(2004) 03 AP CK 0103

In the Andhra Pradesh High Court

Case No : CRP No. 696 of 2004

Y. Vijaya @ Viyaja Laxmi APPELLANT

Vs

Bojja Baghaiah RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:
Stamp Act, 1899 — Section 48

Citation : AIR 2004 AP 506 : (2004) 3 ALD 283 : (2004) 4 ALT 177 : (2005) 1 CivCC 70

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant;

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—The revision petitioner filed the suit for recovery of money due on the basis of a bond said to have been executed by the respondent/ defendant. During the course of inspection of the Trial Court by the District Judge, he observed that the suit document which should have been as a deed conveyance, is not so stamped, and so he directed the Trial Court to collect proper stamp duty and penalty thereon. The Trial Court on hearing the Counsel for the revision petitioner, issued a show-cause notice to the revision petitioner to pay Rs. 10,340/- i.e., Rs. 940/- towards stamp duty and Rs. 9,400/- towards ten times penalty at the pain of attachment of his property or his being sent to jail for default. Hence this revision questioning the said show-cause notice.

2. Learned Counsel for the revision petitioner, relying on Peteti Subbarao v. Anumala Narendra, (2002) 10 SCC 427 , contended that the Court below erred in directing the petitioner to pay stamp duty and penalty as fixed by it, without sending the document to the Collector for determination of the stamp duty and penalty as contemplated by Section 40 of the Stamp Act.

3. The procedure adopted by the Court below in calling upon the revision

petitioner to pay stamp duty and penalty on a document even before it is sought to be introduced into evidence is contrary to the ratio in K. Santhakumari Vs. K. Suseela Devi, , where, following Devasikamani Gounder v. Andamuthu Goundar 1955 (1) MLJ 457, it was held that stamp duty on unstamped document filed in Court can be collected only at the time of its admission into evidence as per Proviso (a) to Section 35 of the Stamp Act, and that Court errs in ordering payment of stamp duty and penalty even before the state of admission of the document in evidence is reached. For that reason only the show-cause notice issued to the revision petitioner is liable to be set aside.

4. This apart the Court below was in error in issuing a notice to revision petitioner to pay the stamp duty and penalty at the pain attachment of his property or his being sent to jail, because under the Stamp Act, Civil Court is not vested with the power to recover the stamp duty and penalty. Such power is vested only in the collector by Section 48 of Stamp Act. If a party does not pay the stamp duty or penalty fixed by the Trial Court it can only refuse to receive the document in evidence, and send it to the Collector, who only has the power to recover the stamp duty and penalty payable on insufficiently stamped documents to recover the stamp duty and penalty payable. Since the Civil Court has no jurisdiction to exercise the power to recover stamp duty and penalty, the show-cause notice issued to the revision petitioner that his properties would be attached, or he would be sent to prison for default in payment of stamp duty and penalty, is liable to be set aside.

5. In Peteti Subbarao (supra), relied on by the learned Counsel for the revision petitioner, it is held that an insufficiently stamped document should be sent to the Collector, by the Civil Court, for determination of the stamp duty and penalty since u/s 40 of Stamp Act, he has power to decide the question whether a document is properly stamped or not and can decide the penalty to be levied, in case it is held that it is insufficiently stamped.

6. Therefore, the revision petition is allowed and the show-cause notice issued by the Court below is set aside. The Trial Court is directed to follow the procedure prescribed in Peteti Subbarao case (supra). No costs.

