

HIGH COURT OF ANDHRA PRADESH

BENCH : HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

Date of Decision: 10th May 2024

CIVIL REVISION PETITION NO: 26/2024

N.S. Rama Devi ...PETITIONER

Versus

V Chitti Babu and Others ...RESPONDENT(S)

Legislation:

Indian Stamp Act, 1899

Sections 33, 35, 36, and 38 of the Indian Stamp Act

Rule 13 of the Code of Civil Procedure, 1908

Subject: Civil revision petition concerning the return of unmarked documents, which were not admitted in evidence, and whether such documents need to be impounded and stamped before return post-trial.

Headnotes:

Civil Procedure – Return of Unmarked Documents – Dispute on Impounding Documents for Insufficiency of Stamp Duty and Registration – The petitioner, after the dismissal of her suit for a permanent injunction (O.S.No.181 of 2024), sought the return of unmarked documents which the trial court refused due to insufficiency of stamp duty and lack of registration. The High Court of Andhra Pradesh examined precedents governing the return and impounding of such documents. [Paras 1-3, 18-19].

Legal Principles – Impounding of Documents – Application of Stamp and Registration Acts – The court reviewed various judgments to determine if unmarked, improperly stamped, or unregistered documents could be returned to the parties without impounding. It was concluded that documents not tendered in evidence could not be impounded and should be returned, as their impounding only arises at the stage of marking documents as exhibits during trial. [Paras 5-17].

Decision – Allowing the Civil Revision Petition – Held: The Court directed the return of the documents listed in I.A.No.704 of 2023 to the petitioner, overruling the trial court's decision. This decision was supported by a conjoint reading of Sections 35 and 36 of the Indian Stamp Act and relevant case law indicating that the duty to impound arises only when documents are tendered in evidence. [Paras 18-20].

Referred Cases:

- K. Santhakumar vs. K. Suseela Devi AIR 1961 AP 424:1961 2
- C. Sreedhara Raja vs. S. Vittoba Rao Andhra Weekly Reporter 425
- Lokara Om Kumar vs. Baikan Satyanarayana AIR 2005 AP 322 3 2006 (5) ALD 91
- K. Sivakanth Reddy and Ors vs. Ramanjaneyulu and Ors. AIR 2008 AP 4
- Miss Sandra Lesley Anna Bartels vs. Miss. P. Gunavath AIR 2013 Karnataka 52
- B. Ratnamala vs. G. Rudramma AIR 2000 AP 167
- Khetra Mohan Saha vs. Jamini Kanta Dewan [1927 SCC Online Calcutta 291]

Representing Advocates:

For the Petitioner: Venkata Narayana Sarma Paturi

For the Respondent(s): P.S.P. Suresh Kumar (Appointed as Amicus Curiae)

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This Court made the following Order:

The petitioner herein had filed O.S.No.181 of 2024 before the Senior Civil Judge, Tirupathi for grant of permanent injunction over the suit schedule property, against the respondents herein. This suit came to be dismissed on 28.06.2022.

1. After the dismissal of the suit, the petitioner filed I.A.No.704 of 2023 for return of certain documents which had not been marked in the course of trial. However, this application was dismissed for the trial, by an order dated 11.08.2023. The trial had held that documents in serial number 4, 6 and 7 of the list furnished with the application, are unregistered and insufficiently stamped documents. The trial Court on the basis of the circular issued by this Court on 10.07.2006 in ROC.No.1628/SO/2005 had directed that whenever a document is liable to be impounded for stamp duty and penalty are filed before the Court, such documents cannot be returned to the party unless deficient stamp and penalty are paid.
3. On this basis, the trial Court refused to return the documents. Aggrieved by the said order, the petitioner has filed the present Civil Revision Petition.
4. As the respondents had already endorsed —no objectionll for the return of the documents, issue of notice to the respondents would only lead to further delay and expense for the respondents. To obviate such problems, this Court thought at fit to appoint Sri P.S.P. Suresh Kumar, a learned Advocate of this Court, as Amicus of the Court, to assist the Court in this matter.
5. Sri P.S.P Suresh Kumar has placed certain judgments before this Court. These judgments can be put into two categories. Those for the proposition that such document can be returned and those for the proposition that such documents cannot be returned without payment of stamp duty etc.

6. The judgments holding that documents can be returned are ; **K. Santhakumar vs. K. Suseela Devi**¹, **C. Sreedhara Raja vs. S. Vittoba Rao**², **Lokara Om Kumar vs. Baikan Satyanarayana and Ors.**,³ **K. Sivakanth Reddy and Ors vs. Ramanjaneyulu and Ors.**⁴

7. The judgments which hold that it may not be appropriate to return the same are **Miss Sandra Lesley Anna Bartels vs. Miss. P. Gunavath**². A judgment on a connected issue as to the stamp duty payable for agreement of sale which is followed by delivery of possession or which records delivery of possession is reported in **B. Ratnamala vs. G. Rudramma**⁶.

Consideration of the Court:

8. In **K. Santhakumar vs. K. Suseela Devi**'s case a learned Single Judge of the Court was considering the exigibility of stamp duty on an agreement of sale and whether documents produced in that case were deeds of sale or agreements to sell. The subsidiary issue that arose in that case was whether a Court should collect stamp duty and penalty at a stage even before the time of admission of evidence. The learned Single Judge, after considering judgments of the Hon'ble High Court of Madras had held that collection of stamp duty should not be done before the stage of admissibility of the document in evidence. The learned Single Judge, while laying down this principle, also took into account a situation where a party pays penalty for stamping of the document and such document is not admitted in evidence, the party would not have a chance of refund also and would cause undue hardship.

9. In **C. Sreedhara Raja vs. S. Vittoba Rao**'s case, a learned Single Judge of this Court while considering the requirement to pay stamp duty on certain documents, had laid down the following principles.

¹ AIR 1961 AP 424:1961 1 Andhra Weekly Reporter 425 ² AIR 2005 AP 322 ³ 2006 (5) ALD 91 ⁴ AIR 2008 AP 4.

² AIR 2013 Karnataka 52 ⁶ AIR 2000 AP 167

25. From a reading of the above provision, the following would emerge:

- (1) The parties can file the documents at the initial stage;
- (2) Such documents shall be admitted into evidence as provided under Sub-rule (4) of Rule 13 of the Code of Civil Procedure;
- (3) An unstamped or insufficiently stamped document is not admissible in evidence per se as postulated under Section 35 of the Indian Stamp Act, subject to Section 36;
- (4) During the trial when actually the document is tendered to be marked as piece of evidence, objection can be raised either by the contesting party or by the Court as regards its admissibility on account of unstamped or insufficiently stamped and also can impound and eventually can levy the stamp duty along with penalty;
- (5) In the event of any application made by the party who tries to introduce a document into evidence for admission can file an application under Section 38(2) of the Stamp Act to send the document to the competent authority for impounding and levying the stamp duty along with the penalty;

10. In **Lokara Om Kumar vs. Baikan Satyanarayana and Other's** case a learned Single Judge directly dealt with the question of whether documents which are not admitted in evidence can be returned even before disposal of the suit and had held that unmarked documents would have to be returned to the party who produced such documents. However, a learned Single Judge had not dealt with the question of whether documents requiring stamp and registration can be still returned even after they are unmarked in **K. Sivakanth Reddy and Ors vs. Ramanjaneyulu and Others** case. A learned Single Judge of the erstwhile High Court of Andhra Pradesh considered the question of whether unmarked documents can be impounded after disposal of the suit and had held, after considering the judgments of **Khetra Mohan Saha vs. Jamini Kanta Dewan**⁷ that impounding of document cannot be done by a Court

⁷ 1927 SCC online Calcutta 291

which has become functus officio and a document which is merely presented along with the plaint cannot be treated as the production of a document which is contemplated under Section 33 of the Stamp Act.

11. In **Miss Sandra Lesley Anna Bartels vs. Miss. P. Gunavath**, a Division Bench of the Karnataka High Court had taken the view that under Section 33 of the Indian Stamp Act, 1899 (for short the Stamp Act), an insufficiently stamped instrument would require to be impounded the moment the insufficient stamp on the instrument is brought to the notice of the Court. Sri P.S.P. Suresh Kumar would submit that a logical corollary of the judgment would be that no unstamped document can be returned even after disposal of the suit without the same being impounded as the duty to impound the document arises the moment the document/instrument is presented to the Court.

12. The manner in which improperly stamped documents or unregistered documents, which require registration, are to be dealt with by the Court, when the said documents are produced, is set out in Sections 33 and 35 of the Stamp Act and the Registration Act, 1908. The said provisions of law are as follows:

“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.

35. Instruments not duly stamped inadmissible in evidence, etc. —

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up

such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees, of a sum equal to ten times such duty or portion;

- b) xxxxxx
- c) xxxxxx

13. A conjoint reading of Sections 35 and 36 of the Indian Stamp Act, makes it mandatory to reject any unstamped or insufficiently stamped documents. However, such documents can be admitted in evidence, after they are impounded and proper stamp duty and consequent penalty is paid on the said documents, in accordance with the procedure set out under Section 38 of the Stamp Act.

14. In the normal course of events, improperly stamped/unregistered documents, which are produced before the Court, either at the time of the filing of the suit or written statement or subsequently under an application filed before the Court, go through the process of determination of stamp duty and penalty that needs to be paid on such instruments, in the event of the documents being found to be stamped improperly. As far as registration of documents is concerned, there is no provision in the Registration Act, for correcting such defects and the said documents would be declared to be inadmissible except for the purpose of demonstrating a collateral purpose.

15. There is, however, a rare situation where improperly stamped/unregistered documents are produced before the Court, but are not marked as exhibits or introduced into evidence. In such circumstances, the question that arises before this Court is whether such documents can be returned without impounding them or whether the said documents have to be impounded and only after appropriate deficit stamp duty and penalty is paid.

16. A reading of Sections 35 and 36 of the Stamp Act makes it clear that a duty is cast on the Court to ascertain the appropriate stamp duty that

needs to be paid on any document tendered in evidence and to impound the same for levy of deficit stamp duty penalty by the appropriate authority if such documents are found to be insufficiently stamped. It must also be noted that this duty commences only when the document is actually tendered in evidence, in the course of examination of a witness of the party, who is seeking to tender this document.

17. As rightly held in of **Khetra Mohan Saha vs. Jamini Kanta Dewan** and **K. Sivakanth Reddy and Ors vs. Ramanjaneyulu and Other**, the duty of the Court to impound documents and ensure proper payment or stamp duty arises only at the stage of marking of the documents. In case where documents which have been produced before the Court are not tendered in evidence, the said documents cannot be impounded.

18. In the circumstances, the decision of the Senior Civil Judge, Tirupathi to refuse return of the documents which had not been marked in the course of the trial would have to be set aside.

19. Accordingly, this Civil Revision Petition is allowed with a direction to the Senior Civil Judge, Tirupathi to release the documents, mentioned in I.A.No.704 of 2023, to the petitioner herein.

20. This Court also places on record its appreciation of the assistance given by Sri P.S.P. Suresh Kumar learned Amicus in the matter.

Miscellaneous petitions, pending if any, shall stand closed.

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