
(2007) 01 AP CK 0064

In the Andhra Pradesh High Court

Case No : CRP No. 3538 of 2006 and CRP (SR) No. 1473 of 2007

Kalyanapu Venkatalaxmi and Others

APPELLANT

Vs

Kalyanapu Ramudu

RESPONDENT

Date of Decision : 23-01-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Registration Act, 1908 — Section 17, 49
Stamp Act, 1899 — Section 2, 2(15), 3, 35, 36

Citation : (2007) 3 ALD 18 : (2007) 4 ALT 9 : (2007) 103 RD 331

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S.A.V. Ratnam, for the Appellant; Tirumala Rao, for Hema Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Smt. S.A. V. Ratnam, learned Counsel representing the revision petitioners and Sri Tirumala Rao, Counsel representing Ms. Hema Jaiswal, Counsel for respondent.

2. C.R.P. No. 3538 of 2006 is filed as against the order dated 30-6-2006 made in LA. No. 269 of 2006 in O.S. No. 275/2000 on the file of I Additional Senior Civil Judge, Warangal. C.R.P.S.R. No. 1473/2007 is filed along with an application C.M.P. No. 379/ 2007 to dispense with the filing of certified copy of the order in I.A. No. 270/2006 in O.S. No. 275/2000 on the ground that both these applications were disposed of by a common order. Hence, dispense with application is hereby ordered.

3. Inasmuch as both these CRPs. arise out of a common order made in I.A.Nos.269/2006 and 270/2006 in O.S. No. 275/2000 on the file of I Additional Senior Civil Judge, Warangal, both these revisions are being disposed of by this common order,

4. The respondent herein filed the aforesaid applications LA. Nos.269/2006 and 270/2006 praying for reopening of the suit and to recall D.W.1 and D.W.2 to mark the document dated 12-8-1996. The learned Judge after recording certain reasons allowed the applications. Aggrieved by the same, the respondents in the said applications, the plaintiffs in the suit, preferred these civil revision petitions.

5. The Counsel on record made certain submissions relating to the nature of the document, the admissibility or inadmissibility and at what stage the said question may have to be decided and placed reliance on certain decisions.

6. The respondent in both these revisions as petitioner in I.A. Nos.269/2006 and 270/2006 in O.S. No. 275/2000 aforesaid had taken a stand that the evidence on his side was closed and the original partition deed to be marked in the evidence. It is also stated that the Counsel appearing on the other side had taken an objection for the marking of the said document and hence the respondent in these revisions moved an application to send the said document to the Revenue Divisional Officer, Warangal for impounding and the said document was impounded and after impounding, the document in question was sent to the Court and in such circumstances he may be permitted to reopen the suit and recall D.W.1 and D.W.2 for the purpose of marking the said document. The same was resisted by the revision petitioners with all vehemence on the ground that the document in question suffers from the deficit stamp duty and penalty and even if such defect is cured by virtue of impounding, the payment of stamp duty and penalty, if any cannot cure the defect of registration since it is an award made by Arbitrators dated 12-8-1996 which requires compulsory registration.

7. It is not in serious controversy that during the course of trial, I.A. No. 480/2005 was filed to send the document in question dated 12-8-1996 for the purpose of impounding and the said application was allowed granting sometime for impounding. But however, since within the time the same was not completed, another application I.A. No. 630/2005 was filed to condone the delay in getting the document impounded and the said application was dismissed and as against the said order, C.R.P. No. 6059/ 2005 was filed which was allowed granting further time and accordingly the said document was impounded and in view of the same, these applications to reopen the suit and recall D.W.1 and D.W.2 for the purpose of marking the said document were allowed.

8. The relevant portion of the order in C.R.P. No. 6059/2005 dated 2-12-2005 reads as hereunder:

No doubt, the order, dated 20-7-2005 has not been complied with. Having allowed the application, vide docket order dated 20-7-2005, the Court below ought to have given sufficient time enabling the party to approach the Revenue Divisional Officer to get the document impounded and produce the same before the Court. Instead, it has given only a week's time and directed him to produce the document by 27-7-2005. Of course, the learned Counsel also has not raised any objection for the same and did not request the Court for a period more than

one week. The learned Counsel appearing for the petitioner herein has stated that if sufficient time is given, she will get the document impounded and produce the same before the Court.

Hence, the petitioner is directed to get the document impounded and produce the same on or before 30-12-2005, failing which it is needless to observe that the order dated 2-8-2005 shall come into force.

Accordingly, the civil revision petition is allowed.

Strong reliance was placed on the decision of the Division Bench of this Court in *M. Manik Reddy and Another Vs. M. Anasuya Devi and Others*, wherein the Division Bench held that if the award of the Arbitrator does not direct partition but only indicates that the parties shall enter into agreement to share the properties in the proportions stated and the terms of the said award have to be implemented in future by further documentation etc., then the said Award cannot be treated as one directing partition and not (sic. as) attracting Section 2(15) of the Stamp Act and Section 17 of the Registration Act. It was also further held by the Division Bench that if the Arbitrators had directed by the award itself that the disputed property should go to some party without any further document, then the same shall amount to partition itself and it was also further observed following the decision of the Apex Court in *Ratan Lal Sharma Vs. Purshottam Harit*, that in the instant case the exclusive right is created in favour of one party by extinguishing the right of another party and separate possession thereof and the partition has been effected by the award itself specifying the shares and conditions and on facts it was held that the award directed partition and separate possession of the immovable property worth more than Rs. 100/- and as such attracts the levy of stamp duty as an instrument of partition as defined in Clause (15) Section 2 of the Stamp Act and requires compulsory registration u/s 17 of the Registration Act and hence the finding of the Court below on this aspect is reversed and it was held that the award is inadmissible in evidence as even though the deficit stamp duty can be cured by impounding the award, nonregistration cannot be cured.

9. The Apex Court in *Bipin Shantilal Panchal v. State of Gujarat and Anr.* 2001 (1) ALD (CrL.) 548 (SC) : 2001 (3) SCC 1, at Paras 14, 15 and 16 observed:

When so recast, the practice which can be a better substitute is this : Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objection to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection

before proceeding further. For all other objections the procedure suggested above can be followed.)

The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence-taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

We, therefore, make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

In *Meda Anjamma and Another Vs. Vikram China Veeraiah and Others*, , the learned Judge of this Court while dealing with a similar question relying upon *Bipin Shantilal Panchal's* case (*supra*), observed at Paras 5, 6, 8 and 9 as hereunder:

Section 3 of the Indian Stamp Act, 1899 (Stamp Act, for brevity) is a charging section and requires the instruments enumerated therein chargeable with duty of the amount indicated in the schedule as proper duty thereof. Section 35 of the Stamp Act mandates that an instrument chargeable with duty cannot be admitted in evidence by any person having authority to receive evidence if such instrument is not properly/ duly stamped. Section 36 of the Stamp Act further postulates that when an instrument is admitted in evidence, such admission shall not be called in question at any stage of the suit or proceeding on the ground that the instrument has not been duly stamped. In the case of an instrument, which is not sufficiently stamped, the law provides for procedure to validate such insufficiently stamped documents by collecting the deficient stamp duty as well as penalty. Therefore, when an objection is raised regarding the admissibility of a document in evidence for want of proper stamp duty, the Court or public authority having power to receive evidence has to decide the question of stamp duty at the stage of receiving the document because when once the document is received, the same cannot be challenged at later stage in a suit or proceeding. The same is not however the case with regard to the registerable unregistered documents.

Section 17 of Registration Act mandates and enumerates certain documents, which shall have to be registered necessarily. Section 49 of the Registration Act contains the consequence of non-registration of the document and it is to the effect *inter alia* that no document required by Section 17 to be registered shall affect any immovable property comprised thereon and can be received as

evidence unless it has been registered. The exception, however, is in the case of the document affecting immovable property, which can be received as evidence of contract in a suit for specific performance under Chapter II of Specific Relief Act, 1877 or as evidence of collateral transaction not required to be effected by registered instrument. Except these two provisions, there is no provision in the Registration Act, adverting to the question of admissibility of an unregistered document. If an unregistered document is received as evidence, the parties to the suit or proceeding can always urge at the time of final hearing regarding the admissibility of the document for reasons more than one including the ground that being unregistered it is inadmissible as evidence. But, in the case of improperly stamped or unstamped document being offered as evidence in a suit, the Court has to necessarily decide as and when objection is raised because when once unstamped document is admitted in evidence, at a later stage, the question of inadmissibility cannot be raised. It is no doubt true that conventionally the Courts in common law jurisdictions decided questions of admissibility of documents at the stage of trial, whether objection is regarding proper stamp duty or registration. This procedure would certainly results in delaying the trial and therefore the Supreme Court directed to substitute this practice by better one to help acceleration of trial proceedings.

Before proceeding further with the case it is also necessary to point out that when the nature of document is to be analysed either with reference to Stamp Duty or Registration, the Court has to look to the recitals of the document and any reference or reliance on the pleadings in the case would amount to gave error on the face of record (See V.L. Narasimha Rao Vs. K.T. Pentaiah and Others, and Chintam Kantam Vs. Dhulipudi Venkateswara Rao and Others, . In this case, there is no denial before this Court that the trial Court has referred to the pleadings on record for deciding the nature of the document and this itself is a ground warranting interference under Article 227 of Constitution of India.

As noticed supra, the trial Court decided on the question of stamp duty and also the question of Registration. As per the decision of the Supreme Court in Bipin Shantilal v. State of Gujarat (supra), the objection by the defendants 4 to 10 need not detain at this stage. The document sought to be marked by the petitioners as Ex.A.1 can be received in evidence recording the objections, and the lower Court can decide the matter as to the evidentiary value and/ or admissibility at the time of hearing. Insofar as the question of stamp duty is concerned, the document sought to be marked is dated 4-4-1979 and at the relevant time, the stamp duty for an agreement of sale being Rs. 5/-. Hence, the trial Court cannot refuse to receive the same in evidence. Therefore, the finding of the trial Court that it is improperly stamped cannot be accepted, but the question whether it amounts to sale deed or sale agreement has to await the trial in the suit.

10. Certain submissions were made by the Counsel on record relating to the nature of the document in question - the Counsel for the revision petitioners

contending that it is an arbitration award requiring compulsory registration and on the contrary the Counsel for respondent taking a stand that it is just a family settlement.

11. This Court is not inclined to express any opinion relating to this aspect at this stage. It is not as though an objection is coming up for the first time. It appears that at the stage of impounding of the document in question when the same was not done in time, the matter was carried by way of CRP No. 6059/2005 and this Court made an order which had been already referred to supra. However, it is not clear from the record whether the objection relating to want of registration had been specifically raised and decided. Be that as it may, in the light of the facts referred to supra, since the respondent was left with no other option, these applications were moved for reopening of the suit and recall D.W. 1 and D.W.2 for the purpose of marking the document. Again, an objection is being taken that it is an arbitration award which requires compulsory registration. In the light of the peculiar facts, this Court is of the considered opinion that this objection may have to be decided by the learned Judge at the appropriate stage at the time of final disposal of the suit, especially in the light of the fact that the impounding of the document had been completed and the document came back to the Court and at that juncture, these applications were moved. It is needless to say that the nature of the document and other questions which are being argued in elaboration by the parties are left open to be decided at the time of final disposal of the suit.

12. Hence, viewed from any angle, the allowing of the applications by the learned Judge cannot be found fault and accordingly both the civil revision petitions shall stand dismissed. No order as to costs.