



2019:APHC:27319

**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE FIRST DAY OF OCTOBER  
TWO THOUSAND AND NINETEEN

**PRESENT**

**THE HONOURABLE SRI JUSTICE M.GANGA RAO**  
**CIVIL REVISION PETITION NO: 2819 OF 2019**

**Between:**

1. YENNAMREDDY RAMA SUBBA REDDY S/o Santi Reddy,  
aged about 62 years, Occ Cultivation, R/o.D.No.3/151,  
Ramanapalli Village, Chennur Mandal, Kadapa District.

**...PETITIONER(S)**

**AND:**

1. YENNAMREDDY SEKHAR REDDY S/o Santi Reddi,  
aged 52 years, Occ Cultivation, R/o.D.No.3/151-1,  
Ramanapalli Village, Chennur Mandal, Kadapa District

**...RESPONDENTS**

**Counsel for the Petitioner(s): M SIVA JYOTHI**

**Counsel for the Respondents: G RAMESH BABU**

**The Court made the following: ORDER**



**THE HON'BLE SRI JUSTICE M.GANGA RAO**  
**CIVIL REVISION PETITION NO. 2819 OF 2019**

**ORDER:**

The petitioner/defendant filed this revision petition under Article 227 of the Constitution of India against the order dated 24.07.2019 passed in I.A.No.95 of 2019 in O.S.No.294 of 2012 by the Principal Senior Civil Judge, Kadapa, whereby the petition filed under the provisions of Section 33 of the Indian Stamp Act, 1899 (for brevity 'the Stamp Act') for impounding the unregistered agreement of sale dated 18.09.1982 was dismissed.

2. The respondent/plaintiff filed a suit against the petitioner/defendant for partition of schedule mentioned properties and for separate possession of his share. The petitioner/defendant filed written statement. During the course of trial, the respondent/plaintiff adduced and closed his evidence. Then, the petitioner/defendant filed chief affidavit as DW1 and got marked Exs.B.1 to B.8. At that stage, the petitioner/defendant filed the application under Section 33 of the Stamp Act for sending the unregistered agreement of sale dated 18.09.1982 executed by one Chinthakunta Venkata Reddy in his favour in respect of land in an extent of Ac.11.5 cents situated in Circar Punji D.No.1211/1 and D.No.1211/2 with specific boundaries. However, the trial Court dismissed the petition holding that



even if the unregistered agreement of sale dated 18.09.1982 is sent for impounding, no purpose would be served as it is not a curable defect and the said document cannot be received as evidence even for a collateral purpose. Being aggrieved by the dismissal of the application, this civil revision petition came to be filed.

3. Mrs. M.Siva Jyothi, learned counsel for the petitioner would contend that the trial Court grossly erred in holding that the agreement of sale is an outright sale as entire sale consideration had been paid and possession was delivered, which is contrary to the definition of “sale” under Section 54 of the Transfer of Property Act, 1882. The agreement of sale does not by itself create any interest in the property even if the entire sale consideration is paid and possession is delivered. The finding of the trial Court that as the agreement of sale is compulsorily registerable document, no purpose would be served even if it is sent for impounding, is illegal and contrary to law.

4. Sri G.Ramesh Babu, learned counsel for the respondent would contend that the agreement of sale sought to be impounded is compulsorily required to be registered as entire sale consideration was paid and possession was delivered. As per Section 49(c) of the Registration Act, 1908, no document required by Section 17 to be registered shall be received as evidence of any transaction affecting such property or



conferring such power, unless it has been registered. Further, he made his submission to sustain the impugned order.

5. On considering the rival contentions of both the learned counsel and on perusal of the record, the points that fall for consideration of this Court thus:

- a) Whether the unregistered agreement of sale dated 18.09.1982 is required to be sent for impounding?
- b) Whether the trial Court abdicated its statutory duty to send the agreement of sale for impounding as required under Section 33 of the Stamp Act?

6. The respondent/plaintiff filed the suit for partition of the suit schedule properties and separate possession of his share thereof. The petitioner/defendant filed the written statement and also filed his chief affidavit claiming the landed property shown as Item No.4 of the schedule property to an extent of Ac.11.5 cents situated in D.No.1211/1 and D.No.1211/2 based on the unregistered agreement of sale dated 18.09.1982 executed by Chinthakunta Veera Reddy in his favour as his exclusive property and he filed a petition under Section 33 of the Stamp Act. For easy reference, Section 33 of the Stamp Act is extracted 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.

7. A plain reading of the Section clearly states that every person in charge of a public office except an officer of a police, before whom any instrument is presented, shall if it appears to him that such instrument is not duly stamped, impound the same. Likewise, in the present case, the Presiding Officer of the trial Court is statutorily obligated to impound the unregistered agreement of sale and follow the procedure as contemplated under Sections 35 and 38 of the Stamp Act or send the instrument to the Collector if the party to the suit requires the document to be sent to an authorized officer under the Stamp Act i.e., the Collector for levying the duty



along with penalty to send the document to such officer together with a certificate in writing in respect thereof.

8. The Stamp Act is a fiscal statute dealing with payment of stamp duty on instruments as defined under Section 2(14) of the Act and payment of stamp duty is a source of income to the state exchequer. The Presiding Officer of the trial Court is under statutory obligation under Section 33 of the Stamp Act to impound the document on its own or send the document for impounding on application of the party. However, such defect can be cured by collecting deficit stamp duty and penalty as per law. Mere impounding of the document does not obligate the trial Court to receive the same in evidence as it requires registration also under the provisions of the Registration Act. No doubt, the law is well settled that as per Section 49 of the Registration Act, no document required by Section 17 or by any provisions of the Transfer of Property Act, 1882 to be registered shall be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. There is no provision of law or principle which prohibits a party from payment of deficit stamp duty and penalty under the provisions of the Stamp Act. The question of admissibility of document for collateral purpose or otherwise, after such payment of deficit stamp duty and penalty, will be decided on merits as per law. Further, before the trial Court, the respondent/plaintiff is at liberty to raise all his objections with regard to the



admissibility of the impugned subject document before marking the same as an exhibit.

9. In view of the above discussion, the dismissal of the application filed under Section 33 of the Stamp Act on an erroneous appreciation of fact and law, is contrary to the provisions of Stamp Act. This Court constrained to observe that the Presiding Officer of the trial Court passed the order in a casual manner for statistical purpose without reference to the provisions of law and such procedure needs to be deprecated.

10. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order dated 24.07.2019 passed by the trial Court in I.A.No.95 of 2019 in O.S.No.294 of 2012 and consequently, the said I.A. is allowed. Hence, the trial Court is directed to send the unregistered agreement of sale to the District Registrar, Kadapa under the provisions of the Stamp Act as sought by the petitioner/defendant for impounding. It is made clear that after impounding the document, the trial Court shall decide its admissibility in evidence as per law. No order as to costs.

11. Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

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**JUSTICE M.GANGA RAO**



**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**CIVIL REVISION PETITION NO. 2819 OF 2019**

**01-10-2019**

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