THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.7105 of 2017

ORDER

This petition under Section 115 of C.P.C. is filed questioning the propriety and legality of the order dated 06.10.2012 passed in E.A.No.144 of 2017 in E.A.No.242 of 2014 in E.P.No.39 of 2011 by the Senior Civil Judge, Khammam.

2. The petitioner herein is a third party claimant in a petition under Order 21 Rule 58 of C.P.C., i.e., claim petition. The petitioner set up an unregistered pasupukunkuma gift deed dated 25.01.1987 in her favour and sought to impound the same by referring to the Collector by exercising power under Section 42 of Indian Stamp Act, to collect stamp duty and penalty payable on the said document. The executing Court dismissed the petition on the ground that the said gift deed is a compulsorily registerable document under Section 17 of the Registration Act, and even if the document is referred to the Collector under Indian Stamp Act and collected stamp duty and penalty, still it is inadmissible in evidence. The executing Court placed reliance on the Full Bench judgment of this Court in **Gadevalla Jayaram Reddy v. Mokkala Padmavathamma and others**[1].

3. The present revision is filed under Section 115 of C.P.C. by the petitioner to revise the order on the ground that the Court cannot refuse to refer the document to the Collector under the Indian Stamp Act for collection of stamp duty and penalty, thereby the order passed by the Senior Civil Judge is erroneous and liable to be set

[1] 2001(5) ALD 402

aside and prayed to set aside the order passed by the Senior Civil Judge, which is under challenge in this revision.

4. During hearing, learned counsel Sri Mohd Riyaz, on behalf of the learned counsel for petitioner Sri Kowturu Pavan Kumar, contended that referring the document for collection of stamp duty and penalty is sufficient to admit the document and on account of the order passed by the Senior Civil Judge, there is a loss to the exchequer of the Government and the question of registration does not arise while considering the application filed under Section 42 of the Indian Stamp act.

5. Filing an application under Section 42 of the Indian Stamp Act itself is an illegality as there is a specific provision in C.P.C., which deals with the impounding and returning of documents i.e., Order 13 of CPC. Order 13 Rule 1 of C.P.C., conferred power on the Court to impound the document on the application made by any of the parties before it. Section 42 of the Indian Stamp Act conferred power on the District Collector to collect, levy of stamp duty and penalty as if it is a land revenue. But the only reason for dismissing the petition filed under Section 42 of the Indian Stamp Act by the trial Court is, that the document is still inadmissible in evidence even if the stamp duty and penalty is collected since there was deficiency of stamp duty, but it will not cure the defect of non-registration.

6. The Division Bench of this Court reported in **Bhubaneswar Naik Santoshrai V. The Special Tahsildar, Land Reforms,**

Tekkali[2]**,** consistently held that Pasupukumkuma gift deed is liable for registration and the same was followed by a single Judge of this Court in another judgment reported in **P. Buchi Reddy V. Anantula Sudhakar**[3]**,** while dealing with an appeal under A.P.Land Reforms Act, but in the latter judgment reported in **Gandevalla Jayaram Reddy vs Mokkala Padmavathamma and Others**[4], the Full Bench of this Court consisting of five judges overruled the law declared by the Division Bench and the single Judge and concluded that though it is Pasupukjumkuma gift deed, it is required to be registered and the same is recorded by another single Judge of this Court in **V. Suvarna V. Vadla Krishnaiah (died) rep by LR.**[5]. Therefore, the document is still inadmissible since reference to the Collector under Section 42 of the Indian Stamp Act would cure the defect of stamp duty and penalty, but it would not cure the defect of non-registration. Therefore, the order passed by the Senior Civil Judge refusing to refer the document to the Collector for levy and collection of stamp duty and penalty is erroneous since such order would deprive the income to the Government exigency. Therefore, the order impugned is set aside, to the extent of denial of referring the document to the Collector while upholding the other part of the finding about the inadmissibility of the document for want of registration as required under Section 17 of the Registration Act, since the petitioner's claim is based on the unregistered document.

7. In view of the law declared, the order passed by the Senior Civil Judge is hereby set aside, to the extent of refusal to refer the

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[2] AIR 1980 AP 139
[3] 1999 (2) ALD 327,
[4] 2001(5) ALD 402
[5] 2004(6) ALD 539

document to the Collector for levy and collection of stamp duty and penalty payable on the document while directing the Senior Civil Judge to refer the document to the Collector since it is the duty of the Court or any Public Officer to impound the document by levying stamp duty and penalty whenever it is referred for impounding under Section 35 of Indian Stamp Act.

8. In the result, the Civil Revision Petition is allowed, for the limited purpose of referring the document for levy and collection of stamp duty and penalty to avoid loss to the exchequer of the Government. No order as to costs.

9. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

22nd December, 2017
sj