

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION NO.2675 OF 2016

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 23.02.2016 in I.A. No.20 of 2015 in O.S. No.107 of 2006 of the Principal Junior Civil Judge, Ibrahimpatnam, Ranga Reddy District.

The petitioners herein are defendants 5 and 6.

The first respondent-plaintiff filed the suit against the petitioners and other defendants for partition of the plaint schedule property into eight shares and for allotment of 1/8th share.

A written statement was filed by the petitioners opposing the grant of relief and contending that during the life time of the father of the first respondent, he alienated his share to defendants 2 to 4 under an unregistered sale deed dt. 10.07.1994 and that the petitioners purchased it from defendants 2 to 4. They also alleged that the suit schedule property was partitioned between the father of the first respondent and defendants 2 to 4 more than 30 years back. According to them, the petitioners vendors mutated their names in the revenue records and also obtained pattadar pass books and title deeds in 2005 and the petitioners bonafidely purchased the suit schedule property.

The petitioners then filed I.A. No.20 of 2015 stating that when the sale deed dated 10.07.1994 was sought to be marked by D.W-2, the court below did not permit it, since it was insufficiently stamped and therefore, the said document may be sent to the District Registrar, Ranga Reddy District for the purpose of impounding.

Counter-affidavit was filed by the first respondent opposing the said application. They contended that the evidence of the plaintiff has been closed long back, that the defendants evidence was also closed long back and when the matter was coming up for arguments, I.A. was filed only to drag on the case. They alleged that the petitioners could have taken steps at earlier point of the time to send the said documents for impounding, but they did not do so.

By order dated 23.02.2016, the Court below dismissed the said application agreeing with the contention of the first respondent.

Section 35 of the Indian Stamp Act, 1899 (for short 'the Act) prohibits insufficiently stamped documents to be admitted in evidence, but proviso thereto states that any such instrument can be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of instrument insufficiently stamped, of the amount required to make such duty, together with a penalty to be collected therefor.

Thus, the law itself permits a document insufficiently stamped to be admitted in evidence, if the party producing it, is willing to pay requisite stamp duty together with penalty; and under Section 33 of the Act, it is the duty of every person having authority to receive evidence to impound any document which is produced before it if it is insufficiently stamped.

Having regard to the proviso (a) to Section 35 of the Act, the petitioners cannot be denied an opportunity to pay the requisite stamp duty along with the penalty, since that is a document on which their entire case rests.

Accordingly, the order dated 23.02.2016 of the Principal Junior Civil Judge, Ibrahimpatnam, Ranga Reddy District is set aside; and the said I.A. is allowed. Consequently, CRP is also allowed. No costs.

Miscellaneous petitions, pending, if any shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 05.07.2019

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