

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No.1937 of 2022

Between:

Poruri Sri Rama Murali Krishna,
Son of late Venkata Subbaiah, 76 years,
Resident of 4A, Orchid Villa, Lane-2, Street-6,
West Maredpalli, Secunderabad.

... PETITIONER

AND

Ravi Gopi Krishna, Son of late Hanumantha Rao,
Aged about 42 years, Cultivation,
R/o. Dyvaloaravuru Village, Korisapadu Mandal,
Prakasam District, Andhra Pradesh and another

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 28.03.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

- | | | |
|----|---------------------------------------|--------|
| 1. | Whether Reporters of Local Newspapers | |
| | May be allowed to see the order? | Yes/No |
| 2. | Whether the copy of order may be | |
| | Marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether His Lordship wish to | |
| | See the fair copy of the order? | Yes/No |

RAVI CHEEMALAPATI,J

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI**

+ C.R.P.No. 1937 of 2022

% DATED: 28.03.2023

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 R/o. Dyvaloaravuru Village, Korisapadu Mandal,
 Prakasam District, Andhra Pradesh and another

... RESPONDENTS

! Counsel for petitioner : Sri V. Surendra Reddy

^Counsel for Respondents : Sri Marri Venkata Ramana

<GIST :

>HEAD NOTE:

? Cases referred:

¹. 2019 SCC OnLine AP 268

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No. 1937 of 2022

ORDER:

This Civil Revision Petition is filed against the orders dated 23.08.2022 passed in I.A.No.560 of 2022 in O.S.NO.121 of 2017 by the learned I Additional District Judge, Prakasam District at Ongole.

2. The petitioner is the defendant and the respondents are the plaintiffs in the suit filed for specific performance of possessory agreement of sale.

3. The respondents/ plaintiffs filed I.A.No.560 of 2022 under Section 35 of the Indian Stamp Act to send the possessory agreement of sale dated 10.09.1991 for impounding to the District Registrar, Ongole for payment of stamp duty and penalty, contending that the suit document is followed by possession and as such the stamp duty and penalty has to be paid for getting it marked in evidence. The petitioner/ defendant opposed the said petition by filing counter contending that the document does not contain the fundamental contractual norms and the same is morphed, sham and manipulated one only to grab the property.

4. The Court below, upon hearing both the parties and upon perusing the material available on record, allowed the petition.

5. Aggrieved thereby, the petitioner/ defendant preferred this Civil Revision Petition.

6. Heard Sri V.Surendra Reddy, learned counsel for the petitioner and Sri Marri Venkata Ramana, learned counsel for the respondents.

7. Sri *V.Surendra Reddy*, learned counsel for the petitioner, would submit that, the contents of the suit *ex facie* show that the suit is barred by limitation, having been filed 31 years after the alleged possessory agreement of sale of the year 1991, but, the Court below upon misconception of the facts of the case as well as law applicable, allowed the petition. Hence, prayed to allow the Civil Revision Petition.

8. Sri *Marri Venkata Ramana*, learned counsel for the respondents, would submit that, the Court below, upon perusing the material available on record has rightly allowed the petition and no valid and justifiable grounds are either raised or urged in this Civil Revision Petition warranting interference of this Court. Hence, prayed to dismiss the Civil Revision Petition.

9. In the suit filed for specific performance of the possessory agreement of sale, the respondents/ plaintiffs filed a petition under

Section 35 of the Stamp Act to send the suit agreement of sale for collection of stamp duty and penalty.

10. It is a well established principle of law that, at the stage of collection of deficit stamp duty and penalty, there is no need to go into the other aspects as to for what purpose the said document is sought to be relied on, whether it is for the main purpose or for collateral purpose, by the parties, as well as its proof, relevancy and admissibility. The said aspects can well be gone into at the appropriate stage.

11. Section 33 of the Indian Stamp Act, ordains that 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 or 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. Thus, a duty is cast upon the judicial officers to seize or take possession of the document for collection of deficit stamp duty & penalty.

12. In ***Parchuri Sireesha and another vs. Challapalli Jalaja***¹, this Court held as follows:

¹. 2019 SCC OnLine AP 268

"12. In the light of the settled legal position and the duty that is cast upon the learned Judge of the trial Court, the learned Judge is obliged nay duty bound to impound (seize/take possession of) the document and collect the deficit stamp duty & penalty as per the provisions of the Act, when the document is admittedly not duly stamped, and see that no loss of revenue is caused to the exchequer of the State Government. Therefore, turning a blind eye to the statutory mandate and dismissing of the petition of the defendants by the trial Court on the ground that no purpose would be served by collection of deficit stamp duty & penalty on the gift deed as it is unregistered, though compulsorily registerable, is erroneous as any document brought before a Court should comply with the requirement of Section 35 of the Indian Stamp Act and the Court is duty bound to impound and collect deficit stamp duty & penalty, if any such document is found to be not duly stamped. In that view of the matter, this Court finds that the trial Court committed a grave error in refusing the request of the defendants to pass orders to collect stamp duty and penalty on the subject gift deed."

13. The observations referred to above makes it clear that, the Court is duty bound to impound and collect deficit stamp duty & penalty, if any such document is found to be not duly stamped and also to see that no loss of revenue is caused to the State exchequer.

14. It is relevant here to note that, collection of stamp duty and penalty would not accrue any automatic right to the party to have the document exhibited, unless the Court is satisfied that the said document can be received and marked as per the provisions of law and guidelines given by the Hon'ble Supreme Court from time to time in this regard.

15. The contents of the counter filed by the petitioner before the Court below and the grounds raised in this revision petition touching the merits of the case need not be gone into at the time of deciding this

application. There is neither illegality nor impropriety found in the orders impunged. No valid and justifiable grounds are either raised or urged in this Civil Revision Petition warranting interference of this Court.

16. The record further discloses that, this Court vide orders dated 18.04.2019 passed in Civil Revision Petition No.1017 of 2019, upon considering the age of the petitioner, has directed the trial Court to dispose of the suit, as expeditiously as possible. It is brought to the notice of this Court that, despite the said direction, the trial Court did not even frame issues till today. The trial Court is directed to adhere to the direction meticulously.

17. In view of the above, the Civil Revision Petition is dismissed. There shall be no order as to costs. The Trial Court is directed to take necessary steps for expeditious disposal of the suit.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

JUSTICE RAVI CHEEMALAPATI

28th March, 2023
Note: LR copy to be marked
B/o
RR

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No.1937 of 2022

28 March, 2023

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