

Application Nos.336 and 337 of 2016
in
C.S.No.324 of 2013

PUSHPA SATHYANARAYANA, J.

The applicants are the defendants in the suit. The above two applications have been filed seeking to eschew the marking of documents Exs.P6 to P8, P14, P17 and P19 and to direct the respondents/plaintiffs to return the originals before this Court.

2. The suit was filed for declaration of title of the plaintiffs. When the suit was posted for trial before the learned Master, the plaintiffs, through PW1 had marked the xerox copies of the application mentioned documents on 06.08.2015.

3. The applicants/defendants contended that the said documents are inadmissible in evidence. Admittedly, when the documents were marked, the applicants/defendants were not present. Though on the date fixed, it was known to both the parties that the documents have to be marked, the applicants/defendants had stayed away from the Court and allowed the documents to be marked. As a result, any objections to the said documents have not been recorded by the learned Master. In such a situation, the above applications

have been filed challenging the marking of the xerox copies of the above said documents, viz., Exs.P6 to P8, P14, P17 and P19.

4. It is contended by the learned counsel for the applicants/defendants that photo copies of the documents are not admissible, as per law of evidence, and when the respondents/plaintiffs have possessed all the documents in original, they ought to have been produced by them.

5. Though the contention was that the documents were only photo copies, they are not documents inadmissible, as contended by the applicants/defendants. No doubt, if any document is found to be inadmissible in evidence, it is open to the Court to either allow the documents to be rectified, to make it admissible, or to reject the same. In this case, only the photo copies of the documents are marked and out of the said documents excepting Exs.P8 and P17, all other documents are issued by the public authorities. Even, Exs.P8 and P17 are admittedly documents, inter-parties.

6. The learned counsel for the respondents/plaintiffs contended that the originals are with the applicants/defendants only. Since, they have not produced the same, the respondents/plaintiffs were compelled to mark the photocopies of the said documents.

7. In support of his contention, the learned counsel for the applicants/defendants placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2010) 8 SCC 423 [Shalimar Chemical Works Limited vs. Surendra Oil and Dal Mills (Refineries) and others]**. The relevant portion is extracted here under:

"15..... The trial court should not have "marked" as exhibits the xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to objection of proof and admissibility. The appellant, therefore, had a legitimate grievance in appeal about the way the trial proceeded."

However, in the judgment reported in **(2001) 3 SCC 1 [Bipin Shantilal Panchal vs. State of Gujarat and another]**, a larger Bench of the Hon'ble Supreme Court has held as under:

"14. 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)."

8. As held in the above decision, the trial courts are expected to follow the aforesaid procedure and whenever an objection is raised regarding the admissibility of any material or any documents of oral evidence, it is open to the applicants/defendants to impeach the said documents, and the non-production of the original ones by the respondents/plaintiffs can be taken advantage of, to draw adverse inference.

9. The prayer made in these applications is to eschew the Exs.P6 to P8, P14, P17 and P19 marked through the plaintiff/PW1. Despite, having an opportunity to oppose and raise the objections, with respect to the marking of the said documents, the applicants/defendants had not made use of the same. Hence, the

documents came to be marked. Once they are marked, it is open to them to challenge its veracity, proof, relevancy and admissibility, at the time of arguments. Even otherwise, the apprehension of the applicants/defendants that once the document is marked, it will be accepted as admissible piece of evidence is unwarranted. Further, there is no provision, to eschew the documents already marked.

10. The learned counsel for the applicants/defendants also placed reliance on the procedure laid down under Order XIII Rule 3 of the Code of Civil Procedure, which empowers the Court to reject any documents at any stage of the suit, which it considers irrelevant or otherwise inadmissible, after recording the grounds of such rejection.

11. Though ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently, in this case, the applicants/defendants were not present to raise such an objection and that they cannot be allowed to take advantage of their own fault. Merely because, the documents are marked as an exhibits, the objection to its admissibility is not excluded and it is always available to the opposite party to raise it, even at a later stage or even in an appeal or revision. However, there is no provision to eschew the documents, even as per the Indian Evidence Act, 1872 which are already marked through a witness, except rejecting the same, on the

ground that the documents sought to be produced are inadmissible in evidence.

12. As stated earlier, instead of seeking to eschew the documents already marked, it is open to the applicants/defendants to raise their objection, with respect to the admissibility of the documents already marked through a witness, at the time of arguments and the power to accept or reject the same, is with the Court.

13. In the light of the above observation, the above applications filed by the defendants are **dismissed**.

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Internet: Yes

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