

(2013) 12 AP CK 0046

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3566 of 2012

Boggavarapu Narasimhulu

APPELLANT

Vs

Sri Sriram Ramanaiah, Chittiprolu Sai Baba and Solleti
Satyanarayana

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 2 ALD 426 : (2014) 1 ALT 577

Hon'ble Judges : M. Seetharama Murti, J

Bench : Single Bench

Advocate : M.R.S. Srinivas, for the Appellant; G. Venkateswarlu for the Respondent No. 1 and 2 and None Appeared for the Respondent No. R3, for the Respondent

Judgement

M. Seetharama Murti, J.—This Civil Revision Petition is filed by the unsuccessful 2nd defendant assailing the orders dated 26.06.2012 of the learned Principal Senior Civil Judge, Nellore dismissing his application in I.A. No. 1028 of 2011 in O.S. No. 653 of 2009 filed under Order XIII Rule 3 read with Section 151 of the CPC ("the Code", for short) requesting to demark and reject exhibit A1, the original agreement of sale dated 02.06.2008, and to eschew the evidence of PW1 in regard to the said exhibit. The facts necessary for consideration, in brief, are as follows:- "The respondents 1 and 2 herein/plaintiffs ("the plaintiffs", for short) filed the suit O.S. No. 653 of 2009 against the revision petitioner/2nd defendant ("the 2nd defendant", for short) and the 3rd respondent/1st defendant for return of the advance amount with interest and for costs. The plaintiffs filed and relied upon the original agreement of sale dated 02.06.2008. The 2nd defendant filed a written statement resisting the suit. The case of the 2nd defendant is as follows: "Since the suit is not one for specific performance of the said agreement of sale and as the suit is filed only for return of the advance amount with interest and for costs, an objection was raised by the 2nd defendant for exhibiting the said unregistered agreement of sale on the ground that the said agreement, which is required under law to be registered, is hit by Section 17 of the Indian

Registration Act and is inadmissible in evidence. In spite of the said objection, the trial Court had allowed the document to be exhibited as exhibit A1. Hence, the 2nd defendant filed the petition for demarking and rejecting the said document and eschewing from consideration the evidence of PW1 in regard to the said document. However, the trial Court had erroneously dismissed the application." On the other hand, the defence of the plaintiffs is as follows: "The agreement of sale was filed along with the plaint. In the written statement, no objection was raised in regard to its admissibility. No objection was also raised when the document was exhibited on behalf of the plaintiffs. When once the document is marked as exhibit A1, without any objection, it cannot be demarked and the evidence in regard to the said document cannot be eschewed from consideration. The petition is filed to drag on the proceedings and there are no merits in the petition. Hence, the trial Court rightly rejected the request of the 2nd defendant." Be it noted that the 3rd defendant filed a counter supporting the case of the 2nd defendant.

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record including the impugned orders.

3. During the course of enquiry before the trial Court, the 2nd defendant placed reliance on a decision in the case of Telugu Kishna Mohan and Another Vs. Smt. Boggula Padmavathi and Others, . On the other hand, the plaintiffs relied upon a decision in the case of C. Prithvi Raj Reddy and C. Sanjay Raj Reddy Vs. G.P.R. Housing Pvt. Ltd., . In the decision in Telugu Kishna Mohan v. Smt. Boggula Padmavathi (supra), in a suit for partition, a document styled as relinquishment deed, which was unregistered and which was inadmissible, was sought to be tendered in evidence and the plaintiff had filed an application under Order XIII Rules 3 and 6 praying for rejection of the said relinquishment deed and the said application was allowed by the learned Judge of the trial Court. This Court while confirming the said orders held that in the light of Order XIII Rules 3 and 6 of the Code, the order made by the learned Judge allowing the application in I.A. No. 78 of 2008 cannot be found fault." In C. Prithvi Raj Reddy's case (supra), in a suit for specific performance of an agreement of sale dated 06.11.2000 said to have been executed by the defendants in favour of the plaintiff in respect of immovable property, the said agreement of sale was marked in the evidence on behalf of plaintiff as exhibit A1; and when the matter was at the stage of cross examination of PW1, the defendants had filed IA 1821 of 2010 u/s 151 of the Code with a prayer to reject the agreement of sale on the ground that the said document is inadmissible in evidence since it was insufficiently stamped. The trial Court dismissed the said application in view of the provision contained in Section 36 of the Indian Stamp Act, 1989. This Court, having referred to the decisions in Javer Chand and Others Vs. Pukhraj Surana, and Shyamal Kumar Roy Vs. Sushil Kumar Agarwal,) held that interference by this Court is not warranted and had dismissed the civil revision petition. Be it noted that in the decision in C. Prithvi Raj Reddy's case (supra), the aspect that fell for consideration was the inadmissibility of a document on the ground that the said document was

insufficiently stamped. The learned counsel for the revision petitioner/2nd defendant sought to distinguish the decision in the above case on the ground that in the case on hand, the objection is in regard to non-registration of the agreement of sale, which is compulsorily registrable and that the defect in regard to non-registration is an incurable defect, whereas the defect in regard to non-payment of stamp duty can always be rectified by payment of the duty/deficit duty and penalty.

4. (a) Now the important question is - "Whether the 2nd defendant can raise any objection in regard to the admissibility of the exhibit A1 on the ground that it has been not duly registered despite the fact that the said document has already been admitted in evidence and was in fact exhibited without any objection during the course of trial before the trial Court?"

4. (b) The learned counsel for the plaintiffs would contend that exhibit A1 was already exhibited and was admitted in evidence before the trial Court and that at the time of marking no objection was raised in regard to the issue of registration and, therefore, the 2nd defendant cannot now raise any objection in regard to the admissibility of the exhibit A1 on the ground that it has been not duly registered. He placed reliance on section 35 of the Indian Stamp Act which reads as under:- "Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped". He further submitted that once the document is admitted in evidence rightly or wrongly, with or without an objection, rejection of the same later by the Court is impermissible. He had also placed reliance on the ratio in the decision in the case of *Javer Chand and others v. Pukhraj Surana* (supra). In this reported case the facts show that the hundis were marked as exhibits P.1 and P.2 and bare the endorsement "admitted in evidence" under the signature of the Court. Having considered the said fact and other facts, the Hon'ble Supreme Court held as follows:

It is not, therefore, one of those cases where a document has been inadvertently admitted, without the Court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S. 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

4. (c) However, on the same aspect the learned counsel for the respondent placed reliance on another decision of the Hon'ble Supreme Court in the case of *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, In this decision the Hon'ble Supreme Court having referred to an earlier

decision cited held as follows:

The learned counsel for the defendant-respondent has relied on "The The Roman Catholic Mission Vs. State of Madras and Another, in support of his submission that a document not admissible in evidence, though-brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

Following the presidential guidance which is binding it must be held that the contention of the petitioner/2nd defendant is having an acceptable merit.

4. (d) Further in the decision in the case of The The Land Acquisition Officer,

Vijayawade Thermal Station Vs. Nutalapati Venkata Rao, , a Full Bench of this Court held as follows:

It is now well settled, by a long series of decisions of all Courts, to which it is unnecessary to refer, that there is a basic difference between the mode of proof of a document and its admissibility. The mode of proof of a document is a matter of procedure while its admissibility is a matter of substantive law, such as the Registration Act or the Stamp Act or other specific provision. If the objection is as to the admissibility of the document, then the mere making of the document as an exhibit, does not preclude any objection being raised later as to its admissibility. But so far as the mode of proof is concerned, it is well-settled that, if an objection as to the mode is not raised at the stage when the document is marked as evidence in the case under O. 13, R. 4 C.P.C. such an objection cannot be raised at any subsequent stage.

4. (e) In view of the binding ratios in the before mentioned two decisions supra, in the well considered view of this Court, the 2nd defendant can raise an objection in regard to the admissibility of the exhibit A1 on the ground that it has been not duly registered inspite of the fact that the said document has already been exhibited as exhibit A1 and is admitted in evidence during the course of trial before the Court below, as the said objection is as to admissibility of the document and is a matter of substantive law viz., the Registration Act. The trial Court failed to take note of the binding ratios in the decision of the Hon''ble Supreme Court and the Full Bench decision of this Court and had arrived at an incorrect conclusion to the effect that if a document is exhibited without any objection, the aggrieved party is precluded from raising an objection as to the admissibility of the document though the matter relates to substantive law such as the Registration Act or the Stamp Act or other specific provision. As a sequel to the above discussion coupled with reasons, it follows that merely because the document has been marked as "an exhibit", an objection as to its admissibility is not excluded in the case on hand and is available to be raised even at a later stage or even in appeal or revision. Therefore, the impugned order which calls for interference is liable to be set aside.

Accordingly, the impugned order is set aside and the Civil Revision Petition is allowed, however, with the following directions:

The defendants are at liberty to raise an objection before the trial Court as to the inadmissibility of the exhibit A1 for want of registration as required u/s 17 of the Indian Registration Act. In case, such an objection is raised, the trial Court shall consider the said objection at the appropriate stage of the matter and on merits and shall either exclude from consideration the exhibit A1 and the evidence in regard to the said document or take into consideration the exhibit A1 and also the evidence in regard to the said document having regard to the decision on merits that may be made by the Court after taking into consideration the contents of exhibit A1 and the law applicable.

It is made clear that this Court did not go into the merits of the matter as to either the requirement of the registration or the sufficiency or otherwise of the stamp duty in respect of the exhibit A1 and the said aspects are left open for consideration by the trial Court.

Miscellaneous petitions, if any, pending in this revision shall stand dismissed. There shall be no order as to costs.