THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2164 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the docket order dated 21.01.2015 passed in O.S.No.130 of 2013 by the Principal Junior Civil Judge, Kavali, whereby the Court below directed the petitioner/plaintiff to pay stamp duty and penalty while differing cross examination till 12.02.2015.

The petitioner filed suit for recovery of an amount of an Rs.86,000/- which is inclusive of advance consideration under agreement of sale dated 09.02.2010 and interest @ 24% per annum from 09.02.2010 to 08.02.2013 alleging that he purchased the property shown in the plaint schedule under agreement of sale for Rs.6,61,500/- and paid Rs.50,000/-as advance on the same day while agreeing to pay balance consideration of Rs.6,11,500/- on or before 28.02.2010. The agreement was executed on Rs.120/- stamp paper and as the agreement of sale is only non possessory agreement, the Court below took objection that ExA.1-agreement of sale was not duly stamped and unregistered, hence, it is impounded for collection of penalty and deficit stamp duty. But on the ground of non registration, the document cannot be impounded and the deficit stamp duty cannot be collected. The stamp duty payable on agreement of sale as per Schedule I A is under Article 6(c) of the Indian Stamp Act as amended by A.P. Act 1999. The stamp duty and penalty proposed to be collected by the Court below for want of registration, but the Court below did not consider the objection in proper prospective and committed an error in passing such an order. If Ex.A.1-agreement of sale is not admissible in evidence for want of registration, the stamp duty and penalty cannot be collected, if Ex.A.1 agreement of sale is insufficiently or improperly stamped as per Schedule I A of the Indian Stamp Act as amended by A.P. Act, 1999 the duty of the Court is to collect deficit stamp duty and penalty. Therefore, the impugned order is hereby set aside and remanded to the Court below with a direction to examine whether the stamp duty paid on agreement of sale is in accordance with Indian Stamp Act as amended by A.P. Act, 1999 and levy stamp duty and penalty and collect, if necessary.

With the above directions, the revision petition is allowed and remanded to Principal Junior Civil Judge, Kavali to decide in accordance with. There shall be no order as to costs.

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

JUSTICE M. SATYANARAYANA MURTHY

13.03.2018
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