

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4643 of 2011

ORDER :

The plaintiff/petitioner in O.S.No.87 of 2010 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad maintained against the defendant/respondent, the suit for permanent injunction and pending the suit filed I.A. No.485 of 2011 under Order VII Rule 14(3) read with Section 151 C.P.C to receive alleged agreement of sale un-registered dated 21.04.1989 said to have been executed by one J.Ramireddy in favour of the plaintiff. In fact agreement is for Rs.5,100/-. The possessory sale agreement as per the Stamp Act with A.P. Amendment with effect from 16.08.1986 by Amended Act 17 of 1986 as an instrument of sale must be liable for stamp duty as a conveyance or sale and to receive and exhibit it must be impounded if not asked for referring to the District Registrar for impounding. The agreement is stamped only with Rs.5/-, even as a non-possessory agreement it is insufficiently stamped. Even as per the Apex Court's expression in ***Bipin Shantilal Panchal V. State of Gujarat***^[1] the objection relating to the Registration and Stamp Duty must be decided instantaneously though other objections to be decided is at the end of trial by marking subject to objection. It is no doubt to decide the crucial aspect not in the course of receiving but during evidence for marking, though the very purpose referred in filing belatedly is to receive for exhibiting in evidence that cannot be ignored by the Court. Other important aspect is the reasons assigned in the affidavit in support of the petition to receive the document condoning the delay in filing particularly from para No.2 is at the time of instituting the suit, he could not file certain documents as the same were missing in his house and that after diligent search he could trace the document as mentioned in the list of the document viz., agreement of sale without even list and not mentioned even as an enclosure with affidavit petition and he intends to file for proper adjudication and administration of justice before the Court, that the document is very vital and crucial in deciding the matter and he could not file the document earlier for reasons

explained above and the non-filing is neither willful nor deliberate.

2) The counter filed opposing the same by the defendant-respondent is the alleged agreement of sale dated 21.04.1989 is a forged, fabricated, concocted and trump up document and the reasons assigned are false and baseless and it is inadmissible in evidence more particularly there is no even any whisper about the document either for the plaint or otherwise if existing and thereby it cannot be accepted to receive.

3) From the above, the crucial facts clear are that the party is conscious about the existence of the document and he made a roving search according to him but it could not be traced and thereby could not file with plaint and allegedly later he traced without even explaining where and when traced. When having been conscious before filing of a suit from the very affidavit averment supra of even making a roving search for filing with the plaint and could not trace, no prudent person could keep quite without making a whisper about its existence, that too consciously and for nothing about the same is crucial and vital, to make a mention in the plaint, that is one of the circumstances to draw the inference of Section 3 of the Indian Evidence Act as also contended rightly in the counter of its inexistence for no whisper in the plaint and later forged, fabricated and concocted and thereby that cannot be received. The lower Court, no doubt, placed reliance in support of the contention of the respondents, the expression in **2010(1) ALD 163**. In the revision filed by the plaintiff impugning the said order, now plaintiff placed reliance upon four expressions, three are of this Court and one is of single Judge expression of Madras High Court. The first one is **Bada Bodaiah V. Bada Lingaswamy**^[2]. On the factual matrix in allowing the revision against the order rejecting receiving of the document what the observation made by the Honourable Single Judge of this Court earlier therein was mere non-mention of the document in the plaint or other supplemental or incidental proceedings does not in any manner effect the power of the Court to grant leave to produce the document at the subsequent stage. The document therein was a lease deed. The suit therein was for perpetual injunction and in fact there was an

observation, it is not mere lease deed alone, there is pahanis and sale deeds in further support of it therefrom it was received. This decision speaks the power of the Court where the Court believes the genuineness of the document thereby there is no principle of law laid down of in all cases in spite no explanation and no prudence on the part of the party the Court has to receive ignoring the contest of the other side when the material even substantiating of a shows invention or creation.

4) The next decision is of the Madras High Court in **Muthusamy V. K.Ganesan**^[3] in the revision against dismissal of the petition to receive document in the suit for bare injunction, the defence of the defendants was plaintiff neither owner nor entitled to injunction muchless to file suit on behalf of his wife without any authority, referred to **Bipin Shantilal** supra also and observed that where the Court considers the document is irrelevant or otherwise undisputedly vested with discretion to reject the receiving of document assigning reasons. There ultimately following **Bipin Shantilal** to record any objection while marking to decide ultimately for not touching stamp duty and registration, revision allowed. In fact the observation supra is against to the petitioner herein of if it is inadmissible that also can be gone into even in subsequent filing of a document though admissibility generally be decided while marking, this decision also no way helpful to the petitioner herein.

5) Coming to the other decision of this Court of another Honourable Single Judge in **Economic Transport Organisation, Hyderabad V. New India Assurance Co. Ltd.**^[4] the principle laid down is what is to be decided at the time of tendering the document at a belated stage by explaining reasons for the delay is the document is receivable in evidence or not to decide while marking and the only thing is whether the delay is properly explained or not and reasons are there to exercise the discretion to receive the filing or not.

6) Before discussing with reference to the expression there is another recent expression of another single Judge of this Honourable Court placed

reliance in ***John Santiyago V. Clement Dass***^[5] it was a suit for partition, where the relationship between the parties was in dispute and service pension and other documents marked through plaintiff showing plaintiff's mother as wife of Dass, whereas the defendant denied that relationship and the contest by otherside of the document obtained under R.T.I Act pending suit and not produced earlier delay not explained. It was observed no grounds for refusal when the document is a public document and existence cannot be doubted. The last decision has no application herein for present one is not a public document or where existence and custody of original record from which copy issued not in dispute.

7) Coming to the decision in ***Economic Transport Organisation*** supra what was laid down therein is, when there are reasons explaining belated filing if the Court find sufficient reason, it can receive and the admissibility, relevancy etc, is to be decided only while tendering in evidence need not be considered while at the stage of receiving or not.

8) Now, coming to the facts, turning back supra, at the cost of repetition plaintiff being conscious before filing of the suit as per the very affidavit of existence of the document and made a roving search and could not trace and allegedly later searched without time or place in its filing there is no meaning for any little prudent person could have make a mention that too being conscious before filing of the suit of the document is vital and crucial to the lis and the non-mention of its existence in any manner in the plaint itself is a ground to infer that but for non-existence in support of the contention of the defendants of a subsequent creation and fabrication, plaintiff could have been made a mention. Once that was conclusion arrived by the trial Court in rejecting to receive the document and even the expression in ***Economic Transport Organisation*** supra one way support said conclusion of the trial Court and the other expressions no way applicable, leave about the Madras High Court's expression says even at the time of belated stage receiving admissibility or not also can be considered, for nothing shown for this Court of the impugned order of the lower Court is unjust and unsustainable within its exercise of the discretion

to interfere within the limited scope of revision, there is nothing to interfere and the revision deserves dismissal confirming impugned order of the lower Court.

9) Having regard to the above, the revision is dismissed. There is no order as to costs. Miscellaneous petitions pending, if any, in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 01-02-2016

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[\[1\]](#) (2001)3 SCC 1 = AIR 2001 SC 1158

[\[2\]](#) 2003(1) ALD 790

[\[3\]](#) 2006 LawSuit(Mad) 1531

[\[4\]](#) 2007(3) ALD 496

[\[5\]](#) 2014(2) ALD 184