

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

-

C.R.P. No.3003 of 2015

Between:

Trinadha Patro

.... Petitioner

And

Lingaraj Rana

....

Respondent

JUDGMENT PRONOUNCED ON: 03.09.2015

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether their Lordship wish to
see the fair copy of the Judgment? Yes
/ No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Between:

Trinadha Patro

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Respondent

! Counsel for Appellant

: Sri K. Manik Prabhu

^ Counsel for Respondent

: Sri B.Ramesh

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2008 SC 1640

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRP No.3003 of 2015

ORDER:

In this revision filed under Article 227 of the Constitution of India, the petitioner/defendant challenges the order dated 26.06.2015 in I.A.No.125 of 2015 in O.S.No.43 of 2014 passed by Principal Junior Civil Judge, Sompeta whereby and whereunder the learned Judge dismissed the petition filed under Section 35 of Indian Stamp Act requesting the Court to impound the petition mentioned unregistered mortgage deed dated 31.03.2003.

- 2) Factual matrix of the case is thus:

a) The respondent/plaintiff filed O.S.No.43 of 2014 against the petitioner/defendant seeking perpetual injunction in respect of plaint schedule vacant site situated in Gandhipeta Baruva village, Sompeta Mandal of Srikakulam District pleading that originally plaint schedule property was a thatched house belonging to his paternal-grand-father—Bollobho Narayana Rono and after him it devolved on his only son—Tarini Rono and later the said property was devolved on his four sons i.e. plaintiff and his three brothers and as the brothers of the plaintiff are settled in different places for their livelihood, plaintiff has been managing the plaint schedule property and during the course of time the thatched house collapsed and plaint schedule property remained as vacant site. It is further pleaded that plaintiff and his brothers are the absolute owners and defendant has nothing to do with the plaint schedule property. However, the defendant started proclaiming that he will trespass into plaint schedule property illegally.

Hence the suit for injunction.

b) Defendant filed written statement denying all the material averments in the plaint contending that the plaint schedule thatched house is the ancestral property of one Sakula Madhava Rao and after his death it devolved on his only son—Joga Rao and the said Joga Rao wanted to migrate to Calcutta to eke-out his livelihood and for this purpose he needed money and so he mortgaged the plaint schedule property which was originally a thatched house to plaintiff for Rs.11,000/- under an

unregistered mortgage deed dated 31.03.2003 and delivered possession of the said house to defendant and since then defendant has been in possession and enjoyment of the same. His further contention is that subsequently the thatched house was collapsed in the year 2009 and suit property became vacant site and it was in possession of the defendant. He denied the ownership and possession of plaintiff in respect of plaint schedule property.

c) While so, during trial the defendant filed a petition I.A.No.125 of 2015 under Section 35 of Indian Stamp Act requesting the trial Court to impound the mortgage deed dated 31.03.2003. The trial Court however dismissed the said petition on the main ground that boundaries of plaint schedule property and mortgaged property are different from each other and so, the property covered by mortgage deed dated 31.03.2003 has nothing to do with the plaint schedule property.

Hence the instant CRP.

3) The parties in the CRP are referred as they stood before the trial Court.

4) Heard arguments of Sri K.Manik Prabhu, learned counsel for petitioner and Sri B.Ramesh, learned counsel for respondent.

5) Challenging the impugned order, learned counsel for petitioner/defendant argued that the trial Court grossly erred in rejecting the petition on the ground that boundaries of both the properties are different. He argued that Northern boundary of both the properties which is a permanent boundary is the same.

Similarly, Southern boundary which is a Zinc sheet roofed house of Pondara people is also same for both the properties and difference, if any, is only in respect of Eastern and Western boundaries, which the defendant will explain when the mortgage deed is tendered in evidence and therefore, the trial Court was not justified in rejecting the document at the threshold without impounding the same. He thus prayed to allow the CRP.

6) Per contra, learned counsel for respondent/plaintiff while supporting the impugned order vehemently argued that boundaries of both the properties are quite different from each other and so, the trial Court rightly rejected the petition to impound the mortgage deed since the mortgage deed has no relevancy in evidence. He thus prayed to dismiss the CRP.

7) In the light of above rival arguments, the point for determination in this CRP is:

“Whether the order of the trial Court is sustainable under law”

8 a) **POINT:** As can be seen from the respective pleadings, the plaintiff and defendant are making rival claims in respect of plaintiff schedule vacant site. The defendant has come up with unregistered mortgage deed dated 31.03.2003 claiming that Joga Rao mortgaged the said property to him for Rs.11,000/- and executed unregistered mortgage deed in his favour. To prove his contention, he produced the said document and since it is deficiently stamped document, he requested the Court to impound the same for collection of stamp duty and penalty. The trial Court rejected the petition on the main ground that

boundaries of plaintiff schedule vacant site and mortgaged property are different. I am unable to appreciate the reason shown by the trial Court.

b) It must be noted that '*admissibility*' and '*relevancy*' are two tests for judicial approval of the evidence tendered by a party. In respect of documentary evidence also the Court shall apply these two tests before admitting the document into evidence. Admissibility of a document in evidence means the admissibility under the provisions of Indian Evidence Act and also other enactments such as Indian Stamp Act, Registration Act etc. So, before approving a document for evidence, the Court has to apply its judicial consideration as to whether the document produced is hit by any of the provisions of Indian Evidence Act or other laws. It is only when the document is not hit by provisions of any such enactments the Court shall admit the same in evidence.

c) Then, so far as relevancy of the evidence is concerned, evidence produced by a party shall pass the test of relevancy applied under Sections 5 to 55 of Indian Evidence Act i.e. the evidence must be relevant to the fact in issue in one of the ways prescribed under Sections 5 to 55 of the Evidence Act. Thus, admissibility and relevancy are two different concepts.

d) In the instant case, since the mortgage deed dated 31.03.2003 in issue is not duly stamped and registered, it is inadmissible in evidence and it is liable to be impounded under Section 33 of the Indian Stamp Act. The Court shall impound the

mortgage deed and collect the requisite stamp duty and penalty under Section 35 of the Indian Stamp Act.

9) The Apex Court reiterated this aspect in **Government of Andhra Pradesh v. Smt. P.Laxmi Devi**^[1] as follows:

12. A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorized to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word 'shall' in Section 33(1) shows that there is no discretion in the authority mentioned in Section 33(1) to impound a document or not to do so. In our opinion, the word 'shall' in Section 33(1) does not mean 'may' but means 'shall'. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions."

So at the stage of impounding the document, the trial Court, in my considered view, need not probe into the fact whether the said document will pass the test of relevancy to be admissible in evidence. That aspect can be relegated to a later stage. It must also be noted that the mortgage deed is an unregistered one. Hence, whether the said document can be admitted in evidence for collateral purpose under Section 49 of Indian Registration Act can also be looked into at the time when the document is actually tendered in evidence on behalf of defendant. At that stage the defendant has to convince to the satisfaction of the trial Court that property covered by plaint schedule and

mortgage deed is in fact one and the same and it is relevant for the purpose of proving his case and further, the same is admissible in evidence for collateral purpose. Hence, what is pertinent at this stage is only to impound the document and collect the proper stamp duty and penalty under the relevant provisions of Indian Stamp Act. Therefore, impugned order is liable to be set aside.

10) In the result, this Civil Revision Petition is allowed and impugned order dated 26.06.2015 in I.A.No.125 of 2015 in O.S.No.43 of 2014 passed by the Principal Junior Civil Judge, Sompeta is set aside and the trial Court is directed to impound the mortgage deed dated 31.03.2003 and collect the stamp duty and penalty under the relevant provisions of Indian Stamp Act. No costs.

U. DURGA PRASAD RAO, J

Date: 03.09.2015

Murthy

[\[1\]](#) AIR 2008 SC 1640