
(2006) 04 AP CK 0082
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1961 of 2005

M. Seshagiri Rao	Vs	APPELLANT
M. Rukkamma and Others		RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 2(15), 35, 36, 38

Citation : (2006) 4 ALT 250

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

Bench : Single Bench

Advocate : M. Rama Rao, for the Appellant; T.P. Acharya, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri M. Rama Rao, the learned Counsel representing the petitioner and Sri T.P. Acharya, the learned Counsel representing the respondents.

2. This Court ordered notice before admission on 21-4-2005 and inasmuch as the respondents were served and the learned Counsel Sri T.P. Acharya entered appearance. The C.R.P. is being disposed of finally.

3. Sri Rama Rao, the learned Counsel representing the petitioner had taken this Court through the contents of the document in question and had pointed out that it was specified in the document both in the beginning and also in the concluding portion as Will and in view of the same, the intention of the testator is clear, even otherwise, the learned Counsel would submit that the petitioner as plaintiff instituted the suit for cancellation of the preliminary decree made in O.S. No. 51 of 1964 dated 8-7-1965 and final decree made on 31-1-1972. The learned Counsel also would submit that the petitioner filed this document-the Will dated 16-12-1962 said to have been executed by M.V. Kishan Rao allotting the properties and when the petitioner-plaintiff wanted to mark this document as Ex.A-6, an objection was taken by the respondents-defendants on the ground that the document in question is a settlement deed and hence both for want of registration and also the liability to pay stamp duty and penalty, the same cannot

be admitted in evidence. The learned Counsel would maintain that in the peculiar facts and circumstances especially in the light of the nature of the recitals, it would be appropriate to decide this question after marking the document and not at this stage without marking the document on the ground that the other side had taken objection. The learned Counsel placed strong reliance on the decision of this Court in Vajrala Ramesh and Another Vs. Vajrala Narayana Setty and Another, and also the decision of full bench of this Court in K. Venkatadri Sarma Vs. Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, .

4. Percontra, Sri T.P. Acharya, the learned Counsel representing the respondents-defendants had touched the merits and demerits of the matter and also would contend that this is not a case where the document was rejected at the threshold but the suit had reached the stage of letting in evidence and at that stage objection was taken. The learned Counsel had taken this Court through the impugned order and would maintain that the learned Judge appreciated the contents of the document in question and also several decisions cited in this regard and came to the correct conclusion. The learned Counsel also would maintain that the name given to the document is not material but the recitals in the document may have to be taken into consideration. The learned Counsel also would submit that in case objection is not taken and decided and if the document is exhibited, the same cannot be de-exhibited again and in view of the same, it would be always just and proper that such objection should be raised and decided at the threshold itself before admitting the document in evidence. The learned Counsel placed strong reliance on the following decisions:

Ratan Lal Sharma Vs. Purshottam Harit, , A. Krishna and Another Vs. A. Arjun Rao and Another, , Isra Fatima Vs. Bismillah Begum and Another, , Chintalapudi Annapurnamma and another Vs. Andukuri Punnayya Sastry and others, , Vemi Reddy Jkota Reddy Vs. Vemi Reddy Prabhakar Reddy, , Thonduri Changa Reddy Vs. Chillakuru Chandra Sekhara Reddy, .

5. Heard the counsel and perused the impugned order.

6. The document in controversy between the parties reads as hereunder:

7. It is no doubt true that the learned judge recorded certain reasons and came to the conclusion that the document in question is in fact a settlement deed though the same has been styled as a Will and hence the same is inadmissible. The objections raised in relation to the admissibility of the document in question appear to be on two grounds (i) Non registration, and (ii) not duly stamped. In Ramaswami Naidu and Another Vs. Gopalakrishna Naidu and Others, ; the learned Judge of the Madras High Court at Para 3 observed as hereunder:

The broad tests or characteristics as to what constitutes a Will and what constitutes a settlement have been noticed in a number of decisions. But the main test to find out whether the document constitutes a Will or a gift is to see whether the disposition of the interest in the property is in praesenti in favour of the settlees or whether the disposition is to take effect on the death of the

executant. If the disposition is to take effect on the death of the executant, it would be a Will. But if the executant divests his interest in the property and vests his interest in praesenti in the settlee, the document will be settlement. The general principle also is that the document should be read as a whole and it is the substance of the document that matters and not the form or the nomenclature the parties have adopted. The various clauses in the document are only a guide to find out whether there was an immediate divestiture of the interest of the executant or whether the disposition was to take effect on the death of the executant.

If the clause relating to the disposition is clear and unambiguous, most of the other clauses will be ineffective and explainable and could not change the character of the disposition itself. For instance, the clause prohibiting a revocation of the deed on any ground would not change the nature of the document itself, if under the document there was no disposition in praesenti. In such a case the clause prohibiting revocation will be contrary to law and will be ineffective. If, on the other hand, the document is a settlement, merely because a right of revocation is given, it would not change the character of the document as a settlement because such a clause will be against law and will be invalid. The nomenclature of the document nor the fact that it had been registered also will not be of any assistance in most of the cases unless the disposition is very ambiguous and extraneous aid is required to construe the clause.

8. In Pamireddy Gangireddy v. Pamireddy Chinna Venkate Reddy S.A. No. 93 of 1972, dt.25-1-1973 (A.P.), the learned Judge of this Court considered the test in elaboration whether a document can be said to be a gift or Will. Transfer of ownership of property in present time in favour of the respondent condition imposed later as regards enjoyment of the property without postponement of the transfer of ownership and effect thereof had been considered at length. In Narsimhan v. Perumal (dead) by legal representatives AIR 1994 Mad 39, the learned Judge of the Madras High Court observed that document styled as settlement deed but reciting that settlee will take property absolutely after the death of settlor and his wife and it is not a settlement deed or gift deed but a document of transfer for consideration or a Will. The under noted decisions in P. Venkatachalam Chetty v. P.S. Gonvindaswamy Naicker AIR 1924 Mad. 605, K. Veerabhadrayya v. Jajala Seethamma AIR 1940 Mad. 236 , Ponnuchami Servai Vs. Balasubramanian and Others, , Mallappa v. Kogara Venkatappa 1958 ALT 570, Khushalchand Bhagchand v. Trimbak Ramchandra AIR 1947 Bom 34 49, Kadiyala Venkatasubbaiah and Others Vs. Sarupuri Narayanamma and Others, , Srinivasa Padayachi Vs. Parvathiammal and Others, , Sengamalam Vs. Logambal and Others, , Kunchiyan Janaky v. Mathevi Nachi 1956 KLT 516 , Koraprolu Veerabhadrayya Vs. Jajala Seethamma and Others, , Ramautar Singh Vs. Sm. Ramsundari Kur and Others, , Murari Lal Kutti Vs. Narayan Lal Ahir, and Parvathy Nadachy Umayaparvathi Nadachy v. Ramalekshmy Seethalakshmy Ammal AIR 1956 Coc 127 also may be referred to in the context of the test in relation to deciding a particular document whether falls under one category or the other.

9. Be that as it may, the question which was argued in elaboration by the both the counsel is in relation to the aspect whether this admissibility to be decided at the threshold itself even without admitting the document or the same to be decided at the time of the disposal of the suit at least marking this document subject to objection. There appears to be some controversy between the parties whether an issue in relation thereto has been settled or not. It is stated by the counsel for the petitioner that in fact, an issue in relation thereto also had been settled in the suit. The counsel for the respondents placed strong reliance on the decision of Three Judge Bench of the Apex Court in *Ratanlal Sharma v. Purshotham Harit* (3 supra) whereunder the Apex Court held that an Award creating rights in immovable property worth more than Rs. 100/- requires registration and unregistered Award cannot be looked into for passing judgment in terms of the Award.

10. The decision of the Special Bench in *K. Venkatadri Sarma v. Inspector General of Registration and Stamps, A.P. Hyderabad* (supra) was relied upon, wherein the Special bench had an occasion to deal with the provisions of the Stamp Act in the context of lease-cum-sale agreement.

11. A Division Bench of this Court in *Chintalapudi Annapumamma v. Andukuri Punnayya Sastry* (supra) while dealing Sections 35 and 38 of the Indian Stamp Act, 1899 held that the court is competent to impound the document and impose duty and penalty payable on the document and it is upto the party producing the document to pay the duty and penalty and get it admitted and if the party does not want to pay the duty and penalty as determined by court, it is open for him to ask the document to be sent to the Collector but till the duty and penalty are determined by the Collector and paid by the party, the document cannot be admitted in evidence. However, the court cannot compel the party to pay the duty and penalty determined by it and get the document admitted in evidence. Reliance was also placed on the decision of yet another Division Bench of this Court in *M. Manik Reddy and Another Vs. M. Anasuya Devi and Others*, wherein Section 2(15) of the Indian Stamp Act, 1899 and Section 17 of the Registration Act, 1908 in the context of instrument of partition and the interpretation of Award of Arbitrators had been dealt with. In *Isra Fatima v. Bismillah Begum* (5 supra), the learned judge of this Court while dealing Section 36 of the Indian Stamp Act, 1899 held that documents when once admitted as exhibits cannot be sought to be de-exhibited on the ground that they are not properly stamped. The inadmissibility of a memorandum of partition in the context of Section 35 of the Indian Stamp Act, 1899 had been dealt with by the learned Judge of this Court in *A Krishna v. A. Arjun Rao* (4 supra). Further strong reliance was placed on the decision of the learned Judge of this Court in *Netrambaka Krishnaiah Vs. Nellore Audinarayana*, . In *Vemi Reddy Kota Reddy v. Vemi Reddy Prabhakar Reddy* (supra) the learned Judge of this Court while dealing Section 36 of the Indian Stamp Act, 1899 issued suitable directions to the courts in relation to documents being filed along with affidavits in the context of letting in evidence. The three Judge Bench of the Apex Court in *Bipin Shantilal Panchal v. State of Gujarat*

(2001) 3 SCC 1, at paras 13, 14 and 15 held as hereunder:

It is an archaic practice that during the evidence-collecting stage, when ever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realized through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

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).

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 re-canvassed 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 against 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.

12. In *Vajrala Ramesh v. Vajrala Narayan Setty* (supra) it was held by the learned Judge of this Court that in order to avoid duplicity and multiplicity of the proceedings it would always be expedient for the courts to receive the documents subject to objection by recording such objection and decide the said

issue after trial is completed, of course after framing an appropriate issue regarding the objection and admissibility of any disputed document. In *Meda Anjamma and Another Vs. Vikram Chinn Veeraiah and Others*, , the learned Judge of this Court followed the view expressed by the Apex Court in *Bipin Shantilal Panchal v. State of Gujarat* (supra) and held that where objection as to admissibility of a document in evidence, if taken such document can be marked recording such objection regarding admissibility which can be decided at the time of final hearing of the suit except in case of objection relating to deposit of stamp duty which has to be decided immediately before proceeding further, as such objection cannot be raised after marking the document u/s 36 of the Indian Stamp Act. Objection as to requirement of registration of document can be decided while deciding the suit finally,

13. Here is a case where the question in controversy is whether the document is a Will or a Settlement Deed. The question of the liability of the payment of the stamp duty and penalty also is so closely connected with the nature of the document and if it is to be construed as Will most probably the said question needs no further consideration at the hands of the court. There can be certain cases where the question of stamp duty and penalty can be decided independent of the question of the registration or non-registration of a particular document. But there can be certain cases where these questions may be interdependent and virtually mixed, which cannot be separable and which cannot be decided treating them as different aspects. This is one such case. Since the question is whether the document in controversy is a Will or a Settlement Deed, it is no doubt true that if it is a clear case where the document in question is liable for stamp duty and penalty, the said question may have to be decided at the threshold even before marking of the document and the concerned party may be given liberty to follow the procedure under the provisions of Indian Stamp Act in this regard.

14. In view of the peculiar facts and circumstances inasmuch as both these questions are so interlinked, it may be appropriate to permit the petitioner to let in further evidence by giving an exhibit mark to the document in question recording subject to objection and to decide this question at the time of final disposal of the suit. In the light of the view expressed by the Apex Court in *Bipin Shantilal Panchal v. State of Gujarat* (supra), this practice and procedure would be proper and just especially in the peculiar facts and circumstances of the present case. Accordingly the impugned order is hereby set-aside and the C.R.P. is allowed. No order as to costs.