

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.263 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the docket order dated 18.12.2017 in a memo filed in O.S.No.1121 of 2007 passed by the I Additional Senior Civil Judge, Vijayawada.

The petitioner filed I.A.No.329 of 2017 under Order XIII Rule 3 and Section 151 of C.P.C to reject or demark Ex.A-1 document i.e. agreement of sale dated 30.01.1994 to demark Ex.A-1-agreement of sale on the ground that, it was insufficiently stamped document and hit by explanation thereto of Item No.47 of Schedule I-A of Indian Stamp Act.

The respondent filed counter denying the material allegations, *inter alia*, contending that the document is admissible in evidence in a suit filed for specific performance and that the document was not a possessory agreement of sale or agreement of sale, evidencing delivery of possession.

The Trial Court upon hearing argument of both the counsel, dismissed I.A.No.329 of 2017 holding that the Ex.A-1 document is admissible in evidence and the bar under Sections 17 & 49 of Registration Act has no application, since it is a suit for specific performance that would fall within the proviso to Section 49 of Registration Act.

This petitioner raised an objection with regard to admissibility of document on two grounds. The first ground is that, it was not registered, though it is compulsorily registerable under Section 17 of Registration Act and on the second ground that, in view of amendment to Schedule I-A of Indian Stamp Act by A.P. Amendment Act with effect from 22.07.1986. But, the Trial Court

instead of deciding the admissibility of the document passed a different order without deciding the objection on merits, while observing that the same objection was raised by Order VI Rule 17 C.P.C by way of amendment and hence the Court is not inclined to grant further opportunity.

When the petition is filed, the Court ought to have either register the same as interlocutory application or reject the same, instead of doing so, passed a docket order. But, denied an opportunity without deciding the objection, so far as objection regarding admissibility of the document on the basis of Sections 17 & 49 of Registration Act, which is covered by order in I.A.No.329 of 2017. Therefore, there is no need to decide about the admissibility of document by this Court again in the present application filed before the Trial Court. Hence, the docket order dated 18.12.2017 in a memo filed in O.S.No.1121 of 2007 passed by the I Additional Senior Civil Judge, Vijayawada is erroneous and consequently, it is liable to be set-aside, while directing the I Additional Senior Civil Judge, Vijayawada to decide the admissibility of the document based on the objection under Article 47-A and explanation annexed thereto of Schedule I-A of Indian Evidence Act, after affording reasonable opportunity to both parties.

With the above observation, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:01.11.2018

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