

(1965) 01 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 271 and 607 of 1963

Kolli Eranna and Others

APPELLANT

Vs

Bellamkonda Thimmaiah and Others

RESPONDENT

Date of Decision : 22-01-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4(1)
Stamp Act, 1899 — Article 45, 2(15), 36

Citation : AIR 1966 AP 184

Hon'ble Judges : Chandrasekhara Sastry, J

Bench : Single Bench

Advocate : K. Ramagopal and R. Kondaiah, in C.R.P. No. 271 of 1963 and N. Ramamohanarao, in C.R.P. No. 607 of 1963, for the Appellant; N. Ramamohanarao in C.R.P. 271 of 1963 and K. Ramgopal and R. Kondaiah, in C.R.P. No. 271 of 1963, for the Respondent

Final Decision : Dismissed

Judgement

Chandrasekhara Sastry, J.—The question raised in these revision petitions relates to the amount of Stamp duty payable on an award. The plaintiffs sought to obtain a decree in terms or an award under Sections 14 and 17 of the Arbitration Act, 1940. The plaintiffs and the defendants were partners carrying on several businesses and due to disputes, which arose between them, they referred the matter to arbitration by two arbitrators with a provision to have third arbitrator as an umpire. The award is dated 28-11-59. It was sent to the lower Court by the arbitrators by post on 25-1-61. When P. W. 1, one of the arbitrators, was in the witness box, this award was put to him. Then the 1st defendant's counsel Mr. D.L. Chetty objected to the admissibility of the document; but the document was marked as Ex. A. 9, while at the same time in the deposition of P.W. I, it was noted by the court as follows: "Mr. D.L. Chetty for 1st defendant objects to the admissibility -- As there is an issue No. 6 about the admissibility of the document, a finding on this will be given along with the finding on the other issues in the judgment."

2. Issue No. 6 reads as follows:

"Whether the award is inadmissible in evidence for want of registration?" This issue was raised obviously because the defendants pleaded in the written statement that the award is not admissible in evidence as it was not registered as required by the Registration Act. Subsequently, there is a change in the personnel of the Presiding Officer of the Court and the question whether the award was properly stamped under the Stamp Act was raised by the Court itself. The following points were framed for determination:

"(1) Whether the stamp duty paid on this document is sufficient or not; if not what is the stamp duty and penalty payable?

(2) Whether the question of stamp duty and penalty can be raised at this stage after the document is marked as Ex. A-9 in the suit?"

3. On the first point, the lower court held, though it has not given reasons for the same, that the document is an award and that stamp duty has to be paid under Article 12 of the Stamp Act; whereas, the contention on behalf of the defendants was that it was really an award directing partition and that it is governed by Article 45 of the Act which prescribes the stamp duty payable on an instrument of partition which is defined in Section 2, clause (15) of the Act. After considering the other facts of the case, the lower court found that originally, only stamp duty of Rs. 3 was paid whereas, the proper duty payable under Article 12 is Rs. 120. Therefore, it directed the plaintiffs to pay the deficit stamp duty of Rs. 117 and ten times penalty Rs. 1170 thus making a total of Rs. 1287. Time for this was given till 2nd February, 1963. C. R.P. No. 271 of 63 is by the plaintiffs questioning the correctness of this order. It was argued in the lower court and again before me that, since the document is marked and admitted in evidence as required by Order 13, Rule 4 C. P. C., such admission cannot be called in question at any stage of the same proceeding in view of Section 36 of the Stamp Act. This argument was repelled by the lower court on the ground that the lower court marked this document as Ex A-9 only subject to the question of admissibility of the document being decided. The note, made by the previous Subordinate Judge shows that the first defendant's counsel objected to the admissibility of the document. It appears that the defendants' advocates stated before the learned Subordinate Judge that passed the order under revision that, when the award was sought to be proved by P. W. 1, he took objection to the admissibility of the award both on the ground that it is not stamped and also on the ground that it is not registered. The order of the lower court does not disclose that this statement of the defendants' counsel was contradicted by the plaintiffs' counsel. But, what appears to have been argued by the plaintiffs' counsel was only that the note made by the previous Subordinate Judge does not warrant the inference that objection was taken by the defendants' counsel both on the ground that the award is not properly stamped and also on the ground that it is not registered.

4. The learned counsel for the petitioners in C. R. P. No. 271 of 63 relied upon certain decisions in support of his contention that once a document is exhibited and marked as required by Order 13, Rule 4 C. P. C., such admission cannot be called in question at any subsequent stage of the suit. In *N. Basavaiah Naidu v. T. Venkateswarulu*, AIR 1957 A P 1022 it was argued that, unless the question of the admissibility of a document was actually considered by the trial Judge after applying his mind consciously to the question whether the document was admissible or not, the endorsement thereon of the particulars required by Order 13, Rule 4 C. P. C., does not preclude him from considering the question of the admissibility of the document in evidence at a later stage of the case. But the learned Judge. Viswanatha Sastry J., observed:

"To some extent, the argument involves nice considerations of human psychology into which a court is reluctant to be drawn. This is particularly so where an admission of a defectively stamped document in evidence without the court being alive to or aware of the provisions of Section 35 of the Stamp Act, is rendered unassailable u/s 36 of the Act. In the case of a judicial proceeding which is required to be reduced to writing, the record made by the Judge is the authentic evidence of what he intended to do." The learned Judge further pointed out;

"In applying the provisions of Section 36 of the Stamp Act, the Court should have regard to what has been actually done and not to the unexpressed intentions of the Judge. The Judge might have intended to reject the document, But if, in fact, he had not rejected it, but admitted it in evidence, it must be acted upon at the subsequent stages of the litigation."

5. In *Nallajerla Satyavati and Others Vs. Vijjapu Pallaya*, when admitting an improperly stamped document, the Court overruled the objections raised to the admissibility of the document and marked it as an Exhibit Venkataramana Ran. J., referred to Order 13, Rule 3 C P C. which provides that the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection and observed that the rule must be taken subject to the provisions of Section 36 of the Stamp Act, which is mandatory and that once a document is admitted in evidence, no objection as regards insufficiency of stamp can be taken and that the provision in Rule 3, Order 13 must yield to it. The real question that was considered by the learned Judge was whether Rule 3 of Order 13 C. P. C. is controlled by Section 36 of the Stamp Act. The decision has no direct bearing on the question to be decided in these revision petitions.

6. Reliance is also placed upon the decision in *Simhadri v. Varalakshmi*, AIR 1962 A P 398. The suit document in that case was a promissory note for Rs. 500 but stamped with only one anna instead of two annas. The plaint and the document were returned with the endorsement that penalty of Rs. 1 was to be paid and the plaint was represented after paying the penalty. Then, the document was proved by one of the plaintiff's witnesses and marked as an exhibit. From the Judgment, it appears that the promissory note had on it the endorsement as required by

Order 13, Rule 4 C. P. C., and Rule 79 of the Civil Rules of Practice. It was under those circumstances that it was held that the admission of the promissory note could not be called in question at any subsequent stage of the suit in view of Section 36 of the Stamp Act.

7. The learned Counsel for the petitioners next relied upon the decision of the Supreme Court in *Javer Chand and Others Vs. Pukhraj Surana*, wherein it was held:

"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, 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 has been used by the parties in examination and cross-examination of their witnesses, Section 36 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."

A close perusal of the judgment of the Supreme Court in that particular case shows that the documents in question, which were two hundis marked as Exs. P. 1 and P. 2, bore the endorsements "admitted in evidence" under the signature of the Court. The endorsements made on the two documents clearly show that they were admitted in evidence.

8. But, in the present case, the endorsement on the document, which is signed by the learned Subordinate Judge only shows that it was received by post on 25-1-61 from the arbitrator, P. W. I and that it was proved by him on 7-8-61 (and was filed as Ex. A. 9 There is no endorsement that the document was admitted in evidence as in the case before the Supreme Court

9. Order 13, Rule 4 C. P. C., prescribes that there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-

- a) the number and title of the suit.
- b) the name of the person producing the document.
- c) the date on which it was produced, and
- d) a statement of its having been so admitted and the endorsement shall be signed or initialled by the Judge.

10. In the present case, the requirement of Clause (d) of Rule 4(1) is not satisfied since there is no statement signed by the Judge that the document has been admitted. No doubt, under Order 13, Rule 3, the Court may at any stage of the suit reject any document, which it considers irrelevant or otherwise inadmissible, recording the grounds on such rejection. But as pointed out in

Nallajerla Satyavati and Others Vs. Vijjapu Pallaya, , this is controlled by Section 36 of the Stamp Act. So that, once the document is admitted any objection on the ground that it has not been stamped or has not been properly stamped could not be raised at any further stage of the suit. But, unfortunately for the plaintiffs in this case, there is no endorsement on the document to the effect that it was admitted in evidence as required by Order 13, Rule 4(1) (d) C. P. C. Taking this along with the note made by the learned Subordinate Judge when the document was marked as an exhibit during the evidence of P.W. 1, and the statement of the 1st defendant's Counsel before the Judge that passed the present order, I must hold that the lower court is right in its view that the document was not admitted in evidence at all but was only marked as Ex. A. 9 during the course of the evidence of P. W. 1 only for the purpose of identification with the reservation that the question of admissibility of the document would be considered later. The document is either admitted or is merely marked as an exhibit for the purpose of identification subject to the question of admissibility being decided later on. If the question of its admission in evidence is to be determined under the Registration Act or any other enactment, the document cannot be held to have been admitted at all for the purpose of any other enactment.

11. The lower Court has now found as a fact on the evidence and probabilities that initially the document bore only a stamp duty of Rs. 3 whereas, the proper duty payable under Article 12 is Rs. 120. Therefore, it directed the plaintiffs to pay the deficit stamp of Rs. 117 and ten times penalty Rs. 1170 thus making a total of Rs. 1287.

12. The next question for consideration is whether the document is to be stamped under Article 12 or Article 45 of the Stamp Act. Article 12 covers awards, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit. It means that all awards other than those directing a partition are governed by this Article. Article 45 prescribes the stamp duty for "instrument of partition", which is defined by Section 2, Clause (15) of the Stamp Act. which reads as follows:-

"instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition." Therefore, the question is whether the document in question which admittedly is an award, is one directing a partition.

13. It is contended by Mr. Ramamohana Rao, that, on a fair reading of the document, it has to be held that it is an instrument of partition. In support of this, reliance is placed upon the decision in The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another, . It was a decision of the Special Bench of the Madras High Court. It was pointed out:

"In the definition of an instrument of partition as defined in Section 2(15) the true antithesis is between the original common ownership & the subsequent cessation of that common ownership."

It was held that an award by arbitrators purported to direct a partition of two firms between the five partners fell as well under the definition of an instrument of partition. In that case, there was a partition of the individual items of partnership assets allotting certain items to one group of partners and the rest to the other group.

14. Next, reference is made to the decision in *M.S. Kalyan Shetty Vs. Inspector General of Stamps, Hyderabad (Dn.)*, It was also a case of deed of dissolution of partnership. It will be noticed that, by that deed, the assets were divided between the partners. These two decisions, in my opinion, have no application to the facts of the present case. There are four partners and two of the partners relinquished all their rights in the partnership for a specified consideration. As such, I cannot hold that the award in question is one directing partition. It follows that it has to be stamped under Article 12 of the Stamp Act and not under Article 45 of the said Act as an instrument of partition.

15. In the present case, the lower Court held that the proper stamp duty to be paid is Rs. 120, but only a stamp duty of Rs. 3 was paid. Hence, the lower Court directed the plaintiffs to pay deficit stamp duty of Rs. 117 and the penalty of Rs. 1,170 making in all Rs. 1,287. The order of the lower Court is right. Time for paying the deficit stamp duty and the penalty amounting to Rs. 1,287 is extended till 22nd February 1965.

16. Both the revision petitions are dismissed. The parties will bear their own costs in both the revision petitions.