

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.6208 OF 2017

ORDER :

This Civil Revision Petition is filed by the petitioner/1st defendant against docket order dated 31.10.2017 in O.S.No.126 of 2012 wherein and whereby the Court below overruled the objections raised by the revision petitioner (1st defendant therein) for marking of document i.e, partition list, which was sought to be received in I.A.No.191 of 2017 on the ground that the same is not properly stamped.

Heard learned counsel for the petitioner, who submits that the Court below has not considered the issue in proper perspective. He submits that the document which is sought to be marked creates rights in immovable property, as such, same requires stamp duty.

On the other hand, learned counsel for the 1st respondent/ plaintiff submits that the document which is sought to be marked was executed prior to 16.08.1986 on which date, the A.P. (Amendment) Act 17 of 1986 (for short 'the Act') came into force by virtue of which definition of 'Instrument of Partition' was amended under Section 2(15) of the Act, as such, Amendment Act has no application.

Admittedly, the subject partition list relates to the year 1932 and the definition of 'instrument of partition' under Section 2(15) of the Act was amended on 16.08.1986 by A.P (Amendment) Act 17 of, 1986, which reads as follows:

“(15) “Instrument of Partition”: “Instrument of Partition” means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition ¹[and a memorandum regarding post partition;]

The objection of the revision petitioner that since the 1st respondent intends to mark list of partition relates to the year 1932 and that it creates a right over the immovable property, which requires stamp duty, the same cannot be admitted in evidence unless stamp duty is paid, cannot be accepted for the simple reason that Section 2(15) of the Act was amended and ‘memorandum of partition’ was also included in the definition of ‘instrument of partition’ by A.P. (Amendment) Act 17 of 1986 with effect from 16.08.1986. Since the subject partition list intends to be marked by the 1st respondent is prior to the year 1986, as such, same does not fall within the definition of Section 2(15) of the Act. Therefore, the same is not liable for payment of stamp duty.

Though learned counsel for the petitioner raised other objections regarding evidentiary value of the document sought to be marked, but the same can be considered at the time of final disposal of the suit. That apart, learned counsel for the petitioner can cross-examine P.W.3 on the said aspect and dispute the same before the Court below.

In view of above facts and circumstances, I do not see any infirmity in the order passed by the Court below warranting

¹ Added by A.P.(Amendment) Act 17 of 1986 (w.e.f.16-8-1986)

interference by this Court under Article 227 of the Constitution of India.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

23-01-2018
kvs



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