THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.3180 OF 2020

O R D E R

The case of the petitioner is that one Mr. Pingili Jagan Mohan Reddy @ Jagan Reddy, s/o Madhusudhan Reddy was the owner of the subject property. The grandfather of the petitioner by name Mr. Pindi Peddy Mallaiah s/o Illaha, purchased the subject property from the said original owner on 12.05.1960 under simple sale deed executed on a non-judicial stamp paper worth Rs.2/-, and since then, their family has been in possession and enjoyment of the subject property. The further case of the petitioner is that he presented the said unregistered sale deed before the 3rd respondent – District Registrar, Registration Department, Warangal, for impounding. Vide the impugned order No.G1/2507/2019 dated 31.01.2020, the 3rd respondent, refused to impound the document, and the relevant portion of the order reads as under:

> "2. The matter has been examined in detail. Sub-section (1) of Section 33 of the Indian Stamp Act, 1899 is the provision which enables a public officer to impound not duly stamped instruments. It says – *"Every person having by law or consent of parties authority to receive evidence, and every person-in-charge of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same"*. So it is not sufficient for the purposes of this section that the document should somehow be produced or come before him, but it is essential that it should be produced or come before him 'in the performance of his functions'.
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> 3. The document in question has been simply produced before the undersigned with a view to get it impounded. As the document has neither been produced nor it has come in the performance of the functions by the undersigned, it cannot be said that the document was produced as contemplated under Section 33 of the Stamp Act. Hence, it cannot be impounded."

The 3rd respondent refused to impound the unregistered sale deed on the ground that it has neither been produced, nor it has come in the performance of his duties. Assailing the said order of the 3rd respondent, the present writ petition has been filed.

Learned counsel for the petitioner submits that petitioner produced the unregistered sale deed before the 3rd respondent for impounding and for payment of stamp duty and penalty. He submits that Section 33(1) of the Act empowers the 3rd respondent to receive the document and impound the same and send to the Collector under Section 38(2) of the Act, who shall exercise his power under Section 40(1) of the Act and impose stamp duty and penalty. Learned counsel submits that the 3rd respondent without considering Section 33 of the Act in proper perspective, refused to impound the document. Therefore, the learned counsel seeks to set aside the impugned order and to direct the 3rd respondent to impound the document presented by the petitioner.

Heard the learned Assistant Government Pleader for Revenue.

Section 33 of the Act provides for examination and impounding of instruments. Section 38 provides for the procedure how to deal with the instruments impounded, and Section 40 deals with the jurisdiction of the Collector to impose stamp duty and penalty on the instruments so impounded. The said provisions, to the extent relevant, are extracted as under for ready reference:

> 33. Examination and impounding of instruments:--
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> (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same.
>
> (2) . .

38. Instruments impounded, how dealt with

(1) When the person impounding an instrument under Section 33 has law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by section 37, he shall send to the Collector, an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appointed in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

40. Collector's power to stamp instruments impounded:--

(1) When the Collector impounds any instrument under Section 33, or receives any instrument, sent to him under Section 38, sub-section (2), not being an instrument chargeable with a duty of twenty paise or half an anna only or a mortgage of a crop (Article 36(a) of Schedule I-A) chargeable under clause (aa) or (bb) of Section 3 with duty of forty paise only or a bill of exchange or promissory note; he shall adopt the following procedure:--

(a) if he is of opinion that such instrument is duty stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees;

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purpose of this Act, be conclusive evidence of the matter stated therein.

(3) Where an instrument has been sent to the collector under Section 30, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

From a reading of sub-section (1) of section 33, it is clear that the person who is competent to examine and impound the instrument, shall be either a person having by law or consent of parties, authority to receive evidence, or every person-in-charge of a public office, except an officer of a police. If the instrument, in their opinion, is chargeable with duty, is produced or comes in the performance of their functions, and if it appears that such instrument is not duly stamped, then such instrument 'shall' be impounded. The use of the word 'shall' in the above said section, leaves no manner of discretion with regard to impounding of the instrument, which is not duly stamped. The above said provision is drafted to see that no document escapes stamp duty and registration, and thus no revenue loss is caused to the State.

It is to be noticed that the instrument, which is chargeable with duty, but not duly stamped, is produced before the above said first category of person, or comes before him in the performance of his functions, i.e., the person who has the authority under law to receive evidence and admits such instruments in evidence upon payment of penalty as provided under Section 35 or of duty as provided by Section 37 of the Act, then the procedure, after impounding the document under Section 33(1), is provided under Section 38(1) of the Act. In case the instrument is impounded by the second category of person i.e., every person-in-charge of a public office, except an officer of a police, then the procedure after impounding the document, is provided under sub-section (2) of Section 38 of the Act. And Section 40 of the Act, provides for the jurisdiction of the Collector to impose stamp duty on the instruments impounded.

The Apex Court in GOVERNMENT OF *ANDHRA PRADESH v. SMT. P.LAXMI DEVI*[1], considering Section 33(1) of the Act, held as under:

> "15. Section 33(1) of the Stamp States:
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> . . .
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> 16. A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorized to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word 'shall' in section 33(1) shows that there is no discretion in the authority mentioned in section 33(1) to impound a document or not to do so. In our opinion, the word 'shall' in section 33(1) does not mean 'may' but means 'shall'. In other words, it is mandatory to impound a document produced before him or which come before him in the performance of his functions. Hence the views taken by the High Court that the document can be returned if the party does not want to get it stamped is not correct.

[1] 2008(2) ALT 100 (SC)

> 17. In our opinion, a registering office under the Registration Act (in this case the Sub-Registrar) is certainly a person who is in charge of a public office. Section 33(3) applies only when there is some doubt whether a person holds a public office or not. In our opinion, there can be no doubt that a Sub Registrar hold a public office. Hence, he cannot return such a document to the party once he finds that it is not properly stamped, and he must impound it."

In the present case, the petitioner has produced the unregistered sale deed before the 3rd respondent for the purpose of impounding. Then under Section 33(1), the said respondent is obligated to impound the document and no discretion is left to him. For refusing to impound the instrument, the 3rd respondent strangely records that "*As the document has neither been produced nor it has come in the performance of the functions by the undersigned, it cannot be said that the document was produced as contemplated under Section 33 of the Stamp Act. Hence, it cannot be impounded.*" The reasoning adopted by the 3rd respond is unsound, and cannot be accepted. As per the judgment of the Apex Court it is mandatory to impound a document produced before him or which come before him in the performance of his functions. Hence, the impugned rejection cannot be sustained and the same is liable to be set aside.

In the writ affidavit it is stated that the 3rd respondent vide letter dated 25.10.2018 has impounded unregistered documents dated 14.02.1993 and 26.05.1993 as per the procedure laid down under the Act, but failed to adopt the same procedure in the case of the petitioner. If that being so, then the action of the 3rd respondent has to be termed as 'discriminatory', and liable to be set aside.

For the foregoing reasons, the impugned order is set aside, and the 3rd respondent is directed to impound the document and follow the procedure laid down under Section 38(2) of the Act.

The writ petition is accordingly allowed to the extent indicated above.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE: 18—02—2020

AVS