(2013) 07 AP CK 0060

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 116 of 2013

Uppula Ramesh APPELLANT

Vs

Elagandula Harinath and Others RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5A
Evidence Act, 1872 — Section 32
Registration Act, 1908 — Section 17, 49
Stamp Act, 1899 — Section 35
Transfer of Property Act, 1882 — Section 54

Citation : (2014) 1 ALD 1 : (2014) 1 ALT 700

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : B. Narsimha Sarma, for the Appellant; Y. Rama Rao Counsel, for the Respondent

Final Decision : Allowed

Judgement

Samudrala Govindarajulu, J.—This revision petition is filed against order of the lower court by which objection of the third defendant u/s 35 of the Indian Stamp Act for marking a document was overruled by way of dismissal of the said petition. The disputed document is styled as "Illu Vikraya Dasthaveju Pramana Patram" i.e. house sale deed affidavit. As observed by the lower court, it is true nomenclature of the document is not the criterion but contents of the said document are relevant in determining admissibility of the said document without payment of further stamp duty and penalty. The said disputed document is stated to be engrossed on stamp paper worth Rs. 50/- and it was notarised by a notary public. The said document reads that executant of the said document earlier executed a simple sale deed () on 13.06.1994 for the property in question under which the plaintiff purchased the same for consideration of Rs. 1,25,000/-. It further reads that the vendor confirms the said sale by way of the disputed document. Virtually the document is stated to be a record of past transaction between the plaintiff and his vendor for the suit property. The said document was sought to be marked during interlocutory proceedings for interim injunction. In Burra Anita v. Elagari Mallavva 1 of this Court, the learned Judge held that objection as to insufficiency of stamp duty paid on the document can be raised not only during trial but also in interlocutory proceedings. The lower court took that document as a mere affidavit and not a conveyance and held that the said document does not require any stamp duty.

2. As can be seen from contents of the disputed document, the previous sale deed dated 13.06.1994 is not evidenced by a valid conveyance as per the provisions of Section 54 of the Transfer of Property Act coupled with provisions of the Indian Stamp Act and the Indian Registration Act. The previous document is styled as a simple sale deed, in the sense, a white paper document without stamp duty and registration. The law does not recognise execution of any such white paper documents conveying title relating to any property from one person to another person. It is contended by the respondents'' counsel that in these parts of the state in Telangana area it is practice of the parties to enter into such documents. The alleged practice has no sanction in law. Such documents, even if true, will not convey any title to the alleged purchaser thereunder. Unless the defects under the Indian Stamp Act and the Indian Registration Act are rectified by way of regularisation u/s 5A of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971, provided such white paper documents were prior to the cut-off date of the amendment therein and these documents are presented within the prescribed time before the revenue authorities for regularisation.

3. The disputed document styled as sale affidavit intends to record a past transaction in it. It is stated to have been executed on 01.11.1994 on stamp paper worth Rs. 50/-. When the original document dated 13.06.1994 is admittedly unstamped, any further document which is in the nature of record of a previous transaction has to be stamped with the same stamp duty payable under the original document. Therefore, when the plaintiff relied upon the disputed document dated 01.11.1994 styled as sale deed affidavit, it requires stamp duty and penalty as the original document dated 13.06.1994, since the disputed document intends to record the earlier transaction dated 13.06.1994 and since it contains all terms of the original white paper sale deed dated 13.06.1994. In that view of the matter, Section 35 of the Indian Stamp Act comes in the way of marking the disputed document without payment of deficit stamp duty and penalty as a conveyance. Even if deficit stamp duty and penalty are paid on the disputed document, it can be marked in evidence only for collateral purpose under the proviso to Section 49 of the Indian Registration Act and it cannot be received for proof of terms and contents of that document, since it is a document which is compulsorily registerable u/s 17 of the Indian Registration Act.

4. It is contended by the respondents'' counsel that the document is liable to be

marked as an affidavit in interlocutory proceedings like any other affidavit. This is not an affidavit given by a party for the purpose of the pending suit or interlocutory proceeding, but it is a document which is stated to have been given on 01.11.1994 recording earlier transaction dated 13.06.1994. This is not an affidavit deposed by the deponent for the purpose of the suit. In interlocutory proceedings, affidavits are received for the purpose of proving a fact or a document filed in that suit or proceeding. Since this affidavit intends to prove earlier white paper sale deed dated 13.06.1994 and its terms, this affidavit cannot be received in evidence to prove terms of an inadmissible document which is a white paper sale deed. When the original white paper document dated 13.06.1994 is not filed in the suit or in the proceeding pending in the lower court, the question of receiving the disputed document dated 01.11.1994 to prove the earlier transaction does not arise, unless the disputed document dated 01.11.1994 is properly stamped as a conveyance under the Indian Stamp Act.

5. Secondly, the disputed document dated 01.11.1994 is totally inadmissible even as an affidavit of an earlier transaction, since affidavit of a living person is no evidence as it is hit by Section 32 of the Indian Evidence Act, the only exception being filing an affidavit in a pending suit during interlocutory proceedings as provided under Order XIX CPC.

6. Therefore, for all the above reasons, the impugned order passed by the lower court is erroneous in law. In the result, the revision petition is allowed setting aside the order passed by the lower court and directing the lower court to mark the disputed document dated 01.11.1994 only on payment of deficit stamp duty and penalty as evidence of conveyance, and further to mark the same for collateral purpose and not for proving terms and contents of the said document.