

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.1036 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by VII Senior Civil Judge, City Civil Court, Hyderabad in I.A. No.353 of 2015 in O.S. No.795 of 1996 dated 12.11.2015. The petitioners herein are the defendants in O.S. No.795 of 1996 which was filed by the 1st respondent-plaintiff, who also filed I.A. No.353 of 2015, under Section 151 CPC, to permit them to mark the certified copy of the order and judgment in C.M.A. No.1459 of 2008 and in O.A. No.56 of 1997.

The petitioner had earlier filed I.A. No.128 of 2014, under Section 151 CPC, to reopen the case for filing additional documentary evidence. This application was opposed by the revision petitioner herein. In its order in I.A. No.128 of 2014 dated 26.12.2014, the Court below observed that, since the petition was filed only to receive documents, the question of marking documents in the said petition did not arise; the proposed documents were certified copies of the judgment passed by the High Court relating to the petitioner and some third parties; and the I.A. was, therefore, being allowed in the interest of justice for just decision in the main suit, subject to proof and relevancy of the documents.

Even prior to the filing of the present I.A, the Secretary of the 1st respondent herein had filed his chief-affidavit dated 01.07.2015 in O.S. No.995 of 1996 as P.W-2 stating that, on 17.09.2013, the High Court had passed the judgment in CMA No.1459 of 2008 confirming the order passed by the Deputy Commissioner, Endowments in O.A. No.56 of 1997; I.A. Nos.127 of 2014 and 128 of 2014 were allowed and the judgment of the High Court, and the order of the Deputy Commissioner, were received; and, as the judgment and orders related to the said suit, the same may be marked as Exs.A-34 and A-

35.

In the affidavit filed in support of the present I.A, the Secretary of the 1st respondent had stated that he had filed his chief-affidavit as P.W-2 for marking documents in Court; there was a marked distinction between receiving documents, proof of documents, admissibility of documents, relevance of documents and its probative value; while an application under Order 7 Rule 14 was confined only to the aspect of receiving of documents, the aspect regarding proof and admissibility would arise only at the time of marking the documents; the aspect of relevancy and probative value would arise for consideration at the time of trial hearing after the documents were marked; what was held in I.A. No.128 of 2014 should be understood in this broad colour; I.A. No.128 of 2014 was filed only to receive documents which are public documents; unless the documents were marked and made part of the evidence, receipt of the documents would not benefit the parties; the order in I.A. No.128 of 2014 did not preclude the petitioner from marking the documents; only if the documents were marked and given exhibit numbers, would it then become part of the record; and the Court should permit the petitioner to mark the certified copies of the order and judgment already received by the Court in I.A. No.128 of 2014 for the purpose of making it a part of the record.

While the 1st respondent herein had merely sought that the documents be marked, and the Secretary of the respondent-plaintiff had stated in his chief affidavit as P.W-2 that they be permitted to mark the documents, the petitioner herein had merely contended that the documents be marked through P.W-2 to enable them to cross-examine him. Curiously the Court below, in the order under revision, held that the documents sought to be marked by the petitioner as public documents, were certified copies of the order and judgment of the High Court; they were public documents; and they should be marked without cross-examining any witnesses for the respondent-plaintiff. With this observation, the I.A. was allowed and the documents were

marked in 'A' series.

Before this Court Sri S. Balchand, Learned Counsel appearing on behalf of the revision petitioner, would submit that the petitioner is not a party either to CMA No.1459 of 2008 or to OA. No.56 of 1997; these orders are not judgments in rem falling within the ambit of Section 41 of the Indian Evidence Act; certified copies of judgments which are not inter-parties are inadmissible in evidence; in any event they cannot be marked except through a witness; and the evidence now sought to be adduced in the form of these judgments were not even referred to in the plaint filed before the Court below. Learned Counsel would rely on **State of Bihar v. Sri Radha Krishna Singh**^[1].

On the other hand Sri Ghanshyamdas Mandhani, Learned Counsel for the respondent-plaintiff, would submit that the order passed by the Court below does not suffer from any error necessitating interference in proceedings, under Article 227 of the Constitution of India; both the documents, sought to be marked were public documents, and were admissible in evidence under Sections 74 and 77 of the Indian Evidence Act; in **Jaswant Singh v. Gurdev Singh**^[2], the Supreme Court held that there was a presumption as to the genuineness of such certified copies under Section 78 of the Indian Evidence Act; reliance placed on **Sri Radha Krishna Singh**¹ is misplaced as the said judgment of a three judge bench is contrary to the Constitution bench judgment of the Supreme Court in **Sital Das v. Sant Ram**^[3]; and, as these documents can be received in evidence under Section 13 of the Indian Evidence Act, the question whether it would fall within the ambit of Section 41 thereof is wholly immaterial.

As noted hereinabove, the Secretary of the 1st respondent society, in his chief-affidavit as P.W-2, specifically stated that the judgment in CMA No.1459 of 2008, and the order of the Deputy

Commissioner, Endowments dated 30.07.2008, related to the suit and ought to be marked as EXs.A-34 and A-35. Even in the affidavit filed in support of I.A. No.353 of 2015, all that the respondent herein had sought was for these two documents to be marked. The affidavit, filed in support of I.A. No.353 of 2015, refers to the Secretary of the 1st respondent society having filed the chief-affidavit as P.W-2 for marking these documents in Court.

In **Jaswant Singh**², the question which arose for consideration before the Supreme Court was whether a compromise inter-parties was admissible in evidence. The Supreme Court held that the compromise had become a part of the decree passed by the Court, and hence a public document in terms of Section 74 of the Evidence Act; certified copies of public documents were admissible in evidence under Section 77 of the said Act; the certified copy was admissible in evidence without being proved by calling a witness; and, as the decree was passed and drafted in the light of the compromise entered into between the parties i.e., the plaintiff and the defendants, there was a presumption as to the genuineness of such a document, produced before the Court, under Section 78 of the Act. What was considered by the Supreme Court, in **Jaswant Singh**², was a compromise decree inter-parties. It is not in dispute that, in the present case, the documents sought to be marked related to a judgment and order to which the petitioner herein is not a party, and these documents are neither judgments nor orders inter- parties.

In **Sri Radha Krishna Singh**¹, the Supreme Court classified documents under three heads i.e., those documents which were *per se* inadmissible; recitals in judgment not inter-parties; and documents or judgments post litem mortam. The Supreme Court, thereafter, observed that the judgments of Courts were admissible in evidence under Sections 40, 41 and 42 of the Evidence Act; Section 43 clearly provided that these judgments, which did not fall within the four

corners of Sections 40 to 42, were irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Evidence Act; some Courts had used Section 13 to prove the admissibility of a judgment coming under the provisions of Section 43; where there is a specific provision covering the admissibility of a document, it was not open to the Court to call into aid other general provisions in order to make a particular document admissible; if a judgment was not admissible, as not falling within the ambit of Section 40 to 42, it must fulfil the conditions of Section 43; otherwise it cannot be relevant under Section 13 of the Evidence Act; the words “other provisions of this Act” cannot cover Section 13 because this Section does not deal with judgments at all; a judgment in rem, like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are inter-parties or not; the findings in judgments not inter-parties are not admissible in evidence; and the recitals and findings in a judgment, not inter-parties, are not admissible to prove the fact that a decree was made in a suit between certain parties.

Admittedly, the judgments which the respondent-plaintiff sought to mark as exhibits are not judgments in rem falling within the ambit of Sections 40 to 42 of the Indian Evidence Act. Sri Ghanshyamdas Mandhani would, however, submit that, since the Constitution bench of the Supreme Court, in **Sital Das**³, had held that such judgments could be received in evidence under Section 13 of the Evidence Act, the subsequent judgment of a three-judge bench of Supreme Court in **Sri Radha Krishna Singh**¹, passed in ignorance of the earlier Constitution bench judgment of the Supreme Court, is *per incuriam* and is not a precedent binding on this Court.

It is wholly unnecessary for us to dwell on this aspect any further, as the CRP must be allowed, and the order under revision set aside,

on the short ground that the 1st respondent-plaintiff herein did not even contend before the Court below that the documents in question should be marked by the Court without its being marked through a witness, and his being subjected thereafter to cross-examination. As noted hereinabove the Secretary of the 1st respondent society, in his chief affidavit as P.W-2, specifically stated that these judgments be marked as Exs.A-34 and A-35. Even in the affidavit filed in support of I.A. No.353 of 2015, the Secretary of the respondent society has specifically stated that he had filed his chief affidavit as P.W-2 for marking the documents in Court. There was no dispute between the parties regarding marking of the documents through a witness. It was wholly inappropriate for the Court below, on its own accord, to hold that the certified copies of these judgments could be marked on its own, and not through P.W-2 and without giving the petitioner the opportunity to cross-examine the witness.

While Sri Ghanshyam Mandhani, Learned Counsel for the respondent, would submit that this question, as to whether the document can be marked without examining any witness, should be decided in the present proceedings, it must be borne in mind that the jurisdiction, which this Court exercises under Article 227 of the Constitution of India, is supervisory; and interference is called for where substantial injustice is caused to the person invoking its jurisdiction. In the present case there was no dispute, between the petitioner-defendant and the respondent-plaintiff, regarding marking of the documents through a witness. It was wholly inappropriate for the Court below, to mark the documents through Court, and to thereby deprive the petitioner of the opportunity of cross-examining the witness more so when the respondent-plaintiff did not even make a request that the document be marked through Court, and not through P.W-2. The order passed by the Court below has, undoubtedly, caused substantial injustice to the petitioner herein as he has been deprived of

his right to cross-examine the witness regarding these documents.

The order under revision is set aside. The respondent herein shall have the document marked through P.W-2 who shall then be made available for cross-examination by the petitioner herein. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 14.07.2016.

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[\[1\]](#) AIR 1983 SC 684

[\[2\]](#) (2012) 1 SCC 425

[\[3\]](#) AIR 1954 SC 606