

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.5729 of 2017****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed questioning the Order dt. 10.08.2017 in I.A.No.66 of 2015 in O.S.No.23 of 2011 passed by XVI Additional District Judge, Rangreddy District at Malkajgiri, admitting the agreement of sale dt. 21.09.2009 in evidence, overruling the objection raised by the learned counsel for the petitioner herein i.e., defendant before the trial Court.

O.S.No.23 of 2011 was filed for recovery of the amount based on agreement of sale as the respondent allegedly paid advance amount of Rs.5,05,100/- under agreement of sale for total consideration of Rs.63,00,000/-, but the objection raised by the learned for the defendant as to the admissibility of the document on the ground that the document was not sufficiently stamped document in view of Article 6 B of Schedule 1-A of the Indian Stamp Act and filed a Memo dt. 16.09.2015 raising an objection and a reply was given by the respondent referring two judgments contending that agreement is admissible in evidence as it did not convey or transfer or alienate any immovable property, but the trial Court on considering the objection held that the document is not required to be registered based on Section 49 of the Registration Act. Unfortunately, in para No.3 of the Order, the trial Court referred Section 17 of the Registration Act and the amendment thereto by Act 4 1999, whereby an agreement of sale of immovable property of the value of Rs.100/- and upwards is made compulsorily registerable and concluded that the document is admissible in evidence, in view of the proviso to Order 49 of Indian Registration Act. In fact, this petitioner never raised any objection as to the admissibility for want of registration in terms of

Section 17 and Section 49 of Indian Registration Act, but the objection before the trial Court was with regard to stamp duty paid on the agreement of sale, in view of Article 6-B of Schedule 1-A of the Act, which deals with an agreement or memorandum of agreement not otherwise provided for and the stamp duty is payable on the document is Rs.5/- for every hundred or part thereof on the market value or the estimated cost of the proposed construction development of such property as the case may be as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department Authorities, whichever is higher. The trial Court did not advert to the objection and decided admissibility of the document erroneously and when an objection was raised regarding admissibility of the document on the ground that document is not sufficiently stamped, the Court has to decide the objection with reference to the provisions of Indian Stamp Act, but not based on the Registration Act. Therefore, the Order passed by the trial Court is erroneous on the face of it and the same is liable to be set aside.

Accordingly, this Civil Revision Petition is allowed setting aside the Order dt. 10.08.2017 in I.A.No.66 of 2015 in O.S.No.23 of 2011 on the file of XVI Additional District Judge, Rangareddy at Malkajgiri, while remanding the petition to the trial Court to decide the objection as to the admissibility of the document on the ground that agreement of sale is insufficiently stamped document and pass appropriate order afresh within a period of two months from the date of receipt of a copy of this Order. As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 09-11-2018
eha

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5729 of 2017

Dt. 09-11-2018

cha

