THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1997 of 2016

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed challenging the order dt.28.03.2016 passed in I.A.No.88 of 2016 in O.S.No.112 of 2014 on the file of the Additional Senior Civil Judge, at Karimnagar.

3. The petitioner herein is plaintiff in the above suit.

4. The respondents filed three documents, *viz.*, (i) an unregistered and unstamped Sale Deed dt.27.04.1960; (ii) Order dt.20.04.1960; and (iii) 13-B Form and 13-C Form dt.20.12.1999 issued by the Mandal Revenue Officer; and sought to mark them in the Chief-Examination of P.W.1.

5. The petitioner objected to the same, and filed I.A.No.88 of 2016 to impound the unregistered and unstamped sale deed by deciding its nature, and determine the stamp duty to be levied thereon.

6. Counter-affidavit was filed by 4th respondent opposing the said application and contending that the Sale Deed had been validated on 27.04.1960 under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 by the Revenue Authorities, and 13-B and 13-C Certificates were already issued and filed; and that since the document is valid as per the law, it is not required to be impounded again.

7. By order dt.28.03.2016, the Court below dismissed the said application. It held that the question whether proceedings which took place before the Revenue authorities are genuine or not amounts to deciding the main dispute in the suit, and it is not the stage to decide, without any evidence, on mere perusal of the document whether stamp duty is properly paid on the said unregistered and unstamped sale deed dt.27.04.1960.

8. Assailing the same, the present Civil Revision Petition is filed.

9. The counsel for petitioner contended that when objection as to inadmissibility of document on the ground of it being insufficiently stamped is raised, the said objection has to be decided then and there and it cannot be put off. He also contended that under Section 5-A(4) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 only the certificate issued by the Mandal Revenue Officer on regularizing the *sãda* sale deed is admissible, and not the sale deed itself.

10. The counsel for respondent refuted the said contentions and supported the order passed by the Court below. He also contended that the above documents have already been marked, and therefore, the application cannot be entertained.

11. No material is placed before this Court to show that the sale deed dt.27.04.1960 had already been marked, and the objection that it is not stamped was raised subsequently. Obviously, there was a mention about marking of the documents in the Chief-examination, and petitioner immediately filed the I.A. objecting to its marking. Therefore, it cannot be construed that the document is already marked, and that the objection regarding stamp duty is raised subsequently. Therefore, Section 36 of the Stamp Act would not be attracted.

12. In **Bipin Shantilal Panchal vs. State of Gujarat and another**[1], the Supreme Court held that objection relating to definition of stamp duty must be decided first before proceeding further. Therefore, the Court below could not have postponed decision on the sufficiency of stamp duty on the unregistered and unstamped Sale Deed dt.27.04.1960 to a later date.

13. Accordingly, the Civil Revision Petition is allowed. The order dt.28.03.2016 passed in I.A.No.88 of 2016 in O.S.No.112 of 2014 on the file of the Additional Senior Civil Judge, at Karimnagar is set aside. The Court below is directed to decide the issue about the admissibility of the said document before proceeding further after hearing both sides in accordance with law. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.04.2019
Ndr/*

[1] 2001 (3) S.C.C. pg.1