

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.236 OF 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dt.10.10.2018 in I.A.No.212 of 2018 in O.S.No.1 of 2010 of the Senior Civil Judge, Jangaon.

2. Petitioner is the 1st defendant in the above suit.
3. The said suit was filed by the 1st respondent against the petitioner and others for partition and separate possession of 1/4th share of the suit schedule properties apart from mesne profits.
4. During the course of evidence, 1st respondent sought to rely upon a document dt.21.02.2007 and mark the same in evidence.
5. Petitioner objected to the same on two grounds; that it is insufficiently stamped and that it requires registration under Section 17(1)(b) of the Registration Act, 1908 (for short 'the Act').
6. Both these objections were overruled by the Court below on 21.10.2014.

7. This was challenged by the petitioner in CRP.No.5035 of 2014.

8. This Court dismissed the said CRP on 06.07.2017 after considering the contentions of the petitioner. It held that the document in question did not fall within 17(1)(b) of the Act; that it is to be considered only as a Memorandum of Understanding and is to be stamped as an Agreement with Rs.100/- stamp paper; and so stamp duty and penalty payable on it as Rs.1100/- was rightly fixed by the Court below. It therefore declined to interfere with the order passed by the Court below and made an observation that since the petitioner did not file any application under Order XIII Rule 4 CPC to raise an objection about the admissibility, it is open to the petitioner to file application under Order XIII Rule 4 CPC.

9. Thereafter, petitioner filed I.A.No.212 of 2017 to de-exhibit the said document which was already marked as Ex.A1 alleging that collection of stamp duty or impounding the document does not cure the defect in the document and that the document requires registration under Section 17(1)(b) of the Act. He contended that if the document is not de-exhibited, grave prejudice would be caused to the petitioner and relied on the observations in the order passed

in CRP.No.5035 of 2014 permitting the petitioner to file an application under Order XIII Rule 4 CPC.

10. Counter affidavit was filed by the respondent opposing the same. He contended that once the High Court had already decided that the document did not require registration and would not fall under Section 17(1)(b) of the Act, the present application to de-exhibit the said document and treat it as compulsorily registerable document cannot be entertained. It was also pointed out that liberty was given to the petitioner only to file an application under Order XIII Rule 4 CPC, and Ex.A1 complied with all the requirements of Order XIII Rule 4 CPC.

11. By order dt.10.10.2018 the Court below dismissed the said I.A. It observed that once the nature of the document and appropriate stamp duty and penalty payable on it were finally decided by this Court in CRP.No.5035 of 2014 on 06.07.2017, petitioner is not entitled to have the document de-exhibited and the High Court had already held that the said document was not a compulsorily registerable document. It also rejected the contention of the petitioner that the document ought to be treated as a Partnership Deed.

12. Assailing the same, this Revision is filed.

13. Counsel for the petitioner contended that though the order dt.06.07.2017 in CRP.No.5035 of 2014 mentioned only Order XIII Rule 4 CPC, the said provision deals with endorsements on documents admitted in evidence, and the learned Judge who disposed of the CRP intended to permit the petitioner to file an application under Order XIII Rule 3 CPC (which entitles the Court at any stage to reject any document which it considers irrelevant or otherwise inadmissible by recording the grounds of such rejection). Therefore the petitioner was entitled to file application to de-exhibit Ex.A1 and the Court below could not have rejected the same relying on the order passed in CRP.NO.5035 of 2014.

14. Counsel for the respondent refuted the said contentions and supported the order passed by the Court below.

15. It is not in dispute that the question of insufficiency of stamp duty on the document dt.21.02.2007 filed by the 1st respondent as well as whether it requires registration, was initially considered by the trial Court and it had passed order on 21.10.2014 admitting the said document, overruling the objections raised by the petitioner and others that it was insufficiently stamped and that it required registration, by levying stamp duty and penalty of Rs.1,100/- and treating

the document as an agreement. This was assailed by the petitioner in CRP.No.5035 of 2014, in which this Court confirmed the view of the trial Court and held that not only the document dt.21.02.2007 did not fall under Section 17(1)(b) of the Act but also that the payment of stamp duty and penalty would cure the defect under the Stamp Act, 1899. Thus the said issues became final.

16. If the contention of the petitioner that the learned Judge, while disposing of the said CRP No.5035 of 2014 intended to leave the said issues open, is to be accepted, then the learned Judge would have mentioned Order XIII Rule 3 CPC and not Order XIII Rule 4 CPC in the order passed in the Revision. But he did not do so.

17. Petitioner has not sought any Review of the order passed in the CRP.No.5035 of 2014 on the ground that Order XIII rule 4 CPC was incorrectly mentioned instead of Order XIII rule 3 CPC.

18. It is therefore not open to the petitioner to now seek to reinterpret the said order dt.06.07.2017 in CRP.No.5035 of 2014 to mean that this Court did not intend to give finality to the issue, whether the said document is liable to be registered and whether the stamp duty and penalty of

Rs.1,100/- would cure the defect under the Stamp Act, 1899; and that the liberty was given again to the petitioner to question the same by filing an application under Order XIII rule 3 CPC.

19. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to de-exhibit the document, Ex.A1, and in taking the view that the order passed by this Court on 06.07.2017 in CRP.NO.5035 of 2014 on the said aspect, binds it.

20. The Civil Revision Petition accordingly fails and it is dismissed. No order as to costs.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

06th March, 2019.

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