

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.98 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 09.12.2016 passed by the learned Senior Civil Judge, Kamareddy in O.S.No.376 of 2007, declining to mark the *illatam* adoption deed dated 12.06.1974, on the ground that it is inadmissible, for want of registration, as required under Section 17 of the Registration Act, 1908 (for short "the Act").

2. The aforesaid order is challenged on the ground that *illatam* adoption deed is not compulsorily registerable document under Section 17 of the Act, since it would not extinguish or confer any right in any immovable property; therefore it is not required to be registered and the trial court committed an error in declining to admit the said document in evidence and prayed to set aside the order, allowing this revision.

3. During hearing, learned counsel for the petitioners Sri K. Lakshman would contend that *illatam* adoption deed is not compulsorily registerable document under Section 17 of the Act and placed reliance on the judgment of the Apex Court in **Dina Ji and ors., v. Daddi and ors.**¹

¹ AIR 1990 SC 1153

4. None represented the respondents and no arguments are advanced on their behalf.

5. Undisputedly, during recording of evidence, PW.1 tendered a document, which is styled as *illatam* adoption deed and the contents of the document would show that Sri Elchala Sangappa, S/o.Chek Basappa along with his wife Basamma, residents of Aruru village, Sanga Reddy Taluk, Medak District, executed document dated 28.05.1974 to adopt Sri Naga Sangappa, S/o. Sri Patlolla Virusangappa, as they were not blessed with any male children and proposed to perform the marriage of Sri Naga Sangappa with his only daughter, Nagamanemma, by taking Sri Naga Sangappa as *illatam* son-in-law, while describing Naga Sangappa and their daughter Nagamanemma as *kartas* and to maintain them till their death; thus, the document would not fall within Section 17 of the Act, prima facie. Learned counsel for the petitioners relied on the judgment referred supra, wherein the Hon'ble Supreme Court decided the admissibility of an adoption deed under the Hindu Adoptions and Maintenance Act, 1956. However, it is to be noted that, at the stage of marking the document, the Court can receive the document and mark the same tentatively subject to objections to be decided at the last stage, in the final judgment. The Hon'ble Supreme Court in **Bipin Shantilal Panchal v. State of Gujarat and another**², held as under:

² (2001) 3 SCC 1

“It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.”

When so recast, the practice which can be a better substitute is this: 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.)”

6. Thus, in view of the law declared by the Hon’ble Supreme Court in the judgment referred above, Courts are not required to decide the admissibility of documents in the midway of the trial and if any such finding is recorded, that would cause undue delay in trial of the matters, as either of the parties may take the matters to the Higher Courts challenging such orders. To avoid such a situation, the Court has to adopt the procedure prescribed by the Hon’ble Supreme Court in *Bipin Shantilal Panchal* (2 supra). Therefore, at this stage, it is not appropriate to decide the admissibility of the document based on the judgment in *Dina Ji* (1 supra) relied on by the learned counsel for the petitioners, however, the document can be marked tentatively subject to order on admissibility, reserving right to decide the objections at the time of pronouncing the judgment. Hence, I find, it is a fit case to direct the trial court to admit the document, subject to objections and mark the same tentatively as an exhibit on behalf of the party who tendered the same, by following Rule 115 of the Civil Rules of Practice and pass appropriate orders at the time of pronouncing the judgment, about the admissibility of the document and if the court

finds that the document is inadmissible, it can ignore the same from consideration, while deciding the suit before it.

7. Subject to the above directions, the Civil Revision Petition is disposed of. No costs.

As a sequel, miscellaneous petitions if any pending in the C.R.P., stand closed.

M. SATYANARAYANA MURTHY, J

March 8, 2017
MRR

