

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1537 of 2019

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.06-04-2017 in I.A.No.114 of 2017 in O.S.No.1721 of 1996 of the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad in refusing to return the document which is the original memorandum of past oral partition produced by petitioner in the said suit.

2. Admittedly, the said document was not admitted in evidence. Also, defendant Nos.3, 5 and 6 in the suit had filed an application for impounding this document for payment of stamp duty and penalty and to send it to the District Registrar by filing I.A.No.55 of 2017 and admittedly the said application was dismissed.

3. Ultimately, it appears that the suit was decreed in favour of 1st respondent herein.

4. The petitioner filed I.A.No.114 of 2017 to return the said document to him, and the Court below rejected it by the impugned order stating that the document was not produced in the Court by him at his request. It also rejected his contention that he brought the document from the widow of 2nd respondent on trust and he has to return it to her.

5. Learned counsel for petitioner contended that the Court below cannot retain the document when it has not been marked in the suit and it was produced by the petitioner on the direction of the Court.

6. Learned counsel for 1st respondent relied on Circular ROC No.1628/SO/2005 dt.10-07-2006 (Circular No.13/2006), which states as:

“(1) To ensure that the documents which are produced in the Court and which are liable to stamp duty are properly stamped.

(2) In case any document is not properly stamped that same shall be impounded and the Presiding Officer shall ensure that an endorsement on the document impounded is made by the Chief Ministerial Officer.

(3) If a party produces a document in the Court which is insufficiently stamped and pays the penalty to the Court as required under Section 33 of the Indian Stamp Act, the same shall be endorsed on the document.

(4) Where a party requests to receive an insufficiently stamped document in evidence, the document shall not be received in evidence, unless, the party pays the required stamp duty and penalty.

(5) If the party requests the Court to send the documents to the Collector, for collection of the stamp duty and penalty, the Court may consider such request and send the document to the Collector.

If the stamp duty and penalty is not paid or insufficiently paid on a document produced into Court and no request is made to send the same to the Collector, such document shall not be returned to the party. The same shall be sent to the Collector for appropriate action.

Therefore, all the Presiding Officers of the Subordinate Courts are directed to follow the above instructions scrupulously.

The Unit Heads are requested to communicate this circular to all the Subordinate Courts under this control.

Receipt of this circular be acknowledged.”

7. A reading of the same suggests that if stamp duty and penalty are not paid after the document is produced in the Court, and no request is made to send it to the Collector, only then the document shall not be returned to the party and should be sent to the Collector.

8. Since in the instant case, the Court below did not hold that the document requires stamp duty and penalty at all, this Circular has no application.

9. Therefore, the Court below is directed to return the said document to the petitioner under proper acknowledgment, and the impugned dt.06-04-2017 in I.A.No.114 of 2017 in O.S.No.1721 of 1996 of the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad is set aside, and the said I.A. is allowed.

10. The Civil Revision Petition is allowed with the above directions. No costs.

11. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-08-2019

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