

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5638 of 2011

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the orders dated 12.09.2011 of the learned Junior Civil Judge, Gajapathinagaram passed in IA.no.221 of 2011 in OS.no.215 of 2007 filed under Order VI Rule 17 and Section 151 of the Code of Civil Procedure, 1908 ('the Code', for short) for permission to amend the plaint by substituting the word 'promissory note' wherever it occurred with the word 'agreement'.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity). Though the matter is adjourned twice for hearing the learned counsel for the respondent/defendant, there is no representation for the defendant. Therefore, no submissions are made on behalf of the defendant. I have perused the material record.

3. The plaintiff brought the suit for recovery of Rs.30,000/- on the foot of a document referred to in the plaint as a 'promissory note'. The defendant having filed written statement is resisting the suit. When the suit is at the fag end of the trial, the plaintiff had filed the aforementioned application for amendment of the plaint *inter alia* contending as follows: - 'At the time of filing of the suit, the plaintiff understood that the suit document evidences lending of money and acknowledgement of liability and that the suit document is a promissory note. During the trial, the said document was marked subject to objection. Whatever be the nomenclature of the document and the pleading in regard to the document, the contents of the document are to be given effect. She was advised that the suit document cannot be treated as a promissory note since it does not possess the characteristics of a promissory note as per the provisions of the Negotiable Instruments Act. It also does not contain the recitals to call it as a deed of mortgage. On such a document a

suit for recovery of the amount lent is maintainable, as the said document evidences the loan advanced there under. In order to make things plain and fair, it has become necessary to seek amendment of the plaint for substitution of the word 'promissory note' wherever it occurred in the plaint with the word 'agreement'. There are no legal impediments for recovery of the suit amount on the said document. The plaintiff is willing to pay necessary stamp duty and penalty, if any, required to be paid on the said document. The amendment sought does not change the nature of the suit or the cause of action and would not prejudice the case of the defendant.'

4. The case of the defendant in the counter is this: 'In view of the *proviso* to Order VI Rule 17 of the Code, the plaintiff is debarred from seeking the amendment of the plaint once the trial had commenced. In the suit PW1 is examined and the suit document is marked as exhibit A1 subject to objection. If it is an agreement, it requires registration. The suit document is not a registered document. The suit has become infructuous. Hence, to get over the defect, the plaintiff is seeking the proposed amendment. The proposed amendment changes the nature of the suit. The proposed amendment is being sought, after the completion of the recording of the evidence of both the sides. Hence, the petition which is filed to drag on the proceedings is liable to be dismissed.'

5. On merits, the trial Court had dismissed the petition of the plaintiff *inter alia* holding as under: 'The petition is filed with a *mala fide* intention; the plaintiff did not choose to file the application for amendment at the initial stage, inspite of the fact that the Court has framed additional issues on the nature of the document and the plaintiff has got knowledge of the facts; after DW1 was examined-in-chief, the plaintiff did not cross-examine DW1 inspite of ample opportunities that were given to her; if the amendment sought for is permitted after both the sides had adduced evidence, it would work out injustice to the defendant; therefore, the petition which is filed to drag on the proceedings is liable for dismissal.'

6. The learned counsel for the plaintiff while reiterating the case pleaded

by the plaintiff would contend as follows:

The learned Judge of the trial Court ought to have seen that exhibit A1 could not be a promissory note as pleaded and that it is only an agreement on true and proper construction of the recitals therein. The trial Court ought to have considered the document as an agreement and should have allowed the amendment as sought for. The amendment sought for is necessary for the determination of the real questions in controversy. The proposed amendment does not cause any prejudice to the defendant as the defendant is from the beginning opposing for the admission of the document. Therefore, even if the description of the document is changed, no injustice would be caused to the defendant. The observations made by the Court below are erroneous.

7. As already noted, the plaintiff had brought the suit against the defendant for recovery of Rs.30,000/- on the foot of a document, by describing the said document in her plaint as a 'promissory note'. When the trial is at the fag end and after both the sides had adduced evidence, the plaintiff had sought permission for the amendment of the plaint for substitution of the word 'promissory note' employed in the plaint with the word 'agreement'. In support of the said request the plaintiff *inter alia* submits that the document is exhibited as exhibit A1, subject to objection though the document does not possess any of the characteristics of a promissory note as per the provisions of the Negotiable Instruments Act and that on the true and proper construction of the recitals therein it appears to be an agreement and that the amendment sought for is necessary for the determination of the real questions in controversy. Further, Rule 106 of the Civil Rules of Practice clearly lays down that no question regarding admissibility of evidence shall be made subject of an issue. Be that as it may.

8. Except the above amendment in regard to the nomenclature of the suit document, the plaintiff is not seeking any other amendment in the application filed by her for the amendment of the plaint. The language employed in the plaint in regard to the description of the suit document either as a 'promissory

note' or an 'agreement' is not conclusive. The Court need not necessarily agree with the description of the suit document as stated in the plaint or the changed description of the document as being sought to be stated in the proposed pleading. Similarly the Court need not necessarily agree with the version of the defendant, if any, stated in his defence on the aspect of the description or nomenclature of the document. The Court has to make its own decision on the said aspect as per facts and the law, if any, applicable. There is also no dispute with the proposition that the nature/character and the description/nomenclature and also the stamp duty payable, if any, on the document have to be determined with reference to the recitals therein and the substance of the transaction embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument. For classification of instruments, that is, to determine whether an instrument comes within a particular description in an Article to the Schedule to the Indian Stamp Act, the instrument should be read and construed as a whole. The nomenclature of or the caption given to the document is not determinative and the nature or the substance of the transaction contained in the document is only the determinative factor. Therefore, the mere description of the document either as a promissory note or an agreement in the pleadings of the parties is immaterial, rather not much of relevance. Ultimately, even if the amendment is permitted, if the Court finds that the document is promissory note that finding would be binding on the parties subject to the confirmation of the said finding by a superior forum. Similarly, even if the amendment is not permitted also, the Court may on examination of the recitals and the substance of the transaction embodied in the instrument (suit document) may not agree with the view or opinion that the suit document is a promissory note; and, eventually the Court may hold that it is an agreement or some other document of some other nature/character or description/nomenclature. Similarly, merely because the document is described in the plaint as a promissory note, that does not preclude either the plaintiff or the parties to the suit from contending in a given case that the document is not a promissory note but a document of a different character or nature and nomenclature. Therefore, in the well considered view of this

Court, the trial Court need not be faulted for dismissing the petition filed by the plaintiff for amendment of the plaint, as there is no necessity for the plaintiff to seek the amendment or for the Court below to allow it. Nonetheless, for the reasons aforementioned, it is apposite to observe that the dismissal of the application of the plaintiff for amendment of the plaint shall not preclude the plaintiff from raising appropriate contentions in regard to the real nature of the document based on the recitals and the true nature of the transaction contained therein.

9. Viewed thus, this court finds that the revision petition is devoid of merit and that the order impugned needs no interference.

10. Accordingly, the Civil Revision Petition is dismissed.

11. Before parting, it is to be noted that from the material record and the order of the Court below it is evident that the suit document [exhibit A1] is marked subject to objection. When an objection is raised in regard to admissibility of a document and that question is inter related to deficiency/sufficiency of stamp duty and collection of duty and penalty, it is the bounden duty of the trial Court, as per the settled legal position, to consider the said issue before proceeding further in the matter. However, in the present case, the document was marked by the Court below subject to objection, by following an incorrect practice. The said procedure adopted by the trial Court is contrary to the settled legal position. **In Ram Rattan (dead) by**

L.Rs. v. Bajrang Lal and others^[1] the Supreme Court held as under:

“...The court, and 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 ...”

In Bipin Shantilal Panchal v. State of Gujarat and Anr.^[2], the Supreme Court has made 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. **In Shalimar Chemical Works**

Limited v. Surendra Oil and Dal Mills (Refineries) and others^[3],
the Supreme Court held that the issue of admissibility of documents cannot be left open and hanging by the trial Court and should be decided as and when such objection is raised. In the cited case, it was observed as under:

On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. 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.

Therefore, at the conclusion, it is in the interests of justice to give appropriate and necessary directions to the trial Court. Accordingly, the trial Court is directed to give an opportunity of hearing to both the sides and decide the objection raised by the defendant in regard to the suit document and also the nature or character of the document, that is, as to whether it is a promissory note or an agreement or a document of any other nature/description with reference to the recitals therein and the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument. It is needless to state that on such determination, if the document is found to be insufficiently/deficiently stamped and that stamp duty and penalty are collectable, the trial Court may give liberty to the plaintiff to pay the required stamp duty and penalty or make a request to send the document to the Collector concerned for collecting the required/deficit duty and penalty as per procedure.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

26th April, 2016

Note: LR copy to be marked.

(B/o)

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[\[1\]](#) (1978) 3 SCC 236

[\[2\]](#) AIR 2001 SC 1158

[\[3\]](#) (2010) 8 SCC 423