HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Civil Revision Petition No.1025 of 2014

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order, dated 12.6.2013 in O.S.No.31 of 2011 passed by the Special Judge for trial of cases under S.Cs. & S.Ts. (PoA) Act-cum-X Additional District Sessions Judge, East Godavari District at Rajahmundry, whereby the Court held that the nature of the document sought to be relied upon is mortgage by conditional sale and directed the office to collect the stamp duty payable on the document along with ten times penalty.

2. The order is challenged in the present petition on the ground that the document is not mortgage by conditional sale and therefore stamp duty and penalty cannot be levied on it, but the trial court arrived at conclusion that it is mortgage by conditional sale, erroneously and therefore, requested to set aside the order passed by the trial court directing the trial court to collect minimum stamp duty of Rs.100/-.

3. During hearing, the learned counsel for the petitioner would contend that the document sought to be relied is not mortgage by conditional sale, but it is only an agreement and therefore, the stamp duty and penalty proposed to be levied is excessive and in fact minimum stamp duty of Rs.100/- is to be levied and consequently, the impugned order is erroneous and prayed to set aside the same.

4. Whereas, Sri Mangena Sree Rama Rao, learned counsel for the respondent, supported the impugned order in all respects, including nature of document, stamp duty and penalty levied by the trial court.

5. The document is unregistered and unstamped and the terms and conditions in the document would show that the second party (defendant) agreed that if he fails to repay Rs.9,28,900/- with interest @ 24% per annum by 15.2.2011, the entire land in an extent of Ac.3.88 cents shall be registered in favour of the first party (plaintiff) and it is then the second party need not pay any amount or interest to the first party.

6. The first party (plaintiff) filed the suit for recovery of amount due under the document. Based on the nature of the document it can be considered either as mortgage by conditional sale under Section 58 of Transfer of Property Act or as sale with condition to re-purchase the property and both of them are liable to be executed on proper stamp paper and liable for registration. But here the subject document is unstamped and unregistered and registration cannot be cured on payment of stamp duty and penalty, but the defect to admit the document in evidence on account of insufficiently stamped document can be cured.

7. Section 33 of the Indian Stamp Act deals with examination and impounding of instrument. According to Section 33, every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

8. While impounding the document, the authority has to collect stamp duty payable on document, besides penalty of ten times as prescribed in the Act vide Section 35(a). When penalty is to be levied by the Court, if it is impounded by the Collector, then it is the discretion of the authority who impounded the document, but when the stamp duty payable on the document is assessed by the Court, the Court is bound to collect penalty of ten times and the stamp duty or deficit duty payable on the document. Therefore, the order passed by the trial Court to collect stamp duty and ten times penalty is in accordance with law and the same cannot be found fault.

9. Section 35 of the Indian Stamp Act prescribes amount of penalty.

10. Viewed from any angle the order passed by the trial Court does not suffer from any legal infirmity warranting interference of this Court under Article 227 of the Constitution of India which is supervisory in nature and such power can be exercised exceptionally where the trial Court failed to exercise the jurisdiction vested in it or exercises the jurisdiction exceeding the jurisdiction conferred on it or illegally, but here the trial court acted within the powers conferred on it, to levy of stamp duty and collection of penalty on the disputed document. Therefore, the impugned order does not call for any interference by this Court, however, liberty is given to the petitioner to move appropriate application to send the document for impounding to the Collector under Indian Stamp Act.

11. With the above observation, the Civil Revision Petition is dismissed. There shall be no order as to costs.

12. As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:05-06-2017

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