(2010) 04 KAR CK 0089

In the Karnataka High Court

Case No : Writ Petition No. 10895 of 2010

Khivraj Motors and Others APPELLANT

Vs

Smt. Sathya D. Sampath RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Karnataka Stamp Act, 1957 — Section 2 (14), 33, 35

Citation : (2010) 04 KAR CK 0089

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : B.S. Sathyanand, for the Appellant; M. Dhyan Chinnappa, for Crest Law Partners for C/R, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—Petitioners are defendants in the Trial Court. They are challenging the order dated 12.03.2010 passed by the Trial Court holding that the xerox copy of the unregistered lease agreement confronted to PW-1 in the course of cross-examination was not admissible in evidence and therefore, could not be permitted to be marked.

2. Respondents herein filed a suit for ejectment of the petitioners from the suit schedule property contending that the petitioners were occupying the premises as tenants.'' There is no registered agreement of lease between the parties. Plaintiff tendered her evidence. During the course of cross-examination. PW-1 was asked about the existence of any written lease agreement to which PW-1 denied stating that no such lease deed was in existence. At that stage, PW-1 was confronted with the xerox copy of the unregistered lease agreement dated 01.10,2002 and asked the witness as to whether the said agreement was the one under which tenancy in favour of the defendant commenced. The witness admitted that there was such a lease agreement, and contended that the period under the said lease had expired. At this stage, learned Counsel for the defendant requested the court to mark the document in evidence as exhibit as

the witness had admitted the same. This was opposed by the other side, contending that the document was only a photocopy, and was an unregistered document which the learned Counsel on: the point and has held that the document could not be marked in evidence as it was a photocopy and was an unregistered document not bearing requisite stamp duty. Aggrieved by this order, the present writ petition is filed.

3. Learned Counsel for the petitioners submits that as the document in question is admitted by the witness, even if it is a xerox copy and although it is a compulsorily registrable document, the court ought to have received it in evidence and allowed it to be marked, in this regard, learned Counsel has placed reliance on the following judgments.

(i) T. Mohan v. Kannammal and Anr. ILR 2003 KAR 3533:

(ii) Gannmani Anasuya and Ors. v. Parvatini Amarendra Chowdhary and Ors. 2007 AIR SCW 4233;

(iii) Bipin Shantilal Panchal v. State of Gujarat and Anr. AIR 2001 SC 1158;

(iv) K. Anjaneya Setty Vs. K.H. Rangiah Setty, .

4. Taking support from the judgment of the Apex Court in the case of T. Mohan v. Kannammal And Anr. ILR 2003 KAR 3533, learned Counsel for the petitioners contends that in the absence of the original document, copy of the agreement which was nothing but a duplicate of the original could have been received as secondary evidence in the case as PW 1 had admitted the said document. It is necessary at this stage to observe that in the aforementioned case, the question regarding compulsory registration of the document, a duplicate of which was sought to be produced and marked on the ground that the witness had admitted the signatures on the document did not arise. Learned Counsel further draws the attention of the Court to the observation made in para 12 of the decision in the case of Bipin Shantilal Panchal v. State of Gujarat and Anr. AIR 2001 SC 1158, to contend that in matters where any objection is raised regarding admissibility of any material in evidence, the better course is that keeping open the objection, the material could be admitted in evidence so as to avoid delay and to facilitate the appellate court to have the benefit of the document which would be otherwise discarded if the objections were to be gone into at the stage of tendering the document itself. He further submits that the Trial Court ought to have allowed the document to be marked subject to objection. Learned Counsel has drawn the attention of the Court to paragraphs 18 & 30 of the judgment in K. Anjaneya Setty Vs. K.H. Rangiah Setty, , to contend that there is no total prohibition for receiving unregistered document in evidence. It is held in the said case that unregistered partition deed could be received in evidence to prove any collateral transaction. Thus, the main crux of the argument is that regardless of whether it is a xerox copy or an unregistered document, the Court below ought to have admitted the document subject to objection.

5. Learned Counsel for the respondent refuting the contentions urged by the petitioner, has drawn the attention of the Court to the decision in the case of Hariom Agrawal v. Prakash Chand Malviya AIR 2006 SC 166, in support of his contention. He has urged that admittedly the original of the document is not produced and indisputably the transaction reflected in the xerox copy sought to be confronted in evidence is a compulsorily registrable document. What the petitioner could not do with the original cannot be done with the copy of the same. In other words, his contention is that even if the petitioner were to confront PW-1 with the original lease deed compulsorily registrable, he could not have relied upon the same unless the said document was admitted in evidence by following the procedure prescribed under the Karnataka Stamp Act, 1957 by impounding the same and on payment of the requisite stamp duty and penalty. Therefore, in the absence of the original document, petitioner cannot achieve any better result by producing the xerox copy as the same cannot be impounded and the petitioner cannot be permitted to rely on the same and mark it in evidence. Placing reliance on paragraphs 4 & 8 of the judgment of the Apex Court in Hariom Agrawal''s Case, learned Counsel for the respondent submits that the law is now well settled that copy of an instrument cannot be validated by impounding and the same cannot be admitted as secondary evidence under the Indian Stamp Act, 1899. He submits that though this judgment is rendered in connection with the provisions contained under the Indian Stamp Act, the same is the position with regard to the provisions under the Karnataka Stamp Act, 1957, as well.

6. The Apex Court in the aforementioned judgment was dealing with a situation where the copy of the lease deed had been produced and relied upon and the question arose as to whether the same could be admitted in evidence by impounding and collecting the stamp duty and penalty. In that context, the Apex Court observed as under:

8. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence u/s 35 of the Stamp Act Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of document for the purposes of the Indian Stamp Act Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899.

7. The definition of the term ''instrument'' in the Karnataka Stamp Act, 1957, as can be seen from Section 2(1) is pari materia with that of the definition of the term ''instrument'' contained in Section 2(14) of the Indian Stamp Act, 1899, except in so far as the amendment carried in the year 1999 to the Karnataka Stamp Act, 1957, by which ''even a record created or maintained in or by an electronic storage and retrieval device or media'' is also included in the definition

of the term ''instrument''.

8. Having heard the learned Counsel for the parties and on careful perusal of the materials on record and the judgments relied on by the learned Counsel for the parties, I find that the learned Trial Judge was right and justified in holding that the xerox copy of the document which is compulsorily registrable cannot be admitted in evidence. No doubt, PW-1 has admitted in her evidence when confronted with the xerox copy that the lease deed was executed but the duration had since expired. The admission by a party cannot make an otherwise inadmissible document to be admitted in evidence, as otherwise it will amount to violating the prohibition enacted in this regard under the Registration Act, 1908. As per Section 17(1)(d) of the Registration Act, 1908, the transaction contained in the xerox copy sought to be marked in evidence is compulsorily registrable. Section 49 of the Registration Act, 1908, spells out the effect of non-registration of documents required to be registered. It states that,

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall-

(a) affect any immovable property comprised therein; or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

9. The proviso to Section 49 enacts as exception where under such document could be received. It is stated therein that such a document can be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

10. Therefore, in the instant case, merely because PW-1 has admitted, in the course of cross-examination when confronted with the xerox copy that there was such a document executed, the said xerox copy cannot be permitted to be marked in evidence ignoring the prohibition contained u/s 49 of the Registration Act, 1908. It is not the case of the petitioner that the document should have been permitted to be marked for collateral purpose. On the contrary, it is contended that as the document is admitted, it should be permitted to be marked in evidence to prove the transaction and the contents thereof. Therefore, such permission, if granted, would certainly run counter to the mandate contained u/s 49 of the Registration Act, 1908.

11. Moreover, the court below has specifically pointed out that wherever the objection relates to deficiency of stamp duty, the Court has to decide the objection before proceeding further and therefore the decision rendered by this Court in T. Mohan v. Kannammal and Anr. ILR 2003 KAR 3533 had no application to the facts of the case. In this case, it cannot be disputed that the transaction was required to be registered and the document had to be duly stamped as per the provisions of the Karnataka Stamp Act, 1957 read with the provisions of the

Registration Act, 1908. It is not in dispute that the document does not bear the requisite stamp duty. It is in this background that the court below has held that the document cannot be admitted in evidence. The judgment relied on by the learned Counsel for the respondent in the case of Hariom Agrawal v. Prakash Chand Malviya AIR 2008 SC 166 is directly applicable to the facts of the present case, in as much as the xerox copy cannot be impounded for the purpose of making it admissible. The original having not been produced, the question of impounding the document does not arise. Therefore, no exception can be found with the order passed by the court below. The other decisions relied on by the learned Counsel for the petitioners also have no application to the facts involved in this case.

12. Hence, writ petition being devoid of merit is dismissed.

