

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1629 of 2018

ORDER:

1) Aggrieved by the order, dated 06.02.2018, passed in I.A.No.53 of 2018 in O.S.No.679 of 2011 on the file of the II Additional Senior Civil Judge, (Fast Track Court), Rajamahendravaram, wherein the application filed by the respondent/defendant under Section 38 (2) of the Indian Stamp Act, for impounding the un-registered sale deed dated 10.08.1996, was allowed, the present Civil Revision Petition is filed by the petitioner/plaintiff under Article 227 of the Constitution of India.

2) The averments in the affidavit filed in support of the petition would show that the mother of the defendant, who is proposed to be examined as DW.2, filed a document dated 10.08.1996, which is un-registered sale deed executed in her name. It is said that the mother of the defendant enjoyed the plaint schedule property basing on the said document and thereafter executed a registered settlement deed dated 13.01.2011 in favour of the defendant. Since the defendant claimed to be in possession of the property, he intends to mark the above document for collateral purpose and send the same to the Collector for collection of requisite stamp duty and penalty.

3) A counter came to be filed by the petitioner/plaintiff stating that the respondent herein have come to the Court at a belated stage. It is stated that when the suit is coming up for cross-examination of DW.2, the Court ought not to have entertained the said application. It is said that the conduct of the defendant is only to prolong the litigation and hence urges the Court not to take the document as evidence.

4) Considering the rival claims, the trial Court allowed the said application. Challenging the same the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner mainly submits that when the defendant claimed himself to be in possession and when the document which is sought to be marked is only for collateral purpose, there is no need to get the document impounded. He further pleads that when the petitioner himself is stating that the defendant is in possession of the property, there may not be any necessity to impound the document.

6) On the other hand, the learned counsel for the respondent/ defendant would submit that once an application is made under Section 38 (2) of the Indian Stamp Act, the Court cannot refuse to impound the same.

7) In *B.V.R.Reddy v. The Adoni Co-operative Central Stores Limited and another*¹ this Court dealt with a situation where the lower Court refuses to impound the document holding that the document cannot now be sent to the Collector under Section 38 (2) of the Stamp Act, as the civil Court is the competent authority to decide as to the amount of stamp duty and penalty to be collected. Referring to Section 33 and 35 of the Stamp Act, this Court while allowing the Civil Revision Petition directed the trial Court to send the document to the Collector for taking necessary action as provided under Section 40 of the Stamp Act.

8) In *Nalajala Jagannadham v. Veerepally Mangamma*² this Court after referring to Sections 35, 38, 39 and 40 of the Stamp Act, held that if a party wants the document to be admitted in evidence, then the Court shall collect the stamp duty and penalty and then admit the instrument in evidence. If the party, instead of requiring the document to be admitted in evidence merely wants the Court to send it to the Collector to be dealt with under Section 40 of the Act, the Court has no option but to send it to the Collector as provided in Section 38 (2) of the Stamp Act. It is further held that the Court cannot compel the party to pay stamp duty and penalty and have it admitted in evidence.

¹ AIR 1975 AP 96

² (1997) 2 ALD 549

9) In the instant case an application was filed by the petitioner was under Section 38 (2) of the Stamp Act, requesting the trial Court to send the document to the Collector under Stamp Act for the purpose of collecting proper stamp duty and penalty. In view of the judgments of this Court referred to above, the direction given by the trial Court to the extent of sending the document to the Collector for the purpose of collecting stamp duty and penalty, cannot be found fault with.

10) Insofar as other portion of the order ie. the document is marked for collateral purpose is in *Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others*³ the Apex Court while dealing with the effect of using an un-registered document for collateral purpose observed as under:

“18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy⁴ has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped

³ (2016) 1 ALD 40 (SC)

⁴ AIR 1969 A.P. (242)

instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/ defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.”

11) In the instant case the document which is sought to be marked is un-registered document and the same is marked only for collateral purpose. As per Section 17 of the Registration Act, the un-registered document can be received for collateral purpose, if the same is sufficiently stamped. Since the document which is now sought to be marked is only for collateral purpose and the defendant is ready to pay stamp and penalty, I see no merits in the revision and the same is liable to be dismissed.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

26.10.2018
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