed to properly appreciate the purport of Section 4 of the Act, while deciding the issue and the same is also not disputed by the learned counsel for the 1st respondent. Though the document dated 12-08-1997 is not principal document but still chargeable to duty.

Accordingly, this Civil Revision Petition is allowed and the matter is remitted to Court below to dispose of the same afresh. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

20-01-2017
Nvl