

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.10.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (NPD) No.854 of 2013

&

M.P.No.1 of 2013

Chitra

... Petitioner

Vs.

V.Venkatgachalam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 09.01.2013 made in I.A.No.428 of 2012 in O.S.No.99 of 2010 on the file of the learned second Additional Subordinate Judge, Erode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.V.S.Kesavan

ORDER

Impugning the fair and decretal order dated 09.01.2013 and made in I.A.No.428 of 2012 in the suit in O.S.No.99 of 2010 on the file of the learned Subordinate Judge, Erode, this revision is filed by the plaintiff.

2. It appears from the records that the revision petitioner had filed the above suit in O.S.No.99 of 2010 as against the respondent herein to direct the respondent/defendant to pay a sum of Rs.1,21,366/- with subsequent interest

thereon at 12% p.a on the principal amount of Rs.1,00,000/- from the date of suit till the date of realization and to create a charge over the property described in the schedule and also for the relief of permanent injunction restraining the respondent not to alienate or to make encumbrance over the suit property till the final disposal of the suit.

3. This suit was resisted by the respondent/defendant by filing his written statement. After formulating necessary issues, the trial was commenced. At the time of cross examination of the revision petitioner, as PW1, the document which is captioned as "lease agreement" was marked under Ex.A1. When PW1 was in the box, the respondent herein had taken out an application in I.A.No.428 of 2012 under Order XIII Rule 3 r/w.Rule 7(2) of the Code of Civil Procedure to reject the document (Ex.A1) from the list of exhibits. This petition was also contested by the revision petitioner by filing his counter statement.

4. After hearing both sides, the learned trial Judge had proceeded to allow the application and thereby the lease agreement (unregistered), which was marked as Ex.A1, was rejected from the list of exhibits. Having been aggrieved by the impugned order dated 09.01.2013, the plaintiff stand before this Court with this revision.

5. It is the case of the revision petitioner that on 01.05.2007, he entered into an oral lease agreement in respect of the suit property. The said agreement governs various covenants of terms and conditions. Both of them had agreed to abide by the above said terms and conditions. In pursuant to the above said oral agreement, on 15.05.2007 it was reduced into writing in a 20 rupees stamp paper in which both the revision petitioner and defendant had signed. As per the averments of the plaint, the said agreement came into force on 05.06.2007 and would be in existence up to 30.04.2010 for a period of three years.

6. In this connection, Mr.N.Manokaran, learned counsel for the revision petitioner has argued that the specific purpose for the execution of the said sale agreement, was to commence an industrial work in the property and accordingly a sum of Rs.1,00,000/- was parted with by the revision petitioner/plaintiff to the defendant. On account of unforeseen reasons, the said industrial work was not commenced by the revision petitioner and when the amount of Rs.1,00,000/- which was paid to the respondent/defendant was demanded to be returned back, he had refused. Only under this circumstance, he was constrained to file the above said suit claiming a sum of Rs.1,21,366/- which includes the interest at the rate of 12% on the principal of Rs.1,00,000/-. On the other hand, the respondent/defendant had admitted the receipt of Rs.1,00,000/-. However, he had pleaded discharge.

7. Now the question is whether the document under Ex.A1, which was marked through PW1, is to be rejected from the list of documents or not?

8. Admittedly the above said lease agreement was an unregistered document. The question of insufficiently stamped does not arise in this case. Mr.V.S.Kesavan, learned counsel for the respondent has contended that the document, in respect of which the registration is required under Section 17 of the Registration Act, ought not to have been received as documentary evidence and marked as Ex.A1 and hence the trial Court, on the application made by the respondent/defendant, had rightly rejected and therefore, the impugned order did not require the interference of this Court.

9. Mr.N.Manokaran, in order to fortify his contention, has placed reliance upon the decision of the Division Bench of the Apex Court in ***Bipin Shantilal Panchal Vs. State of Gurajat and Another*** reported in ***(2001) 3 SCC 1*** wherein the Apex Court in Paragraph Nos. 12 ,13, 14 and 15, has observed as under:

"12. As pointed out earlier, on different occasions the trial judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the trial court waited for days and weeks for the concerned parties to go before the higher courts for the purpose of challenging such interlocutory

orders.

13. *It is an archaic practice that during the evidence collecting stage, whenever 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 fall out 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 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 realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.*

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.)

15. 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 again 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."

10. While speaking on behalf of the three judges Bench, his Lordship Hon'ble Mr. Justice K.T. Thomas has highlighted the following principle:

"Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised 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. "

11. It is also to be noted that his Lordship has also stated that during the course of trial if any document is marked, which is unregistered and the registration of which is absolutely necessary, that can be the received in evidence subject to objection and the genuineness as well as the creditworthiness shall have to be decided at the end of trial and if it is rejected at the threshold, the progress of the entire trial proceedings would be stalled and subsequently the second proceedings would be taken out and on account of this reason, the entire proceedings will be brought to a stand still and in order to avoid this hurdle, the admission of the document at that stage is essential and it need not be rejected at the initial stage. In Paragraph No.14, his Lordship has also indicated 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. On coming to the instant case on hand, the admissibility of Ex.A1 is in question on the ground of insufficiently” stamped and “not registered”. In this connection, Mr.N.Manokaran has argued that the purpose of marking this document is not to enforce the contents of the document, but only to prove the factum of receipt of money alone.

13. On the other hand, Mr.V.S.Kesavan, in order to support his contention, has placed reliance on the following decision of this Court in ***Ramalingam and***

Others Vs. Ramachandran reported in ***2015 (1) MWN (Civil) 480***. In this case, a learned Judge of this Court has observed that if a document creates a right on the parties, either by way of partition deed or by way of family arrangement, on the date of its execution, it requires registration. Insofar this case is concerned, the receipt of the money by the respondent is admitted. He has only pleaded that the amount was already discharged. When such being the case, the objection in respect of receipt of the document under Ex.A1 in evidence is a futile exercise and since the document was already marked as Ex.A1, it need not be rejected from the list of documents.

14. Keeping in view of the above fact, this Court finds that the genuineness and creditworthiness as well as the evidentiary value of the document can be decided only at the end of the trial i.e., at the time of pronouncement of judgment and not now. In view of the above fact, this Court finds that the impugned order is liable to be set aside.

In the result, the Civil Revision Petition is allowed and the impugned order dated 09.01.2013 is set aside. The petition in I.A.No.428 of 2012 is dismissed. The trial Court is hereby directed to dispose the suit in O.S.No.99 of 2010 as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

21.10.2016

Index: Yes
Internet: Yes
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To

The Additional Subordinate Judge
Erode

T.MATHIVANAN.J.,

gpa

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