(1995) 06 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2931 of 1991

Alapati Nagendramma and Others APPELLANT

Vs

Ghanta Seshagiri Rao RESPONDENT

Date of Decision : 15-06-1995

Acts Referred:
Stamp Act, 1899 — Section 35

Citation : (1995) 2 ALT 491 : (1995) 2 APLJ 170

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Sanaka Venkateswara Rao, for the Appellant; T. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

C.V.N. Sastri, J.—The short but interesting question which arises in this revision under Article 227 of the Constitution of India is whether the stamp duty and penalty paid on a xerox copy of the agreement of lease in the earlier proceedings enures to the benefit of the party and the original of the said agreement of lease though not stamped is admissible in evidence.

2. The petitioners herein are the owners of the land in dispute and the respondent claims that he is a tenant. The tenancy is denied by the petitioners. Originally the petitioners herein filed a suit, O.S. No. 257 of 1980 on the file of the District Munsiff Court, Repalle against the respondent herein for permanent injunction. In the said suit, the respondent-defendant produced the xerox copy of an alleged agreement of lease dated 1-6-1979 which is said to have been executed by the petitioners in his favour in respect of the suit land after paying a sum of Rs. 2,351-80 ps. by way of stamp duty and penalty. The petitioners raised objection as to the admissibility of a xerox copy in evidence even though stamp duty and penalty is paid. That objection was upheld by the learned District Munsiff and the copy was held to be in admissible despite the payment of stamp duty and penalty and the said order was also confirmed by the High Court in

revision. Ultimately, the said suit was dismissed by the trial Court, but on appeal, it was reversed and the suit was decreed. Thereafter, the respondent filed A.T.C. No. 17 of 1990 in the Court of Tenancy Special Officer-cum-Principal District Munsiff, Repalle for declaration of his tenancy rights and for consequential injunction restraining the petitioners herein from interfering with his possession. In the said A.T.C., the respondent filed LA. No. 722 of 1990 seeking temporary injunction pending disposal of the A.T.C. In the course of enquiry into the said petition, the respondent sought to tender in evidence the original of the agreement of lease, dated 1-6-1979. The petitioners herein once again raised an objection as to the admissibility of the said document on the ground that it is not duly stamped. Whereas, the respondent contended that the stamp duty and penalty already paid on the xerox copy in the earlier proceedings enures to his benefit so as to make the original which is now produced admissible in evidence and the stamp duty and penalty need not be paid once again.

3. The learned Special Officer-cum-Principal District Munsiff by his order dated 29-8-1990 upheld the contentions of the respondent and held that the document is admissible in evidence, because stamp duty and penalty was already paid earlier on the xerox copy, certified copy of which is produced and marked as Ex.A-1 in the said I.A. On appeal, the learned District Judge, Guntur confirmed the said order. The petitioners herein challenge the correctness of that order in the present revision under Article 227 of the Constitution of India.

4. The learned Counsel for the petitioners relying on Section 10 of the Indian Stamp Act submits that the original of the agreement of lease which is sought to be tendered in evidence and which is marked as Ex. A-6 by the Special Officer is not admissible in evidence for the reason that the same is not duly stamped as required by the provisions of the Stamp Act. He submits that the stamp duty and penalty paid earlier by the respondent on the xerox copy in the earlier proceedings cannot render the original now produced admissible and the proper course to be adopted is for the respondent to claim refund of the amount paid earlier and to pay stamp duty and penalty on the original now produced.

5. It is difficult to accept this submission which sounds hyper-technical. It is well settled that Section 35 of the Stamp Act is primarily intended to safeguard the revenue of the State, but not to arm the litigants with a weapon. Further I find that the question is squarely covered by a Full Bench decision of our High Court reported in M. Venkataratnam and Another Vs. M. Chelamayya and Another, ". In that case, the original unstamped award was filed alongwith a copy of the award written on stamp. It was held, "although original award could not be regarded as having been duly stamped in circumstance of the case, stamp on copy might be treated as intended to serve as payment of stamp duty and penalty so as to enable original award to be admitted in evidence". This Full bench judgment has also been affirmed by the Supreme Court in Mattapalli Chelamayya and Another Vs. Mattapalli Venkataratnam and Another, .

6. I see no merit in this revision petition. Accordingly, it is dismissed.