

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3123 of 2015

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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioners/defendants is directed against the orders dated 18.06.2015 of the learned Principal Junior Civil Judge, Visakhapatnam passed in I.A.no.277 of 2015 in O.S.no.118 of 2013.

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record. The parties in this revision shall hereinafter be referred to as 'the defendants' and 'the plaintiffs' as arrayed in the suit before the trial Court.

3. From the submissions of the learned counsel made at the hearing, the following facts emerge for consideration: 'The plaintiffs had brought a suit for a mandatory injunction directing the defendants to remove 'EFGH' stair case projections raised in 'ABCD' portion of the plaint plan, i.e., up to 3 feet as shown in the plaint plan at the cost of the defendants and for a consequential perpetual injunction restraining the defendants from making such constructions in future. In the said suit, the plaintiffs had also filed I.A.no.65 of 2013 for a temporary injunction restraining the defendants from making any constructions in 'ABCD' portion of the plaint plan till final disposal of the suit. The said application is coming up for enquiry and the suit is also coming up for marking the documents. Both the interlocutory application and the suit stood posted to 19.06.2014. The defendants, who are resisting the suit are *inter alia* contending that the plaintiffs have no title in respect of the plaint schedule property and that the plaintiffs are in fact, interfering with the possession and enjoyment of the property of the defendants without any manner of right. The defendants, in fact, had taken an objection in their defence in the suit that the 1st document filed by the plaintiffs, viz., possessory sale agreement dated 07.10.1977 is not sufficiently stamped and

is unregistered and that therefore, the said document is inadmissible in evidence and cannot be permitted to be exhibited. During the enquiry in I.A.no.65 of 2013, the trial Court was pleased to permit the above said document to be marked as an exhibit though the said document is inadmissible and cannot be permitted to be marked. Hence, the defendants had filed I.A.no.277 of 2015 in I.A.no.65 of 2013 under Order XIII Rule 3 of the Code to demark exhibit A1-posessory agreement of sale dated 07.10.1977 and reject the same.

4. While so, the plaintiffs had filed a counter submitting that the said document, which is a posessory sale agreement dated 07.10.1977 is admissible under facts and in law and that it is not a compulsorily registerable document and that it is engrossed on a stamp paper of the value of Rs.7/- and that the document was sufficiently stamped having regard to the duty chargeable at the relevant time and that the petitioners had failed to show any authority to the Court for rejecting a document, which is marked. In fact, the affidavit in lieu of examination-in-chief of the 2nd plaintiff was already filed before the trial Court. Be it noted that from the material produced before this Court, it is not clear as to what is the present stage of the trial.

5. Be that as it may. The trial Court had dismissed the petition of the defendants by passing the following order:

“Heard both sides. Petitioners filed this petition by seeking to demark the Ex.A1 is possessoroy sale agreement dt:07-10-1977. The contention of the petitioner is that the above said documents is required impounding as it contains deficiency of stamp duty. But on observing record shows the respondent herein filed recall petition which numbered as IA No.279/15, clearly shows there are no marking of documents as PW1 evidences closed. As such there is no question of demarking Ex.A1. If petitioner has any objection regarding marking of the documents he has right to raise his objections at the time of marking of the documents and it will be decided at the time only. So the prayer of petitioner is premature. Hence petition is dismissed.” (Reproduced verbatim)

The aforementioned order is now under challenge in this revision petition filed by the defendants.

6. At the time of admission, when notice before admission is ordered, this Court had noted that the court below had dismissed the I.A.no.277 of 2015 holding that the record showed that there was no marking of document as PW1's evidence was closed and therefore, there was no question of demarking exhibit A1. On, Sri E.Venkata Reddy, the learned counsel for the revision petitioners/defendants placing before this Court a certified copy, vide C.A.No.14216/15 which disclosed that the said possessory agreement (dated 07.10.1977) was marked as exhibit A1 in O.S.no.118 of 2013 this Court held that *prima facie* the order of the Court below holding that the said document was not marked appears to be erroneous. Having so noted, this Court granted interim stay of all further proceedings in the suit for a period of four weeks. Later, the interim order was extended from time to time, and finally till 15.11.2015.

7. A perusal of the said certified copy, particularly the seal of the Court with the initial/signature of the Presiding Officer on the reverse of the said document, would make it apparent that the said possessory agreement of sale was exhibited in the suit as exhibit A1 through PW1 on 25.06.2015. Another such seal of the Court on the reverse of the said document also would make it manifest that the said document was also earlier exhibited as exhibit P1 in the I.A.no.65 of 2013. Therefore, the order of the Court below holding that the said document was not marked and that therefore, the question of demarking of the said document does not arise appears to be erroneous. However, the Court below in the impugned orders had further observed that the defendants have a right to raise the objections in regard to the admissibility of the document at the time of marking and that the objections, if any, raised will be decided at the appropriate time. This observation conceivably was made on the premise that the document was not yet exhibited. But, the certified copy of the document produced before this Court, as already noted, discloses that the document was marked at the time

of enquiry in the IA as exhibit P1 and also in the suit through PW1 as exhibit A1.

8. In this factual background, it is necessary to refer to the ratio in the decision in **Bipin Shantilal Panchal vs. State Of Gujarat And Another**^[1] wherein the Supreme Court, on the aspect of the objections generally raised before the trial Courts, had laid down the following new procedure: **“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.) 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. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.”** This decision rendered by an

Hon'ble three Judge Bench of the Supreme Court also makes 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.

9. In the decision in the case of **Smt. Burra Anitha vs Elagari Mallavva And Others**^[2] this Court had held as follows: **“When the objection to the document in question was not only on the ground of want of registration, but also on the ground of want of sufficient stamp, the party producing the document was not stated either to have offered or to have made any attempt to pay required stamp duty and penalty on the document to enable consideration of the admissibility of the document for any collateral purpose and in view of the absolute prohibition under Section 35 of the Stamp Act, looking into the document, even for the purposes of an interlocutory application, will be overlooking a basic legal infirmity or illegality. The trial Court went wrong in appreciating the ratio of the precedents cited before it as permitting the marking of an unstamped and unregistered document in an interlocutory enquiry and opining that the objections will be considered while disposing of the interlocutory application. Section 60 of Civil Rules of Practice provides for marking of the documents in interlocutory proceedings in the same manner as in a suit and under the circumstances, the impugned order is liable to be set aside and the trial Court is to be directed to determine the objections of the Revision Petitioner/plaintiff against the admissibility of the document on the ground of insufficiency of stamp and want of registration.”** In this decision the earlier decision in the case of **S. RAVINDER Vs. G.DASARATH** [2004 (4) ALD 851] was also referred to and explained. So it can safely be concluded that the objections that are raised as regards the lack or insufficiency of stamp duty and want of registration in respect of a document have to be determined even at the stage of marking the same in the interlocutory enquiry. Therefore, as per the precedential guidance, whenever an objection is raised in regard to admissibility of the document on the ground that it is not sufficiently stamped, the Court shall not proceed further in the matter without deciding the said objection.

10. In R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami

and V.P. Temple and Anr. ^[3] the Supreme Court having referred to an earlier decision cited held as follows:

“The learned counsel for the defendant-respondent has relied on ‘The Roman Catholic Mission v. The State of Madras and Another [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though-brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as ‘an exhibit’, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

11. Reverting to the facts of the instant case, what is to be noted is that admittedly, objections in regard to insufficiency of stamp duty and want of registration were raised by the defendants. But, the trial Court did not decide the said objections on the premise that the document is not yet marked. But, the record discloses that the document is already exhibited. The trial Court was obviously under an erroneous impression that the document is not marked and therefore held that the objection can be considered at an appropriate stage. In the circumstances and in view of the precedential guidance, this Court is of the well considered view that the Court below was in error in permitting the document in question to be exhibited as exhibit P1/A1 without first deciding the objections raised as ordained in the decision of the Supreme Court. For the foregoing reasons, this Court finds that the order is unsustainable and is liable to be set aside.

12. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. The trial Court is directed to ignore/eschew from consideration the markings given to the document in question, viz., possessory agreement of sale, which are obviously given without application of mind and contrary to the settled legal position. It is needless to mention that the trial Court shall first consider the objections raised by the defendants in regard to insufficiency of stamp duty and the requirement of registration and arrive at a decision on the said objections and the admissibility or otherwise of the said document and then take up further proceedings in the matter as per the procedure established by law. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

26th February 2016
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[\[1\]](#) **AIR 2001 SC 1158**

[\[2\]](#) 2010 (5) ALD 438

[\[3\]](#) AIR 2003 SC 4548