



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 1014 OF 2019

Between:

1. JETTI MADHUMAI W/o J.Vijay,
Aged about 24 years, Occ- Employee,
R/o Hyderabad

...PETITIONER(S)

AND:

1. CHIGURUPATI GIRIJA LAKSHMI , W/o.T.Srinivasulu,
Aged about 31 years, Occ- Doctor, R/o Flat No.405,
Kamalapuri Colony, Indira Nagar,
Hyderabad.
2. Mallampati Hanumadh Vara Prasad, S/o M.Janardana Prasad, Aged
about 55 years, Occ -Agriculture,
R/o Inturu Village, Amarthaluru (M),
Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): M R K CHAKRAVARTHY

Counsel for the Respondents: N A RAMACHANDRA MURTHY

The Court made the following: ORDER

**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI****C.R.P.Nos.1014 and 1771 of 2019****COMMON ORDER:**

These two revision petitions, under Article 227 of the Constitution of India, are directed against the orders, dated 22.11.2018, passed in I.A.Nos.2123 of 2018 and 2124 of 2018 in O.S.Nos.124 of 2013 and 125 of 2013 respectively on the file of the Court of II Additional District Judge, Guntur, filed by the 2nd defendant under Section 35 of the Indian Stamp Act, 1899, to send the disputed sale agreements, dated 08.08.2011 and 12.08.2011 respectively for payment of stamp duty and penalty.

2. Heard Sri M.R.K.Chakravarthy, learned counsel for the revision petitioner/2nd defendant and Sri N.A.Ramachandra Murthy, learned counsel for the 1st respondent/plaintiff. The parties shall hereinafter be referred to as the plaintiff and defendants for convenience and clarity.

3. The facts leading to filing of these two applications, in brief, are that the plaintiff, Chigurupati Girija Lakshmi, filed two suits, viz., O.S.Nos.124 of 2013 and 125 of 2013 on the file of the Court of II Additional District Judge, Guntur, seeking a direction to the defendants to execute the regular registered sale deed in favour of the plaintiff in respect of the suit schedule property and to deliver vacant possession of the suit schedule property or in the alternative to direct the 1st defendant to refund the sale consideration of Rs.22,75,000/- and Rs.30,00,000/- respectively. While so, the 2nd defendant in O.S.Nos.124 of 2013 and 125 of 2013, Jetti Madhumai and Posani Kalyan Teja, filed two interlocutory applications seeking a direction to the 1st respondent/plaintiff therein to pay the



amounts required to make up the duty payable on the agreements of sale, dated 08.08.2011 and 12.08.2011 respectively.

4. The case of the 2nd defendant in both the suits in support of the applications filed by them to pay the amounts to make up the duty payable on the agreements, dated 08.08.2011 and 12.08.2011, in brief, is as follows:

(a) The alleged agreements of sale are inadmissible in evidence for want of sufficient stamp duty as the said agreements purport to be possessory agreements of sale and are liable to be stamped under Article 47-A of the Schedule 1-A of the Indian Stamp Act and are liable to be impounded. Hence, the 2nd defendant prayed to direct the plaintiff to pay the amounts to make up the duty payable on the agreements of sale with penalty.

(b) The averments in the counter filed on behalf of the plaintiff to these petitions, in brief, are as follows:

The agreements of sale dated 08.08.2011 and 12.08.2011 was already sent by the trial Court to the District Registrar for impounding and the same were returned after receiving the stamp duty and penalty. The petitions were filed to drag on the proceedings and are liable to be dismissed.

5. The trial Court observed that even as per the admission of the plaintiff or perusal of the contents of the disputed agreement of sale, it is averred as if the possession of the property was delivered and in the said circumstances, it shall be construed as the possession of the sale agreement. Further, the trial Court observed that the plaintiff herself reported no objection to impound the same by sending it to the District Registrar concerned. Thus, the trial Court, taking into consideration the long waves of the above contentions on the disputed



agreement of sale, ordered the disputed agreements of sale, dated 08.08.2011 and 12.08.2011 to be sent to the District Registrar for impounding the same.

6. The revision petitioners/defendants mainly raised the following grounds in the grounds of revision:-

(i) Under Section 35 of the Indian Stamp Act, 1899, no instrument chargeable with duty is admissible in evidence unless duty is paid on that instrument;

(ii) The Court below ought not to have sent straightaway the agreements of sale to the District Registrar when the plaintiff agreed to pay the deficit stamp duty and penalty thereon;

(iii) The Court below ought to have followed the decision in **Chilakuri Gangulappa v. RDO, Madanapalle & others** [2001(4) SCC 197];

7. Undisputedly, the documents in question, viz., agreements of sale with possession, dated 08.08.2011 and 12.08.2011, are unregistered, though they require registration and are inadequately stamped. The Court before which they were filed is under an obligation under Section 33 of the Indian Stamp Act, 1899 ('Act', for brevity) to impound the documents.

8. For better appreciation, Section 33 of the Act is reproduced hereunder:

33. Examination and impounding of instruments.—

“(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 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) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to



ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);
- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- (3) For the purposes of this section, in cases of doubt:
 - (a) the State Government may determine what offices shall be deemed to be public offices; and
 - (b) the State Government may determine who shall be deemed to be persons-in-charge of public offices.”

9. The objection taken by the revision petitioner(s) is that the Court itself ought to have collected the stamp duty and penalty at ten times, rather than sending the documents to the Registrar for collection of stamp duty and penalty. In support of their contention, reliance was placed on the decision of the Hon'ble Supreme Court in **Chilakuri Gangulappa v. RDO, Madanapalle & others**¹. According to the learned counsel for the revision petitioners, as per Section 38 of the Act, the Court has no option but to collect the stamp duty and penalty as indicated in Section 34 of the Act. He further submitted that unless an application is filed under Section 38(2) of the Act by a party to send document to the Collector, Court cannot send the document to the Collector on its own. As such, it is pertinent to refer to Section 38 of the Act, which reads as under:

¹ 2001(4) SCC 197



“38. Instruments impounded how dealt with:--(1) When the person impounding an instrument under Section 33 has, by 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 for 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 appoint in this behalf.

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

A plain reading of the above provision makes it clear that when the person (Court) impounding the instrument under Section 33 of the Act has admitted such document in evidence upon payment of penalty, the document should be sent to the Collector together with a certificate stating that the amount of duty and penalty levied thereof. In every other case, the authority so impounding shall send the instrument in original to the Collector.

10. In the present case, the documents have not been received in evidence by the Court by collecting penalty. In other words, it is only when the document is received in evidence by collecting stamp duty and penalty, the procedure contemplated therein has to be followed, i.e., an authenticated copy of the instrument along with certificate as required should be sent to the Collector and in every other case, the instrument shall be sent in its original to the Collector.

11. The argument of the learned counsel for the revision petitioners that unless an application is filed by the party to the document to send the document to the Collector under Section 38(2) of the Act, the Court cannot, on its own, do so is not acceptable. What is required under Section 33 of the Act is only to



impound the document when it is not duly stamped. Impounding does not mean collection of stamp duty and penalty. When an instrument is impounded under Section 33 of the Act, the next step is provided under Section 38 which covers both instances viz., (a) Court collecting the stamp duty and penalty and receiving the document in evidence and (b) every other case, meaning thereby, cases other than those covered by the first instance. The scope of Section 38(2) of the Act cannot be narrowed down to mean that it applies only on an application of the party proposing to lead such instrument in evidence. The decision of the Division Bench of the A.P High Court relied by the learned counsel for the revision petitioners in **Chintalapudi Annapurnamma v. Andukuri Punnayya Sastry**² paragraphs 11 to 13, excerpted herein below also fortify this view.

“11. In our view, it should be understood that Section 35 and sub-section (1) of Section 38 only contemplate the procedure that is to be followed after impounding and admission of the document in evidence, on payment of levied duty and penalty. Sub-section (2) of Section 38 deals with every other case where after impounding, the levied duty is not paid or offered to be paid and the document is not admitted in evidence. In the latter case, the document has to be sent to the Collector without admitting the same.

12. Obviously, the other decisions referred to supra would make abundantly clear in the light of the scheme of the Act that the civil Court or Tribunal can impound a document and levy duty and also penalty on the document sought to be admitted in evidence which is found to be exigible for any reason. There lies the option of the party either to pay the duty together with penalty and get the document admitted or simply make an application to the Court to send the document to the Revenue Divisional Officer and to defer the admission till then.

² 2000 (2) A.P.L.J 290 (HC)



13. *The second option is obviously under sub-section (2) of Section 38 of the Act. It is needless to observe that inspite of such duty being levied by the Court, if the party makes an application under Section 38(2), he would be doing so at the risk of not getting the document admitted by virtue of the explicit embargo created under Section 35 of the Act. The scheme of the Act does not indicate that the Court cannot compel the party to pay the duty and penalty, and get the document admitted. To put it in another way, as the admission of any document is at the discretion of the party, so also it is the discretion of the party to pay the duty and penalty as determined by the civil Court or other public authority and failure to do so, would only result in non-admission of the document So payment of duty after impounding by the civil Court is the date line between Section 38(1) and 38(2). In case, Section 38(1) is applied, procedure under Section 39 should be followed by the Collector and in case of 38(2), procedure under Section 40 has to be followed.”*

What is said at paragraph No.13 is that Court can compel party to pay stamp duty and penalty and admit document in evidence and it is explained in the other way that the Act does not indicate that Court cannot compel the party.

12. Insofar as the decision relied on by the revision petitioners in **Chilakuri Gangulappa v. RDO, Madanapalle & others** (supra) is concerned, it was decided in a different context, but has not specified the manner of sending the document as argued by the learned counsel for the revision petitioners. Even in the light of this decision, the action taken by the trial Court in sending the documents to the Registrar for collection of stamp duty and penalty is not irregular or illegal.

13. In the result, there is no merit in any of the revisions and the revision petitions are accordingly dismissed.

There shall be no order as to costs.



Miscellaneous petitions, if any, pending in these revisions shall stand closed.

06th April, 2022

B.S BHANUMATHI, J

Note:- LR copy to be marked
(B/o)
RAR