
(2007) 08 AP CK 0019
In the Andhra Pradesh High Court
Case No : C.R. P. No. 3359 of 2007

K. Sivakanth Reddy and Others

APPELLANT

Vs

P. Ramanjaneyulu and Others

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 7(2), 151
Stamp Act, 1899 — Section 32, 33, 35, 47A

Citation : AIR 2008 AP 4 : (2007) 6 ALD 77 : (2007) 103 RD 728

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Prabhakara Rao, for the Appellant;

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This Civil Revision Petition has been filed by the plaintiffs in O.S.No.245 of 2007 on the file of the Principal Junior Civil Judge at Bhongir, Nalgonda District.

2. The plaintiffs filed the above suit for injunction. Along with the plaint, they filed an agreement of sale and some other documents. During pendency of the suit, the counsel for the plaintiffs filed a Memo stating that the matter is settled amicably out of Court and the plaintiffs intends to withdraw the suit as not pressed. In view of the Memo and in the presence of both parties, the Principal Junior Civil Judge, Bhongir dismissed the suit as not pressed without costs, through the order dated 13.07.2007. Later the plaintiffs filed I.A.No.656 of 2007 under Order 13, Rule VII (2) read with Section 151 of C.P.C. requesting the Court to return the unmarked documents including the agreement of sale dated 17.10.2006. The trial Court ordered return of documents 2 to 5 and in respect of document No. 1 i.e., agreement of sale, the trial Court withheld the same observing that the document is insufficiently stamped and the same has to be treated as a document u/s 47(A) of the Indian Stamp Act and to be considered as a sale deed as the agreement was coupled with possession, which has to be

impounded by collecting stamp duty and penalty. The trial Court further directed that if the plaintiffs are willing to pay the stamp duty and penalty in the Court, the Section to collect the amount or else to send the document to the Collector for levying of stamp duty and penalty and thereafter return the document to the plaintiffs.

3. Being aggrieved by the order of the Junior Civil Judge, Bhongir, dated 13.07.2007, the present Civil Revision Petition has been filed contending that as the suit was disposed of, the Court became functus officio, therefore, it ought to have returned the unmarked document without resorting to collect the stamp duty and penalty on agreement of sale; that the trial Court ought to have observed that no relief is sought for on the basis of the document and it is only a document filed for collateral purpose; that the trial Court has no power to impound the document after disposal of the suit and Section 33 of the Indian Stamp Act has no application to the present case.

4. The learned Counsel for the revision petitioners-plaintiffs relied on a judgment of this Court in Lokara Om Kumar Vs. Baikan Satyanarayana and Others, wherein this Court held that a document not marked in evidence has to be returned to the parties, who produced the same, without retaining them till the disposal of the suit. The decision is not directly applicable to the facts of the present case.

5. However, the learned Counsel drew the attention of this Court to a judgment rendered by Varghese Vs. State of Kerala and Others, representing that the question that arose in the present case was dealt with by the Kerala High Court in the above decision and by considering the scope of Section 33 of the Indian Stamp Act, the Kerala High Court held as follows: "If the document is merely presented along with the plaint, it cannot be said that the document was produced as contemplated u/s 33 of the Stamp Act. If the plaintiff intended to use the document as an item of evidence, then only the court can consider that it was a document "produced" and the same can be impounded by the court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Once the case is over and the decree was signed and sealed or it can no longer be considered to be part of the judicial record and cannot therefore properly come before the court again in the performance of its function and the court is not competent to compound the same."

6. In the case covered by the above decision, the revision petitioner filed a suit for injunction against the respondents 2 and 3. The suit related to the building, which was under the occupation of the revision petitioner as a tenant. At the time of presentation of the plaint, the plaintiff produced a rent deed. The Chief Ministerial Officer of the Court noticed that the rent deed was not properly stamped and a sum of Rs. 41,217/- was payable as stamp duty and penalty. The learned Munsiff thereafter made an endorsement on the document "pay stamp duty and penalty. The suit was not pressed and the same was dismissed on 02.07.1984. Later, the plaintiff filed an application for the return of the

document. The document was not returned and the same was impounded by the learned Munsiff on 03.08.1984. The application to return the document was dismissed. The short question that arises for consideration is whether the order of the learned Munsiff impounding the document on 03.08.1984 was correct. Under the above set of facts, the Court rendered the above judgment.

7. For proper adjudication, it is appropriate to extract Section 33 of the Indian Stamp Act, 1899, which reads as under:

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 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.

8. Section 35 of the Indian Stamp Act, 1899 is as under:

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 not exceeding ten naye paise only, 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 five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898.);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act.

9. A question of similar nature came up before various High Courts. In *Khetra Mohan Saha and Others Vs. Jamini Kanta Dewan and Others*, a Division Bench of Calcutta High Court held that if the suit has already been disposed of and decree signed and sealed, Section 35 of the Stamp Act was wholly inapplicable.

10. A similar question arose in *Puran Chand v. Emperor* AIR 1942 Lah 257. In the case covered by the above decision, a suit was filed for recovery of possession of certain properties. The defendant contended that he bought the properties from the original owner. Along with the written statement, the defendant produced two receipts. The stamp auditor pointed out to the Sub-Judge that one of the receipts amounted to a conveyance and therefore, it was under stamped. On 10th June 1938, the Sub-Judge ordered for the return of that document. But it was not taken off and remained on the record. In August 1938, the Sub-Judge passed an order impounding the very same document and the document was sent to the Collector for realization of stamp duty. But, by mistake a wrong receipt was sent for collection. The question arose whether the order of impounding passed after the order for the return of document was proper. The court was of the view that the impounding order was illegal. The Special Bench of Lahore High Court held as follows:

When a Court orders a document to be returned because it is not proved it can

no longer be considered to be part of the judicial record and cannot therefore properly come before the Court again in the performance of its functions, unless, of course by any chance, the order is reviewed and the document is allowed to be tendered again in evidence. But otherwise, it would remain in the custody of the Court after such order only for being returned to the party concerned.

11. In AIR 1949 214 (Nagpur) the Nagpur Bench of Bombay High Court held that a Court has no jurisdiction to reopen a case to impound a document after the decree is signed and to order the recovery of the stamp duty and penalty.

12. In *Javer Chand and Others Vs. Pukhraj Surana*, the Supreme Court of India considered the question of impounding the document and held as follows:

Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped it has to be decided then and there when the document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case.

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.

13. Therefore, the learned Counsel for the revision petitioners/plaintiffs submits that in the light of the above legal position, it has to be held that the trial Court is not entitled to impound the document by ordering collection of stamp duty and penalty and requested to allow the petition by setting aside the order.

14. After going through the above decisions, it is clearly indicated that the impounding of a document cannot be made after the Court has become functus officio. If the document is merely presented along with the plaint, it cannot be said that the document was produced as contemplated u/s 33 of the Stamp Act. If the plaintiff intended to use the document as an item of evidence, then only the court can consider that it was a document "produced" and the same can be impounded by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Once the case is over and the decree was signed and sealed or it can no longer be considered to be part of the judicial record and cannot therefore properly come before the court again in the performance of its function and the court is not competent to compound the same.

15. In the present case also, the trial Court resorted to impound an unmarked document after disposal of the suit. Therefore, the impounding of an unmarked document after disposal of the suit is illegal and the order passed by the trial Court is not sustainable.

16. In the result, the Civil Revision Petition is allowed and the order of the trial Court dated 13.07.2007 is set aside.

The application covered by I.A.No. 656 of 2007 is allowed.

The trial Court is directed to return the document to the revision petitioners-plaintiffs without impounding the same through proper acknowledgement. In the circumstances, there shall be no order as to costs.