

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.7508 of 2017

ORDER:

This revision petition is filed against the order dated 23.11.2017 passed in I.A. No.468 of 2017 in O.S. No.258 of 2011 by the VI Additional District and Sessions Judge, Markapur.

2) Heard learned counsel for the petitioners/ plaintiffs and perused the grounds of revision and the impugned order of the lower Court.

3) So far as the impugned order of the lower Court dated 23.11.2017 passed in I.A. Nos.468 of 2017 in O.S. No.258 of 2011 dismissing the application filed under Order XVI Rules 2 and 4 C.P.C to issue summons to the witnesses i.e., defendant Nos.1, 4 to 6 viz., Ch.Mala Konda Narasimha Rao @ Chinna Mala Konda Narasimha Rao, 2) Shaik Masthan Vali, 3) P.Kasi Rao and 4) P.Suneetha, W/o.Kasi Rao, does not require interference. That is not however be all and end all, from the factual matrix and from perusal of the impugned order, in the suit filed by the plaintiffs for specific performance of the joint contract for sale executed by the defendants 5 and 6 in favour of the plaintiffs and defendants 1 and 2 together, the trial commenced where the sale agreement in question was returned as the original is not available with the plaintiff and the suit filed is based on Xerox

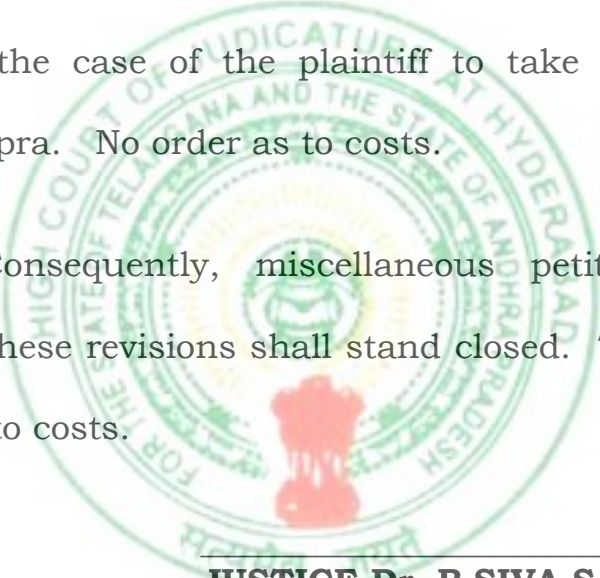
copy of the said sale agreement and stating that the defendants are in possession of the original and when sought for marking, the lower Court refused to exhibit irrespective of the objection, other than stamp duty and registration, as to proof, admissibility and relevancy including for secondary evidence, as to mark subject to objection to decide ultimately, as laid down by the Apex Court in **Bipin Shantilal Panchal Vs State of Gujarat**¹ and if it is even in relation to the stamp duty and registration unless the original is there, question of impounding copy thereof does not arise and once the document is not stamped, question of considering for a collateral purpose or exhibiting does not arise. However, in the case on hand, it is not a case of not duly stamped, but for if at all want of registration once duly stamped for collateral purpose to admit as evidence of a contract in a suit for specific performance as evidence of any collateral transactions as laid down in Section 49 of Provisio of Registration Act, unless it is a possessory sale agreement from the bar of the Central Act 48 of 2001 w.e.f. 24.09.2001 for no such bar by the A.P. Amended Act 4 of 1999 w.e.f. 01.04.1999. Thus, even in such a case, leave about the plaintiffs remedy if at all to serve interrogatories that too having issued notice to produce to the defendant No.1 if at all to issue notice to the others, if any, and if produced, to admit a document else to summon as a court witness any of the

¹ AIR 2001 SC 1158

defendants even after completion of evidence of plaintiff and evidence of the defendants as the case may be as in the present stage of the suit as contemplated by Order XVI Rule 7 and 14 CPC and Section 165 of Evidence Act.

4) With these observations to work out the remedies, the revision petition is disposed of, for nothing to interfere, as practically no purpose will be served from even taken the application covered by the dismissal order of the lower Court filed under Order XVI Rules 2 & 4 CPC for not the provision to support the case of the plaintiff to take under correct provision supra. No order as to costs.

5) Consequently, miscellaneous petitions, if any pending in these revisions shall stand closed. There shall be no order as to costs.



JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.12.2017

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HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.7508 of 2017



Date:29.12.2017

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