

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1232 of 2014

ORDER :

The petitioners are defendant Nos.1 and 2 of O.S.No.1100 of 2007 on the file of the Additional District and Sessions Judge-cum-Special Judge for trial of SCs/STs (POA) Act cases at L.B.Nagar, Ranga Reddy District, they are among the four defendants and the suit filed by the sole plaintiff, no other than the brother of defendant No.1 and they are the sons of late Narayan Reddy. The suit is for partition of the plaint schedule properties. It is necessary to mention that the plaintiff earlier filed a suit for partition in O.S.No.1551 of 2006 on the file of the I-Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, and the same was later withdrawn after filing of the written statement by defendant No.1 and therefrom present suit is filed, which is pending since 2007. Pending trial of the suit, I.A.No.2828 of 2013 is filed by the defendant Nos.1 and 2 by showing the plaintiff and other defendants as respondent Nos.1 to 5 under Order VIII Rule 1-A of the Code of Civil Procedure (Amendment) Act, 2002 (for short, 'C.P.C.') to receive the documents, out of which, the lower Court by virtue of the impugned order dated 04.02.2014, received some of the documents other than the two documents in question, which are unregistered and unstamped outright purported sale dated 17.04.1981 said to have been executed by the plaintiff, defendant No.1 and their father Narayan Reddy among others in favour of one Singoju Kumara Swamy of an extent of Ac.2.20 gts. in Sy.No.293 of Kandukur Village of Ranga Reddy District

for Rs.2,250/-. The other document is not duly stamped and unregistered sale transfer dated 25.07.1991 in relation to Ac.2.06 gts. of land in Sy.No.297 for a consideration of Rs.50,000/- by payment of advance of Rs.5,000/- with subsequent endorsement of Rs.45,000/- un-date. The revision is maintained impugning that order in receiving the two documents along with five pahanies containing some corrections in relation to 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04.

2. The contentions in the grounds of revision are that the lower Court received some documents, ought to have been received the above documents in question instead of rejecting. Whereas, it is the submission of learned counsel for the plaintiff-respondent No.1 to the revision petition that the lower Court rightly rejected the documents relied with suspicion that too having filed written statement. It is further submitted that if the documents are in custody with no explanation for not filing though mandatory as contemplated by Order VIII Rule 1-A clause (1) of C.P.C. by placing reliance on expressions in support of it, viz., (i) **Ravi Satish v. Edala Durga Prasad and others**¹, (ii) **Gopidi Naga Reddy v. K. Sriram and others**² and (iii) **Voruganti Narayana Rao v. Bodla Rammurthy and others**³. The expressions in Ravi Satish and V.Narayna Rao (supra 1 and 3) mainly rely to the scope of Order VIII Rule 1-A clause (1) of C.P.C. and held that all the documents when available for not filing with the written statement even mandatory not to receive by condoning delay in subsequent filing so casually for the sake

¹ 2009 (3) ALT 236

² 1975 APHN 162

³ 2011 (6) ALT 299

of mere asking as leave contemplated under clause (3) of that provision gives judicial determination within the discretionary power by assigning reasons, for earlier non-filing to the satisfaction of the Court to consider. The expression in *Gopidi Naga Reddy* (supra 2) is under the deleted provision Order XIII Rule 2, which is equivalent to Order VII Rule 14A clauses 1 to 4 and Order VIII Rule 1A clauses 1 to 4 practically. In this what was laid down is that a good cause should be shown to the satisfaction of the Court for the belated filing of documents, which implied that the production of documents on subsequent stage should satisfy the Court of those are above suspicion, though mere delay in tendering the documents is not a ground to refuse. What is important is whether the document so tendered is above suspicion or not and for that, duty is cast on the Court to apply its judicial mind even summarily as to no suspicious circumstances for earlier non-filing to receive and if not to reject. Same principle no doubt is applicable even to the amended provisions under Order VII Rule 14-A C.P.C. and Order VIII Rule 1A, clause(1) respectively in granting leave under sub clause(3) respectively.

3. Here, so far as the explanation concerned, those documents allegedly misplaced is, as vague as anything as rightly pointed out for not a sufficient cause. However, the fact remains that in the earlier suit referred supra there was a written statement filed by the defendant No.1 herein stating father of plaintiff and defendant No.1 sold out of schedule property in favour of Kumara Swamy and pursuant to the moral obligation after the death of Narayan Reddy a sale deed was executed by

him. The plaintiff is not even a party to the document from the very say. No doubt, date of the document is 17.04.1981, nature of the document is unstamped and unregistered and it was not even mentioned in the subsequent sale deed in favour of defendant Nos.3 and 4, if any, respectively by defendant No.1. Here, it is also important to consider that in the written statement there is a reference. Leave it as it is, the very provision under clause (4) of Order VII Rule 14-A of C.P.C. equally under Order VIII Rule 1-A clause(4) of C.P.C. says the rigor of the sub sections 1 to 3 of both the provisions have no application respectively, if the document is confronted to the other side, in the course of cross examination. Had it been admitted in that course it could be marked and exhibited and if not admitted to place on record. Thus in the course of confrontation, the proper practice is to supply with memo to the other side along copy of the document and filing the same into Court atleast to avoid any subsequent filing of the application to receive such late filing. Here, the course was not adopted. But the cross-examination of PW.1 is very clear about the two documents in question were put to the same by confronted with, leave about the respective pahanies. What the Court below observed so far as the document dated 25.07.1991 is that it was stamped and executed as if on 24.07.2006, which is not in fact correct as the stamp was bearing No.2410 dated 24.07.1996 and the stamp vendors's licence also shown bearing No.13/95 as it requires every year renewal practically and even an endorsement on the reverse side even though no date given and the

stamp there is a seal of the Sub-Registrar concerned showing 07.11.1995 and 22.07.1996 respectively to say the stamp is of the year 1996 and not of the year 2006, however it is to say the document even to presume as executed subsequent to 1995-96 on 25.07.1996 and not on 25.07.1991, though the translated copy also mentions as if on 25.07.1991, the reverse side endorsement mentioned as executed on 25.07.1996, leave about its genuineness and it was not even dated the so-called subsequent payment endorsement to the document dated 25.07.1996 which is the ground in not receiving the document dated 25.07.1996 by the lower Court supra.

4. No doubt, it is one of the contentions of the plaintiff that the signature of the plaintiff is apparently forged outcome. The other contentions is an unstamped outright sale requires stamp duty by impounding and even thereafter **only** if at all to receive for collateral purpose, that too not to consider even a single sentence of the document even from the reading of the proviso to Section 49 of the Registration Act. So far as the document dated 17.04.1981 purportedly in existence if at all since then to establish and coming to document dated 25.07.1996 equally the same rigor as not duly stamped and not registered. No doubt, these are the aspects while marking to decide instantly as laid down by the Hon'ble Supreme Court at para 12 in **Bipin Shantilal Panchal v. State of Gujarat and another**⁴, but for so far as other objections while marking to raise and left open for ultimate consideration.

⁴ 2001 SC 1158

5. Accordingly and subject to the above, I.A.No.2828 of 2013 is allowed subject to costs of Rs.5,000/- (Rupees five thousand only) payable by the revision petitioners/defendant Nos.1 and 2 to the plaintiff before the lower Court within one week after receipt of the order and on such receiving and while in course of accepting in the lower Court to decide the requirement of stamp duty on the documents in question by impounding with penalty of ten times to the value or to refer to the District Registrar for impounding and after duly stamped only to consider for any admissibility for any purpose, if not required to register; and for collateral purpose if required to registration, that too collateral purpose must be one not connected with the main purpose and for that purpose no single sentence of the document is left open for consideration and leave about the decision regarding the other objections as to the genuineness of the signature of the plaintiff in dispute to decide at the appropriate time. Needless to say, the question of impounding copy of a document does not arise but for the original document is if available and produced to impound the same within the meaning of instrument under Section 2(14) of the Indian Stamp Act and as laid down by this court in **Chintam Kantam v. Dhulipudi Venkateswara Rao and others**⁵.

6. Accordingly and subject to the above observations, the revision is allowed.

⁵ 2004 (1) ALD 380

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

22nd September 2016.

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