

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

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THE HONOURABLE MR. JUSTICE **K.KALYANASUNDARAM**

C.R.P. No.1537 of 2006

&

M.P.No.1 of 2006

V. Goutham Chandran

.. Petitioner

vs

1. D.Kalidoss

2. D.Balakrishnan

.. Respondents

Petition filed under Article 227 of the Constitution of India against the fair and final orderd dated 27.03.2006 passed in I.A.No.98 of 2006 in O.S.No.877 of 2002 on the file of the III Additional District Munsif Court, Coimbatore.

For Petitioner

: Mr.J.Pothiraj

ORDER

This revision is directed against the order passed by the III Additional District Munsif, Coimbatore in I.A.No.98 of 2006 in O.S.No.877 of 2002.

2. The revision petitioner is the defendant in O.S.No.877 of 2002. The respondents had instituted the suit against the petitioner for mandatory injunction and permanent injunction. The Plaintiffs filed I.A.No.98 of 2006 seeking permission to mark the vardhamana letter dated 15.07.1996 as Exhibit in the suit. The application was

opposed by the petitioner stating that the disputed letter is an unregistered document and it gives some pathway right to the petitioner's house purchased by them on 13.03.1995 and 05.07.1995.

3.The learned District Munsif, Coimbatore, allowed the application stating that the disputed document may be marked tentatively as Exhibit and the relevancy and admissibility of the document can be decided after the conclusion of the trial. Aggrieved by the said order, the present revision is filed.

4. It is settled law that an unregistered and unstamped document can not be relied on even for collateral purpose. When the admissibility of the document is questioned, the trial Court has to decide the issue immediately before permitting the party to mark the document. In the judgment reported in **R.KALYANI AND OTHERS V. T.ROSE MUKUNDAKUMAR reported in 2014 (2) CTC 157**, this Court has relied on the decisions of the Hon'ble Supreme Court and Bombay High Court which reads as follows:

"14.In the judgment reported in **Bipin Shantilal Panchal vs. State of Gujarat and another**, AIR 2001 SC 1158, the Honourable Supreme Court has held that if objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further and for all other objections, the

procedure suggested in paragraph No.14 can be followed. Paragraph No.14 of the judgment is usefully extracted hereunder:

"14. 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.)"

(emphasis supplied)

15. In **Hemendra Rasiklal Ghia etc. vs. Subodh Mody, etc., 2008 (5) CTC 577** – wherein the Full Bench of the Bombay High Court had an occasion to answer as to whether "it is necessary for the Court to decide about the admissibility of the documents before

they are exhibited in evidence". The Full Bench, after considering the principles laid down in the cases of (i) **Javer Chand and Others vs. Pukhraj Surana AIR (1961) SC 1655**, (ii) **Bipin Shantilal Panchal vs. State of Gujarat and another-AIR 2001 Supreme Court 1158**, (iii) **Ram Ratan vs. Bajarang Lal – AIR 1978 1978 SC 1393**, has concluded as under:

"72. In the first case, the Court, before which the objection is taken about admissibility of document on the ground that it is not duly stamped, 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, as held by the Constitution Bench in Zaver Chand v. Pukhraj Surana (supra) 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. such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction. Similar view is expressed by the Supreme Court in the case of Bipin Shantilal Panchal (supra); wherein it is made clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further.

73. In the case of Ram Ratan v. Bajarang Lal (supra) the Apex Court reiterating the above view has observed that the Court, as of necessity it would be trial Court, before which the objection is taken about admissibility of document on the ground that it is not duly stamped, 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. So the objection relating to deficiency of duty cannot be raised or decided at the later stage of the suit. It has to be decided there and then unless taken on record subject to objection so as to avoid the rigour of section 36 of the Stamp Act.

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92. In view of the above analysis of the statutory provisions and our discussion, we, accordingly, articulate our conclusions as follows:

Answer to Question-A : -----

As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit; (ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit; (iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case. The Court trying the suit or

proceedings as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove. As we have already added a word caution that while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The aim should always be to prevent miscarriage of justice and expedite trial, which is the dire need of the time."

5. In the light of the above said judgment, I am of the view that the trial Court shall decide the admissibility of the document before permitting the petitioner to mark the document. In view of the finding, the order passed in I.A.No.98 of 2006 in O.S.No.877 of 2002 is set aside and the matter is remitted back to the Court below for fresh disposal.

6. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2015

Index : Yes/No

Internet : Yes/No

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To

The III Additional District Munsif Court,
Coimbatore.

K.KALYANASUNDARAM, J

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