(2000) 06 AP CK 0085

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1473 of 2000

Sowjanya and Another	APPELLANT
Vs	
Chinna Chikkanna	RESPONDENT

Date of Decision : 12-06-2000

Acts Referred:

Citation : (2000) 6 ALT 769

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : A. Hanumantha Reddy, for the Appellant; Govt. Pleader, Amicus Curie, for the Respondent

Final Decision : Allowed

Judgement

Vaman Rao, J.—Heard the learned Counsel for the petitioners as well as the Government Pleader for Revenue.

2. This Civil Revision Petition is directed against the docket order dated 30-124999 passed by the learned Junior Civil Judge, Hindupur passed in O.S.No. 129 of 1994 directing the petitioners-plaintiffs to deposit Non-Judicial Stamp duty of Rs. 1,153/- after giving credit to stamp duty of Rs. 180/-already deposited.

3. The two petitioners-plaintiffs filed suit against their father for partition of joint family properties. The parties entered into a compromise under which the family properties were partitioned into two shares. One share was allotted jointly to the plaintiffs, which has been described in the compromise petition as ''A'' schedule, and the other share described in the ''B'' schedule was allotted to the defendant-father.

4. For preparing the decree on Non-Judicial stamp papers, the Court directed the petitioners-plaintiffs to deposit the stamp duty which has been calculated at Rs. 1333/-. This amount has been arrived at on the value of the share allotted to the plaintiffs.

5. The learned Counsel for the petitioners contends that the direction of the learned Junior Civil Judge goes contrary to the definition of separated share as given in the note under entry 40 of Schedule I-A of the Indian Stamp Act.

6. It is not disputed that the arrangement between the parties, which has been recorded in the compromise petition, on the basis of which a decree has been passed by the Court, is a partition, which falls under item 40 of Schedule I-A. The stamp duty payable on such deeds is the same as Bottomry Bond shown at item 14 for the amount or the market value of the separated share or shares of the property. The suit property has been partitioned into two shares. Admittedly, the larger share described in Schedule-A has been allotted to the plaintiffs and the smaller share has been allotted to the defendant-father. In view of the definition of the separated share as given in the note under this entry in the schedule, the largest share remaining after the property is partitioned shall be deemed to be that from which the other shares are separated. In this case as the property has been partitioned into only two shares the bigger shall be deemed to be one from which the other share has been separated. Thus, obviously, it is the smaller share, which in this case shall be treated as separated share. The contention of the learned Government Pleader for Revenue that in this case inasmuch as the suit property has been partitioned into only two shares and inasmuch as the plaintiffs wanted to separate their shares from the joint family property, it is the share which has been allotted to the plaintiffs, which must be construed as the separated share cannot be countenanced in view of very specific definition of the separated share as incorporated in the note under the said entry.

7. In the result, this Civil Revision Petition deserves to be allowed. The Non-Judicial Stamp on which the final decree is liable to be prepared shall be calculated on the basis that the smaller share in the partition is the separated share which in this case is share as described in the Schedule-B annexed to the compromise petition.

8. This Civil Revision Petition is ordered accordingly.