

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3068 of 2012

ORDER:

The 1st defendant of O.S.No.16 of 1993, among the 3 defendants in the suit filed by two plaintiffs, is the revision petitioner in maintaining revision aggrieved by the docket order of the learned trial Judge dated 28.02.2012. The docket order reads as follows:

“Counsel for plaintiff is present. Counsel for defendant is present. While marking the document i.e., certified copy of unregistered sale deed, which was received on the petition vide orders in I.A.No.463 of 2011 dated 18.01.2012 and on this day when in the evidence of PW.1 is being recorded the counsel for the plaintiff has offered to mark the document as exhibit but the counsel for the defendant objected for it stating that since in another suit pertaining to the suit in O.S.No.13 of 2000 on the file of this Court filed by the plaintiff herein, the marking document was rejected in this case also it cannot be marked.

Perused the document and the orders passed in O.S.No.13 of 2000 on the file of this court, which was filed for declaration of title. This suit is filed for perpetual injunction restraining the respondents/defendant Nos.1 & 3 from interfering with the peaceful possession and enjoyment of the plaintiffs, later this suit on petition is amended for recovery of possession and mandatory injunction to demolish the shutters constructed in the land measuring 0-03 guntas in S.No.310, situated at Endapalli Village of Velgator Mandal. It is the case of the plaintiff that the document filed are necessary to be confronted through the PW.1 for collateral purpose and therefore, it is essential for adjudication of the dispute in controversy. The subject matter of the O.S.No.13/2000 is different from this suit. In this view of the matter, no prejudice would be caused to the defendant if this document is marked as exhibit. Hence, the objection is

over ruled and the plaintiff is permitted to mark the document as exhibit. Call on 27.03.2012.”

The grounds of revision in impugning the said docket order are that the trial Court should have seen that earlier in O.S.No.13 of 2000 which is besides the present suit in O.S.No.16 of 1993, a similar petition was filed to mark the document after duly stamped and the trial Judge (Senior Civil Judge) dismissed the application against which CRP.No.1345 of 2007 maintained and the revision was also ended in dismissal on 26.11.2007 and the plaintiff therein filed SLP.No.15129 of 2008 and it is the submission of the learned counsel for petitioner in a recent order of the two Judge Bench of the Apex Court dated 13.09.2017 the SLP was not admitted and dismissed before admission saying no merit and thereby the docket order in permitting the marking of document is unsustainable.

Whereas it is the submission of the learned counsel for revision respondent Nos.1 & 2/plaintiffs that the impugned order of the lower Court no way requires interference.

Heard and perused the material on record.

Undisputedly the document was impounded and deficit stamp duty was collected and it was duly certified by the Collector (RDO to whom the powers are delegated) and the endorsement of the Collector/RDO is enough for the Court which cannot go beyond. So far as the requirement of stamp duty concerned, from the law that any deficit stamp duty once paid and certified it is to be recorded as if originally it is duly stamped. Once such is the case, the only thing is considered from the

requirement of registration contemplated by Section 17 r/w 49 of the Registration Act, whether the document can be marked. Section 49 proviso clearly speaks that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act or as evidence of any collateral transaction not required to be effected by registered instrument. It is because in this proviso out of 3 clauses, but for the clauses 1 & 2 not interfered by the amendment by Central Act No.48 of 2001 with effect from 24.09.2001 the mutual clause in relation to Section 53-A of TP Act is deleted equally by amending Section 53-A of TP Act. Thus the very section itself is clear that in a suit for specific performance to admit in evidence or for any collateral purpose a document though required to be registered not registered can be received in evidence and admitted in evidence.

Now coming to the earlier order between the parties inter se or some of them in earlier suit, whether a bar to the present docket order of the Court concerned, a perusal of the revision order in CRP.No.1345 of 2007 itself is very clear that the Supreme Court judgment brought to the notice of the Court regarding the expression of the Apex Court in **Bipin Shantilal Panchal Vs. State of Gujarat**¹ no doubt as observed therein it is crystal clear from the expression that, but for stamp duty and registration to decide instantaneously, other objections regarding admissibility, relevancy and proof are subject to objection to decide ultimately

¹ AIR 2001 SC 1158

and not instantaneously and thereby observed that judgment is of no use.

In the very revision order in CRP.No.1345 of 2007 in another matter it is observed that once the document is duly impounded, it satisfies with the requirement of stamp duty deficit if any. So far as the registration concerned, it is observed that it is not even contended for marking in a suit for specific performance of contract or for any collateral purpose. The very observation in last but 3rd Para under operation of the revision another bench of this Court in the other matter is crystal clear referring to Section 49 proviso of Registration Act a document can be marked for a collateral purpose. Once such is the case, the earlier revision order and the SLP maintained against it dismissed before admission no way takes away any right of the party to exhibit the document for a collateral purpose. Here the suit is for permanent injunction and not for specific performance even to say other than for a collateral purpose the document can be marked. This Court in **Buddha Jagadeeshwara Rao Vs. Sri Ravi Enterprises**² categorically held that the document which requires to be registered even not registered can be admitted for collateral purpose. Leave about what is the collateral purpose to be decided ultimately with reference to the factual scenario.

Having regard to the above, there is nothing to interfere with the order of the lower Court in overruling the objection for marking, but for to say instead of permitting to exhibit for a collateral purpose and any objection regarding proof and

² (2017) 2 ALT 736

relevancy shall be to mark subject to objection to decide ultimately as laid down in **Bipin Shantilal Panchal supra**.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.12.2017
ska

