

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2685 of 2018

ORDER:

This revision is filed by the petitioners/ plaintiffs, aggrieved by the order dated 10.10.2017 in O.S.No.245 of 2009 passed by the Principal Junior Civil Judge, Chirala.

2) Heard.

3) The revision can be disposed of without admission, without notice to the other side to rectify the defects in the impugned order of the lower Court, more particularly, from the expression of the Apex Court in *Chilakuri Gangulappa v. Revenue Divisional Officer, Madanapalle*¹ reiterated by this Court in *Buddha Jagadeeswara Rao v. Sri Ravi Enterprises*². It is for the reason that the document terms speak the transaction is contemporaneous and what is future enforceability also mentioned and as rightly concluded by the Court below it is not merely a partition list, leave about the fact that even a memorandum of past partition also an instrument of partition by the State amendment to Section 2(15) of the Indian Stamp Act which came into force w.e.f. 16.08.1986 by amended Act 17/ 1986, even there from as an instrument of partition, it is liable for stamp duty as a partition deed. Once such is the case, the Court should not have rejected, but for, impound as laid down in *Chilakuri Gangulappa (supra)* as if at all the stamp duty deficit is

¹ A.I.R.2001 SC 1321

² 2017(2) ALT 736

paid, for collateral purpose is unknown to Stamp Act, the document can be treated as if originally duly stamped. Once such is the case, the next bar to consider is admissibility to what extent from the bar under Section 49 of the Registration Act from a compulsory registerable document under Section 17 of the Registration Act. So far as bar under Section 17, for a compulsory registerable document laid down in Section 49 concerned, there are three exceptions, of which, so far as document an unregistered partition deed concerned, it speaks of the same can be considered for a collateral purpose. Once such is the case, the lower Court should have been impounded to mark the document only for the collateral purpose contemplated by proviso to Section 49 of the Registration Act.

4) Having regard to the above and with these observations, the order of the lower Court is set aside to the extent of holding as inadmissible with a direction to proceed by impounding if not any application filed to refer the document to the District Registrar for duly impounding and then to consider for marking for collateral purpose.

5) Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.05.2018
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