

(2008) 06 AP CK 0011

Andhra Pradesh High Court

Case No: CRP No"s. 500 and 504 of 2008

Mannaru Penchalaiah

APPELLANT

Vs

Patnam Venkamma and Others

RESPONDENT

Date of Decision: June 17, 2008

Acts Referred:

- Stamp Act, 1899 - Section 13, 14, 3, 33, 34

Citation: AIR 2008 AP 253 : (2008) 5 ALD 11 : (2008) 4 ALT 788 : (2008) 105 RD 494

Hon'ble Judges: Gopala Krishna Tamada, J

Bench: Single Bench

Advocate: M. Venkata Narayana, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Gopala Krishna Tamada, J.

As the question of fact and law involved in these two civil revision petitions are one and the same, these matters are taken up together for disposal by this common order.

2. These civil revision petitions are directed against two interlocutory applications filed in two different suits which are pending on the file of the Principal Junior Civil Judge, Nellore whereby the learned Junior Civil Judge, refused to send the lease agreement dated 5.12.2001 to the Revenue Divisional Officer for impounding it.

3. Brief facts are that the petitioner herein i.e. the plaintiff filed the suits against the respondents herein for grant of permanent injunction on the basis of a lease agreement dated 5.12.2001. According to the petitioner, the plaint schedule property originally belonged to the defendants, but by virtue of the lease agreement, he is in possession of the property. The suit is one for permanent injunction and to establish his possession of the property he is relying on the lease

agreement and requested the Court to send the document to the Revenue Divisional Officer for the purpose of impounding it, but the same was opposed by the respondents herein stating that once the lease deed is inadmissible in evidence and it requires the stamp duty and the petitioner is willing to pay the stamp duty, it is not necessary to send the document to the Revenue Divisional Officer for the purpose of impounding it and the trial Court itself can accept the stamp duty and penalty and get the document impounded. The trial Court, agreeing with the contention put forth by the respondents herein, dismissed the applications and the same are under challenge before this Court.

4. Heard Sri M. Venkatanarayana, learned Counsel for the petitioner and perused the material placed on record.

5. Though notices are served on the respondents they have not chosen to put in their appearance either in person or through their advocate.

6. Chapter IV of the India Stamp Act, 1899 (for brevity "the Act") deals with instruments not duly stamped. Section 33 of the Act deals with Examination and impounding of instruments. Section 34 deals with special provision as to unstamped receipts. Section 35 deals with instruments not duly stamped inadmissible in evidence, etc. Section 36 deals with admission of instruments, where not to be questioned. Section 37 deals with admission of improperly stamped instruments. Section 38 deals with instruments impounded how dealt with. Section 39 deals with Collector's power to refund penalty paid u/s 38, and Section 40 deals with Collector's power to stamp instrument impounded. For the purpose of this case, it may be necessary to extract Sections 35(a) and 40 of the Act which are as follows:

Section 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 not being an instrument chargeable with a duty to twenty paise or a mortgage of crop (Article 36(a) of Schedule I-A) chargeable under Clause (aa) or (bb) of Section 3 with a duty of forty paise or a bill of exchange or promissory note, shall subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of (fifteen 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.

Section 40: Collector's power to stamp instrument impounded:-(1) When the Collector impounds any instrument u/s 33, or receives any instrument, sent to him u/s 38, Sub-section (2) not being an instrument chargeable with a duty (of twenty paise only or a mortgage of a crop (Article 36(a) of Schedule I-A) chargeable under Clause (aa) or (bb) of Section 3 with a duty of forty paise) or a bill of exchange or promissory note; he shall adopt the following procedure:

(a) If he is of the opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or fall short of five rupees:

Provided that when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under Clause (a) of Sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector u/s 38, Sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

7. There is no dispute that the alleged lease deed is inadmissible in evidence and hence, the petitioner is asking for impounding of the document and thus he filed the applications requesting the Court to send the document to the revenue official. When once there is an admission that a document requires stamp duty it is always open for the Court to accept the document together with penalty as contemplated u/s 35(a) of Act and the Court has no discretion except to follow the provision scrupulously. But if such a document is sent to the Collector, the Collector is vested with the power of discretion and he may accept the same on payment of proper duty or the amount required to make up the same together with a penalty of Rs. 5/- or if he thinks fit an amount not exceeding 10 times the amount of proper duty. When such a discretion is given to the Collector and the Court is helpless in exercising its discretion to collect only the amount required towards stamp duty with some penalty, it is always desirable that the document is sent to the Collector, so that the Collector may exercise his discretionary power and get the document impounded by accepting the actual amount required towards stamp duty. In fact, the petition itself is for sending the document to the Collector for the purpose of impounding the document i.e., lease deed.

8. In the light of the above discussion, the view of the trial Court in dismissing the applications and directing the petitioner to pay the stamp duty and penalty on the lease agreement in the Court itself is wrong and therefore, orders dated 4.12.2007 made in both the impugned applications i.e., I.A. No. 882 of 2007 in O.S. No. 349 of 2002 and I.A. No. 883 of 2007 in O.S. No. 361 of 2002 are hereby set aside and the trial Court is hereby directed to send the lease agreement dated 5.1.2001 to the Collector so that the Collector may get the document impounded as contemplated u/s 40 of the Act

9. Accordingly, these civil revision petitions are allowed. No costs.