

(2013) 02 CAL CK 0036
In the Calcutta High Court
Case No : C.O. 2535 of 2012

Bholanath Burman and Another

APPELLANT

Vs

Sunil Dutta @ Christopher Zeorge and Others

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 24
Stamp Act, 1899 — Section 36

Citation : (2013) 02 CAL CK 0036

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharyya, Mr. Chandradoy Basu and Mr. Ashoke Kr. Banerjee, Mr. S. Datta and Mr. P. Bhattacharyya in C.O. 1713 of 2007, for the Appellant; Saptangshu Basu Mr. N. Sengupta and Mr. R.N. Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Soumen Sen, J.—This revisional application is arising out of an order passed in connection with the petition filed by the opposite parties u/s 151 of the CPC for expunging the exhibit no. 1 being the alleged agreements dated 26th May, 2002 and for recalling of the order of 2nd August, 2011 by which the plaintiffs were permitted to exhibit the said document. The ground for expunging the said exhibit is that notwithstanding an order dated 2nd April, 2007 by which the said document was impounded and the plaintiffs were directed to deposit the maximum stamp duty and penalty, the plaintiffs without complying with the said direction and without even brought to the notice of the learned trial Judge that on an earlier occasion such document was directed to be impounded, the said document was taken on record and marked as an exhibit by taking advantage of the absence of the defendant. The said proceeding was preceded by an application filed by the plaintiff for recalling of witness. The petition apparently would appear to be very innocuous and contains only three paragraphs which states that the petitioners earlier had filed few documents during evidence but

due to inadvertence, those documents were not marked as exhibits and, accordingly, the plaintiffs might be permitted to recall its witness for the purpose of marking the said documents as exhibits. The said application was filed on 11th April, 2011.

2. In the meantime, this revisional application was filed against the order dated 2nd April, 2007.

3. The application for recalling of witness for the purpose of marking document as exhibits is silent about the order dated 2nd April, 2007 and it gives an impression that the plaintiffs for the purpose of marking other documents as exhibits require recalling of witness. It is a fact that the order of 2nd April, 2007 was not brought to the attention of the learned trial Judge when the said document was marked as an exhibit at the instance of the plaintiffs and in absence of the defendants. In fact, the defendant prayed for adjournment on the ground that the defendant would prefer a revision against the order dated 25th July, 2011, by which the witness was allowed to be recalled and, accordingly, the defendant did not participate in the said proceeding when the said document was marked as an exhibit. Later on, the defendants filed an application for expunging the exhibit-1 on the ground that fraud was committed upon the Court by the plaintiffs and the learned Court below without examining the record and the orders passed earlier in relation to the said agreement allowed the plaintiffs to mark the said agreement as an exhibit which is contrary to the earlier order. The defendants on an earlier occasion intended to file an application u/s 24 of the CPC before the learned District Judge for withdrawing the suit from the learned Court below for failure of the said Court to adjourn the matter but good sense seems to have prevailed and ultimately the defendant filed the said application for expunging the said exhibit and the evidence in relation thereto. The learned Court below while considering the said application had taken into consideration the detailed order by which the said document was directed to be impounded and also deprecated the conduct of the plaintiffs in suppressing the earlier order dated April 2, 2007, and recalled the order by which the said document was allowed to be marked as an exhibit.

4. Mr. Sabyasachi Bhattacharyya, learned Advocate appearing on behalf of the petitioner submits that in view of Section 36 of the Indian Stamp Act once a document is allowed to be marked as an exhibit, the opposite party cannot object to the same and having regard to the fact that the defendants did not object to the marking of the said document when it was tendered in evidence on 2nd August, 2011, the opposite parties lost opportunity to raise any objection with regard to the marking of the said document as an exhibit. It was further submitted that the said application should have been dismissed since the defendants had waived their right with regard to all possible objections that they could have in relation to the said document once the said document was admitted and marked as an exhibit. In short, it is submitted that once such evidence was admitted, it should not be allowed to be expunged and it is on

completion of trial that the Court shall consider the cogency, relevancy and admissibility of such documents. In this regard, the learned Advocate for the petitioner had relied upon a decision reported in 1999 W.B.L.R. 454 Cal (Gouri Srimani Vs. Anil Kr. Pal & Ors.).

5. In Gouri Srimani (supra) it was held that "Once a document has been marked as an exhibit in the case and has been used by the parties in examination then the document has the effect of being admitted into evidence and it is not open to the Court to expunge the said document at a later stage. The same is only capable of being done under the provisions of Evidence Act and not by analogous reference to Civil Procedure Code. It is, however, made clear that even if a document is allowed to be marked as an exhibit that does not necessarily follow that the document is sacrosanct in character and if it is otherwise not relevant, the same cannot be treated to be deemed to have been proved. Whatever the effects which are likely to follow either from the evidence and document itself that will follow and that will not empower the Court to expunge the document which will be marked as manifest exercise of gross irregularity of jurisdiction by the Court concerned."

6. This Court is unable to accept such submission. Once the said document has been impounded, the Court cannot take on record the said document or admit the said document in evidence without payment of the required stamp duty and penalty. So long the order dated 2nd April, 2007 remains on record, the Court cannot permit the plaintiff to exhibit the said document as the Court had already formed an opinion that the said document cannot be tendered in evidence without payment of required stamp duty and penalty. It appears that the said document was tendered without bringing to the notice of the trial Judge the existence of the earlier order in relation to the said document. If the attention of the learned trial Judge was drawn to the said order then the trial Judge would not have permitted the plaintiffs to tender the said documents in evidence. The said order permitting the impugned document to be marked as an exhibit was passed without noticing the earlier order. The plaintiffs took advantage of the mistake of the Court in overlooking the earlier order. The plaintiffs purposely remained silent.

7. In view thereof, this Court finds no infirmity with the order. The revisional application fails. There shall be no order as to costs. Urgent xerox certified of this judgment, if applied for, be given to the parties on usual undertaking.