HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4521 of 2014

ORDER:

This Civil Revision Petition is filed aggrieved by the order dated 10.10.2014 in O.S.No.198 of 2007 pending on the file of the Junior Civil Judge, Nandikotkur.

2. The petitioner herein is the plaintiff in the suit filed for permanent injunction restraining the defendant and his men from interfering with the peaceful possession and enjoyment of the plaint schedule property of Midthur village. Thereafter, the plaintiff filed an amended plaint along with the unregistered Relinquishment Deed for marking the said document as an exhibit on behalf of the plaintiff. For the same, the defendant raised an objection.

3. After hearing both sides, the Court below, by order dated 10.10.2014, stated that the objection raised by the defendant is sustained and that the unregistered Relinquishment Deed cannot be marked as an exhibit on behalf of the plaintiff. Aggrieved of the said order, the plaintiff filed the present Civil Revision Petition.

4. Learned counsel for the revision petitioner-plaintiff submits that the impugned order of the Court below is contrary to law. He further submits that the Court below

erred in coming to the conclusion that the memorandum of agreement is a relinquishment deed and that the Court below ought to have observed that the document is a memorandum of past transaction and ultimately, prayed the Court to allow the Civil Revision Petition by setting aside the order of Court below. Whereas the learned counsel for respondent-defendant supported the order of the lower Court.

5. In fact, a perusal of the document in question, dated 18.04.1987, executed by Metla Roshamma, w/o. Sunki Reddy in favour of Yelampalle Laxmamma, w/o. Subba Reddy and daughter of Laxmamma by name Gopu Ramanamma by referring said Subba Reddy is her brother and said Subba Reddy registered a document dated 06.10.1982 pertaining to the property situated in Survey No.1180 admeasuring Ac.6.84 cents paiki, Ac.2.68 cents and the extent mentioned instead of Ac.2.68 cents as Ac.2.28 cents and in Survey No.1179 to an extent of Ac.1.22 cents and in Survey No.2 to an extent of Ac.18.96 cents paiki and Ac.1.50 cents situated at outskirts of Devanuru Village, belongs to Govind Reddy, has been handed over the property pending disputes. Since then the beneficiary of the document, in whose favour it is executed, is mentioned as in possession of said property. Said Laxmamma, w/o. Subba Reddy stated filed a criminal case against Sunki Reddy, w/o. Roshamma alleging Nagi Reddy has

not been seen after execution of the registered Deed dated 06.10.1982 in favour of Subba Reddy and the Police after investigation found said Subba Reddy has executed a Gift Deed and delivered the possession to Roshamma on his free consent. By agreeing the suggestion of the village elders of not to quarrel between them by receiving Rs.10,000/- by the executant Laxmamma, she acknowledged the same by showing the above Gift Deed executed by Subba Reddy is valid with assurance of they never raise any disputes over the property and that was delivered and thereby, the agreement. This document no way mentions any conveyance or relinquishment of rights, but for the receipt/acknowledgment about Rs.10,000/- received and consequently mentioning the Gift Deed already executed by Sunki Reddy in favour of Nagi Reddy is true and valid. Though there is no such confirmation is required and thereby, it is not a contemporaneous document of any conferring of right over the property nor relinquishment of property much less with any right to confer or relinquish, but for confirmation of the Gift Deed executed by the owner-donor of the property in favour of the donee; as such this document is liable for stamp duty as a letter/acknowledgment/receipt. So far as the impounding of the document is concerned, the Apex Court in SMS Tea Estates Private Limited v. M/s. Chandmari Tea Company

Private Limited[1] laid down that (i) the Court should, before admitting any document into evidence or acting upon such document, examine whether the document/instrument is duly stamped and whether it is compulsory registerable (ii) if the document is found to be not duly stamped, Section 35 of the Indian Stamp Act bars said document being acted upon and the Court should then proceed to impound it under Section 33 of the Indian Stamp Act and follow the procedure under Sections 35 & 38 of the Indian Stamp Act. If the document is found to be duly stamped or if the deficit stamp duty and the penalty is paid either before the Court or before the Collector (now the District Registrar) as contemplated by Sections 35 to 40 of the Indian Stamp Act, the defect with reference to the deficit stamp is thereby cured to treat the document as duly stamped and once found duly stamped, the Court shall proceed to consider whether the document is compulsory registrable and if it is found to be not compulsory registerable, it can act upon the document without any impediment.

6. Having regard to the above law, as the document no way requires registration, but for stamp duty as receipt as referred supra and without payment of the stamp duty and penalty the

[1] 2011 (5) ALD 149 SC

document cannot be marked, the lower Court is directed to proceed with accordingly.

Accordingly and in the result, this Civil Revision Petition is allowed to the limited extent directing the lower Court to impound the document (only if original available) as receipt and after payment to exhibit for no registration is required, but for any other objection to mark subject to objection as to proof, relevancy and admissibility.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

20.02.2018
MVA