(2015) 04 RAJ CK 0172

In the Rajasthan High Court

Case No : SB Civil Writ Petition No. 13898 of 2013

Krishna Leela Estate Private Limited — APPELLANT

Vs

Kalyan and Others — RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 3, Order 13 Rule 4, Order 18 Rule 4
Rajasthan Stamp Act, 1998 — Section 3, 34, 36, 39, 40
Registration Act, 1908 — Section 49

Citation : (2015) 3 CDR 1360

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : G.P. Sharma, Counsel, for the Appellant; Mahendra Goyal, Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

J.K. Ranka, J.—Instant writ petition has been filed by the plaintiff-petitioner assailing the order Dt. 08/05/2013 passed by the trial court by which the application, filed by the defendants-respondents under Order 13 Rule 3 CPC seeking deletion of Exhibit-2 (Agreement Dt. 01/08/2007) submitted by the plaintiff-petitioner, has been partly allowed and order has been passed to impound the agreement Dt. 01/08/2007 with direction to the plaintiff-petitioner for making the document sufficiently stamped.

2. Brief facts of the case are that the plaintiff-petitioner filed a suit for specific performance of the contract Dt. 01/08/2007 before the ld. trial court against defendants-respondents No. 1 to 8 and after service of the summons, the defendants-respondents No. 1 to 8 submitted written statement of the plaint and on the basis of the pleadings of the parties, the ld. trial court framed issues and at the stage when the matter was posted for recording evidence of the plaintiff-petitioner, an application under Order 13 Rule 3 CPC was filed by the defendants-respondents No. 1 to 8 contending therein that the agreement Dt. 01/08/2007 is

neither registered nor sufficiently stamped and thus the document being not admissible in evidence, deserves to be declared not admissible in evidence and be not exhibited in evidence. The plaintiff-petitioner filed reply to the said application contending therein that the defendants-respondents were served in April, 2009 and thereafter they put their appearance through lawyer and thereafter filed written statement in July, 2009 wherein the execution of the sale agreement Dt. 01/08/2007 was unequivocally admitted. It was further contended that the plaintiff-petitioner deposed statement in chief by way of affidavit in which the aforesaid agreement was exhibited as Exhibit-2 but the defendants-respondents, despite receipt of copy of the affidavit, did not raise any objection with relation to marking of exhibit on the said document rather sought adjournment to cross examine the witnesses and as such, the defendants-respondents waived their right to raise such an objection as has been raised in the application under Order 13 Rule 3 CPC. The trial court, after hearing counsel for both the parties, partly allowed the application of the defendants-respondents, as aforesaid. Hence the instant writ petition has been filed by the plaintiff-petitioner assailing the order passed by the trial court.

3. It is contended by ld. counsel for the plaintiff-petitioner that the agreement Dt. 01/08/2007 was exhibited and after the said document having been exhibited, it was also admitted by the defendants-respondents and once a document has been exhibited so also admitted and there being no objection from the respondents, there was no occasion with the ld. trial court to direct to impound the said document and in further directing the plaintiff-petitioner to pay necessary stamp duty in accordance with law before the Sub-Registrar/Inspector General (Stamps), Jaipur. He further contended that the order is per se illegal and bad in law and there was no occasion for the ld. trial court to have passed such an illegal order. He elaborated his arguments that even otherwise, the matter with regard to the stamp duty could not have been taken up at this stage and could be left to be decided at the time of final disposal of the suit. He further contended that in so far as the respondent is concerned, at least he could not raise any objection and if at all there was insufficient stamp duty, then it was a matter between the petitioner and the state Government. He further contended that when the document was exhibited, there was no objection on behalf of the defendants-respondents and after seeking number of opportunities and time, suddenly the application under Order 13 Rule 3 CPC was filed wherein also the defendants-respondents merely wanted to delete Exhibit-2. which was filed with the affidavit. In support of his submission, he relied upon the judgments rendered in the case of Shyamal Kumar Roy Vs. Sushil Kumar Agarwal, AIR 2007 SC 637 : AIR 2007 SC 234 : (2006) 9 JT 483 : (2006) 11 SCALE 159 : (2006) 11 SCC 331 : (2006) 8 SCR 47 Supp and Kedar Singh Chauhan Vs. Bhagwan Singh, AIR 2001 Raj 125 .

4. Per-contra, ld. counsel for the defendants-respondents contended that mere exhibiting of the document does not amount to admission and he contended that at no stage the issue of admission came and merely because a document has

been exhibited in affidavit, it does not mean that it stands admitted and no objection could have been raised later on. He further contended that admittedly, the agreement under dispute was not duly stamped and that Sec. 39 of the Rajasthan Stamps Act and other provisions clearly demonstrate that document has to be properly stamped and unless a document has been sufficiently stamped, it cannot be considered in evidence. He further contended that the judgments relied upon by counsel for the plaintiff-petitioner are prior to the amendment made in CPC and Order 18 Rule 4 is clear in this regard. In support of his submission, he relied upon judgments rendered in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), AIR 2005 SC 3353 : (2005) 3 ARBLR 81 : (2005) 6 JT 486 : (2005) 6 SCC 344 : (2005) 1 SCR 929 Supp : (2005) AIRSCW 3827 : (2005) 5 Supreme 236 ; Jagdish Prasad and Ors. v. Parshu Ram and Anr.: 2013(1) WLC (Raj.) 696 ; IVRCL Assets and Holdings Limited Vs. A.P. State Consumer Disputes Redressal Commission and Another, (2014) 4 ALD 1 : (2014) 5 ALT 93 .

5. I have considered the arguments advanced by ld. counsel for the parties and in my view, the trial court has rightly come to the conclusion the document ought to be impounded and sent to the proper authority for recovery of deficient stamp duty. Merely a document being executed in affidavit cannot lead to the conclusion that the court has consciously applied its mind upon the issue of admissibility or the opposite party has waived its right to raise objection with regard to the document being not duly stamped. It would have been another matter, if the matter had proceeded further and the defendants had completed cross examination of the plaintiff and exhaustively cross examined the plaintiff on such agreement. In such fact situation the issue of waiver may have been arisen but in the instant case exhibit has been marked in the affidavit of plaintiff and neither the court has taken a conscious decision about the issue of admissibility nor cross examination of the plaintiff has been completed.

6. Sections 39 and 40 of the Rajasthan Stamps Act, provides as under:

"39 - Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty under this Act 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 shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) 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, and

(ii) a penalty of one hundred rupees or, ten times the amount of deficient portion thereof, which ever is higher.

(b) 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;

(c) nothing herein contained shall prevent the admission of any instrument as evidence in any proceeding in a criminal court, other than a proceedings under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(d) 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 36 or any other provision of this Act.

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral account of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.

(f) nothing herein contained shall prevent the admission of any instrument in evidence in any court when stamp duty on such instrument has already been paid in advance in the form of a consolidated lump sum.

(g) nothing herein contained shall prevent the admission of any instrument in any court when such document has been executed by or on behalf of the Government or where it bears the Certificate of the Collector as provided by section 36 or any other provision of this Act.

40 - Admission of instrument, where not to be questioned- Where an instrument has been admitted in evidence, such admission shall not; except as provided in section 71, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

7. A bare glance of the above provisions demonstrates that Sec. 40 only comes into play when a document is before cross examination " admitted" in evidence which implies that the document was consciously admitted by the court and a decision upon the leviable stamp duty was taken or the opposite party had participated in the proceedings and waived his right to raise objection thereof.

8. It may be further noted that as per proviso of Sec. 49 of the Registration Act, an unregistered document effecting immovable property which is required to be registered, may be received as an evidence for any collateral transaction or in a suit for specific performance. However, the instrument chargeable with the stamp duty under Section 3 but not duly stamped, could not be admitted in evidence for any purpose in accordance with Section 39 of the Act of 1998, quoted herein above unless the requisite duty is paid. Therefore the trial court rightly concluded that the document in question ought to be impounded and sent to the proper authority for adjudication and recovery of proper stamp duty.

9. The judgments relied upon by counsel for the plaintiff-petitioner in the case of Shyamal Kumar Roy v. Sushil Kumar Agarwal (supra) and Kedar Singh Chauhan v. Bhagwan Singh (supra), are distinguishable basically in view of the fact that the issue involved therein was prior to the amendment of 2002 which was made in CPC and in these cases, the documents were consciously admitted in evidence whereas the facts of the instant case are otherwise.

10. In the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India (UOI) (supra) wherein the Hon''ble Apex Court, after considering the amendments brought in CPC, observed that there was no question of inadmissible documents being read into evidence merely on account of such documents being given exhibit numbers in the affidavit of examination-in-chief. The court clarified that admissibility of the document was subject to the order of the

11. The Hon''ble Apex Court in the case of Bipin Shantilal Panchal Vs. State of Gujarat and Another, AIR 2001 SC 1158 : (2001) CriLJ 1254 : (2001) 74 ECC 287 : (2001) 134 ELT 611 : (2001) 3 JT 120 : (2001) 2 SCALE 167 : (2002) 10 SCC 529(1) : (2001) 2 SCR 29 : (2001) 1 UJ 573 : (2001) AIRSCW 841 : (2001) 2 Supreme 65 , observed as under:--

"(13) 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 objections 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)".

12. Andhra Pradesh High Court, in the case of IVRCL Assets and Holdings Limited v. A.P. State Consumer Disputes Redressal Commission and anr. (supra) observed as under:--

"In fact, admission of a document in evidence is not defined anywhere but according to this Court, admission of a document in evidence appearing in Section 34 of Stamp Act means "admitted in evidence after judicial consideration applying its mind to the document and disagreeing with the contention raised by the counsel as to admissibility of the document in evidence." Mere marking of a document assigning numerical number for reference by itself does not amount to admitting the document in evidence. In the order under challenge, the State Commission did not overrule the objection of the petitioner about admissibility of the document in evidence, in spite of the bar under Stamp Act and Registration

Act. Therefore, mere marking of a document by itself is not a ground to challenge the order before this court."

13. This Court, in the case of Jagdish Prasad and ors. v. Parshu Ram and anr. (supra), came across an identical situation and held that the trial court, admitting deed of partition dated. 06/11/1993 in evidence being illegal, the same was set aside, though the said document had already been marked as Exhibit-8 but the same was held to be inadmissible. This Court in the said case observed in Para 25 as to the procedure to be followed in such matters by the subordinate courts and it would be appropriate to quote Para 25 and 26 of the said judgment, which provide ad-infra:--

"Before concluding, the court cannot resist itself from observing that there is absolutely an inconsistent practice being followed in the subordinate courts, in the matter of dealing with the documents produced by the parties, for being read in evidence. It has been observed that most of the courts below in utter disregard of the provisions contained in the C.P.C. And in the General Rules (Civil) 1986 framed by the Rajasthan High Court, admit the documents in evidence as a matter of course, without following the due procedure and without deciding as to whether such documents are legally admissible in evidence or not. It has also been observed that the exhibit numbers of the documents are being marked by the parties or witnesses themselves in the affidavits filed by them in respect of their examination-in-chief, and that the courts also would not pass any orders as regards the admissibility of such documents, though required as per the proviso to Rule 4 of Order XVIII of CPC Neither the endorsements of particulars nor the signatures of the concerned court are put on the documents admitted, though required under Order XIII, Rule 4 of CPC, read with Rule 51 to 55 of the General Rules (Civil) 1986. This Court is constrained to observe that in none of the records of the suit proceedings called for from the courts below, one would find any compliance of the said provisions. When such particulars are not mentioned on the admitted documents, it becomes very difficult to know as to in which proceeding, on which date, by whom and how a particular document was admitted in evidence. The signatures or initials of the concerned Judge who admitted the document in evidence also would not be found on any of the exhibited documents. Such a cursory, casual and shallow practice being followed in the subordinate courts is not only improper but is illegal.

26. It is needless to say that it is incumbent on the part of the subordinate courts to follow the procedure laid down in the CPC and in the General Rules (Civil) framed by the High Court for the guidance of the civil courts subordinate to it while conducting the suit proceedings. It is also trite to say that every disputed document before admitting in evidence and before exhibiting the same has to be legally proved by the party relying upon it. It is, therefore, directed that the subordinate courts shall scrupulously follow the procedure laid down in the CPC and in the General Rules (Civil) and consider the provisions contained in the Evidence Act and other relevant Acts, before admitting and marking the

exhibits on the documents for being read in evidence and shall also put their signatures/initials on the admitted and exhibited documents after verifying about the endorsements of particulars as required under Order XIII, Rule 4 of CPC."

14. In my view and in the light of the facts, situation and the authorities, the trial court has rightly come to the said conclusion and I do not find any infirmity, illegality or perversity in the order impugned so as to call for interference of this Court.

15. Consequently, the writ petition, being devoid of any merit, is hereby dismissed with no order as to costs.

