

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5356 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent/plaintiff assailing the order, dated 15.09.2016, of the learned Principal Senior Civil Judge, Karimnagar, passed in I.A.No.383 of 2016 in O.S.No.15 of 2010.

2. I have heard the submissions of *Sri N.Ashok Kumar*, learned counsel appearing for the petitioner/plaintiff, and of *Sri P.V.Narayana Rao*, learned counsel appearing for the 1st respondent/ 1st defendant. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The respondent/ Plaintiff (hereinafter, 'plaintiff') brought the suit for partition of the plaint schedule properties. The 1st respondent/ 1st defendant (hereinafter, '1st defendant') is resisting the said suit by filing a written statement. In the pending suit, the 1st defendant filed the afore-stated application under Order VIII Rule 1(3) of the Code of Civil Procedure, 1908, ('the Code', for brevity) requesting to receive on file a resolution of the elders, dated 17.05.2009, reduced into writing and signed by the parties and attested by the witnesses. The plaintiff filed a counter and resisted the said application. On merits and by the orders impugned in the revision, the trial Court allowed the petition. Therefore, the aggrieved plaintiff is before this Court.

4. The case of the 1st defendant, as stated in the affidavit filed in support of the petition, in brief, is as follows: "The 1st defendant filed a written statement. In that written statement, he pleaded that, on

17.05.2009, the elders passed a resolution; and that the same was reduced into writing and was signed by the plaintiff and the 1st defendant and was attested by the attestors. However, he could not file the said resolution along with the written statement. It is very important for just disposal of the suit.' Per contra, the case of the plaintiff, who is opposing the said request of the 1st defendant, in brief, is this: 'The petition is not maintainable either under facts or in law. The material allegations are denied. The proposed document is a photostat copy. The signatures were obtained before the elders before reducing the same into writing. Taking advantage of the same, the 1st defendant got prepared the same to suit his needs, by converting the suit schedule 'A' house, as his self acquired property. Nowhere, it is mentioned as to how the signatures of the parties are subscribed to the said document, which is a photostat copy of the resolution. The 1st defendant is not seeking permission to produce the said document, which is a photostat copy, as secondary evidence. This plaintiff is denying the said document and the signatures thereon. It cannot be received in evidence.'

5. At the hearing, learned counsel for the 1st defendant would submit as follows: The 1st defendant is resisting the suit of the plaintiff, which is filed for partition. The 1st defendant purchased a house, that is, 'A' schedule property in his own name from his own earnings. He has been residing in that property with his family. The said house was purchased with the own earnings of this defendant after separation from the family. The plaintiff and the 1st defendant decided to partition the lands in the village. As such, they came to an understanding and executed an agreement, on 17.05.2009, before the elders and relatives. The plaintiff is educated. He did M.A., LL.B. Though the document is a

photostat copy, the same is also signed by the two brothers, that is, the plaintiff and the 1st defendant, and it was also attested by the attestors. In fact, when PW1/plaintiff was in witness box, the proposed document was confronted to him in his cross-examination, on 07.04.2016. In his cross-examination, the following points are elicited: 'It is true, on 17.05.2009, we have approached the village elders for settlement. It is true, the village elders decided that I should take land in survey number 377-A and D1 should take land in survey number 378/ C.' However, PW1 denied his signature on the said resolution, dated 17.05.2009. In view of the said evidence, the document was not marked during the cross-examination of PW1. Hence, the present petition is filed to grant leave to file the said document and receive it on file. The trial Court in the impugned orders held that receiving the said document on record stands on a different footing than that of tendering it in evidence and that the plaintiff can raise his objections at the time of tendering the document in evidence and that the document can be received on file, subject to proof, relevancy and admissibility and accordingly, received the document on file. Hence, the order of the trial Court is sustainable.

6. Per contra, learned counsel for the plaintiff would contend as follows:

On 17.05.2009, the 1st defendant approached the village elders for division of the joint family properties into equal shares between the brothers. The elders convened a meeting and called the plaintiff and the 1st defendant and heard the versions of both the parties. They passed a resolution. As per the resolution, this plaintiff discharged his obligations. The 1st defendant failed to comply his part of the obligations in the resolution, which was passed by the elders. It has become ineffective and inoperative. There was exchange of notices

prior to the filing of the suit. Hence, the suit was filed for partition. In the circumstances stated in the counter of the plaintiff, the document is inadmissible and cannot be received in evidence.

7. Before proceeding further, it is necessary to refer to the decisions relied upon by the learned counsel for both the sides.

8. Learned counsel for the petitioner/ 1st defendant relied upon a decision in H.Siddiqui (dead) by Lrs v. A.Ramalingam¹, wherein the facts disclose that a suit for specific performance was decreed though the document produced was a photostat copy. The said document appears to be a power of attorney given only for management of the property and it did not create any right to transfer the property. The executant of the power of attorney merely admitted his signature on the power of attorney, but denied its contents; the suit was decreed without considering the probative value of the contents of the document. In that factual background of the cited decision, the Supreme Court held as follows:

“In our humble opinion, the Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. Moreso, the Court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value.”

In this decision, the Supreme Court also referred the decision in State of Bihar v. Sri Radha Krishna Singh & Others², wherein the Supreme Court

¹ AIR 2011 SUPREME COURT 1492

² AIR 1983 SC 684

considered the issue in respect of admissibility of the document and contents thereof and held as under:

“Admissibility of a document is one thing and its probative value quite another-these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil.”

9. In the case on hand, the suit is at the stage of trial. The application is filed only to grant leave to the defendant to file the document, namely, resolution of the elders, dated 17.05.2009, which was reduced into writing after the brothers were said to have settled the dispute before the elders and in the presence of the witnesses. The trial Court by the orders impugned only received the document on file, subject to proof, admissibility and relevancy reserving liberty to the plaintiff to raise objections regarding admissibility and other aspects, when the document comes to be tendered in evidence.

10. In *Kapil Kumar Sharma v. Lalit Kumar Sharma*³ the Supreme Court having noted that the cross-examination of the witnesses has not yet been commenced, held that there is no reason for debarring the defendant/ appellant from filing the additional documents in support of the claim. Having so held, the Supreme Court set aside the orders of the Division Bench as well as the learned Single Judge and allowed the application under Order VII Rule 14 of the Code and directed that the additional documents filed by the appellant be taken up for consideration subject to proof thereof.

³ (2013) 14 Supreme Court Cases 612

10.1 In *M.R.Anjaneyulu v. R.Subramanyam Achary*⁴, this Court first noted that the reason put forth by the petitioner for the delay in filing the proposed document is vague; however, it is also noticed that one of the documents being a registered sale deed, it may certainly have a bearing on the defence in the suit and that the documents were being sought to be produced before the commencement of the cross-examination of the respondent/plaintiff; therefore, this Court permitted the petitioner/ defendant to produce the document.

10.2 The decision in *Setti Siddamma v. S.Ramulu and another*⁵, was relied upon in support of the proposition that merely because a document was filed into Court, it does not mean that the said document is admitted into evidence and that admission of document in evidence is entirely different from receiving of a document either under Rule 1 or Rule 2 of Order XIII of the Code; And, that the said principle applies even after the coming into force of Act 46 of 1999 and that at the stage of considering the request for receiving a document on file, the Court can receive the document on file when satisfied with the explanation for the delay, however, subject to proof, relevancy and admissibility.

10.3 In *John Santiyago v. Clement Dass and Others*⁶, this Court held as follows:

“It is well settled principle that in case ‘sufficient cause’ is shown for filing the documents at the hearing of the suit and/or at the end of the trial, such cause shown should receive a liberal construction so as to advance the cause of substantial justice, more particularly when the documents sought to be filed, in the opinion of the Court, are relevant and may have bearing on the aspects to be taken into consideration for the determination of the real controversy

⁴ 2012 (5) ALD 243

⁵ 2004 (5) ALD 14

⁶ 2014 (2) ALD 184

and the principal issue/s involved in the matter/suit. And what constitutes a sufficient cause always depends upon the facts and circumstances of a particular case. Hence, the applications need not be rejected merely on the ground of delay/long delay, but the test shall be whether sufficient cause is made out for the delay.”

I have carefully gone through the decisions, wherein the well settled legal position is laid down, though eventually, the decision in each of the cited case was rendered having regard to the facts peculiar to the cited case.

11. Reverting to the facts of the present case, it is to be noted that both the parties admitted that they approached the elders for resolving the disputes and that the elders resolved the dispute. Though the document in question is stated to be a photostat copy, it is also signed by the executants and was attested by the attestors, as per the submissions made before this Court. In fact, the document, dated 17.05.2009, is also produced before this Court during the cross-examination of the plaintiff. It is to be recalled that when the plaintiff/PW1 was cross-examined, he admitted that the parties approached the village elders for settlement and that the village elders decided that he should take land in one survey number and the 1st defendant should take land in another survey number. He further denied his signature on the resolution, dated 17.05.2009. Whether after the original document is prepared, a photostat copy of the same was taken and it was also signed by both the parties and was also attested by the witnesses at the same time when the original was prepared, signed and attested is a question which has to be decided by the trial Court at an appropriate later stage being a question of fact; and, this Court need not go into the said aspect. If the document produced before this Court, as contended, is a

photostat copy, but was signed by the parties and was attested by the witnesses, it can be taken as a document executed in several parts and in that case, each part is primary evidence of the document. Similarly, where a document is executed in counter parts, each counter part being executed by one or more parties, each counter part is primary evidence as against the party executing it.

12. The defendant specifically pleaded and the plaintiff also admitted that they approached the elders and the matter is resolved before the elders. But the plaintiff only contends that he performed his part of the obligations under the document/resolution, dated 17.05.2009, and that the defendant no.1 failed to perform his part of the obligations. As rightly contended by the learned counsel for the 1st defendant, at the stage of considering the request for granting leave to file a document, the Court will not deal with the questions like its admissibility and the weight to be attached to it or its probative value. Even the questions of inadmissibility on the ground of sufficiency of stamp duty or non-registration etcetera will not be considered at the time of considering a request to grant leave to file the document and to receive the same on file, as the said questions have to be considered at a time when the document comes to be tendered in evidence and not before. The trial Court, having regard to the facts and circumstances recorded in its orders that the document, dated 17.5.2009, captioned as 'an agreement' is a photostat copy; but the signatures at the foot of the document are original signatures and that one of the contentions of the 1st defendant is that the elders have reduced into writing two documents and that the original was given to the plaintiff and the photostat copy signed in original is given to the 1st defendant and that receiving a document on file by granting necessary leave stands on a different

footing than admitting the document in evidence. Having so held, the trial Court received the document on file, subject to proof, admissibility and relevancy reserving liberty to the plaintiff to raise objections at a time when the document comes to be tendered in evidence.

13. On the above analysis of facts and the legal position, this Court finds that the order of the trial Court is justified and does not suffer from any infirmities much less legal infirmities warranting interference and that the revision is devoid of merit and is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th November, 2017
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