

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.4104 OF 2017

ORDER:

The present Civil Revision Petition is filed questioning the order, dated 24.07.2017 in I.A. No.79 of 2017 in O.S. No.22 of 2008, passed by the learned Junior Civil Judge, Banswada.

2. The aforesaid order was passed, in an application filed under Section 151 of the Code of Civil Procedure, 1908 (CPC) by the revision petitioners - plaintiffs, raising objection for marking the documents without submission of original documents by the respondent No.3 - defendant No.3 and requesting to de-exhibit the documents already marked as Exs.B-14 to B-19 on behalf of the defendants, refusing such request.

3. The prayer made in I.A. No.79 of 2017 reads thus:

**“ PETITION FILED UNDER 151 OF CPC FOR
OBJECTION FOR MARKING WITHOUT
SUBMISSION OF ORIGINAL DOCUMENTS**

May it please your Honour

For the reasons mentioned in the accompanying affidavit The petitioners/plaintiffs 1 to 6 are objecting for marking the exhibits 14 to 19 of Xerox copies of alleged un-Registered documents filed by defendant No.3 and attested by the defendant No.3 himself on documents in absence of the counsel and party, it cannot be marked. The petitioners/plaintiffs 1 to 6 are objecting for marking as exhibits 14 to 19 in the absence of counsel for

petitioners/plaintiffs. The same may be discarded in the ends of justice and equity.”

4. The petitioners - plaintiffs filed the aforesaid original suit for perpetual injunction simpliciter against respondent Nos.1 and 2 originally, but later defendant No.3 came on record on his own. According to the petitioners, respondent No.3 – defendant No.3 filed photostat copies of alleged un-registered document/documents particulars under Section 38 of Act 17 of 1966 and note files certified by defendant No.3. The objection is that the said documents constitute secondary evidence and, therefore, cannot be marked by the Court, and they are created, concocted and manipulated by defendant No.3 with a *mala fide* intention and ill-motive. The defendant No.3 with a *mala fide* intention tried to mark them as exhibits though, they objected for marking them without producing original documents thereof. The petitioners refer to Section 64 of the Indian Evidence Act, 1872 (for short ‘Act, 1872’). The petitioners would state in paragraph No.5 of the affidavit that the Court has no jurisdiction to entertain the “challenged title deeds” as they are challenging the documents as suspicious in nature.

5. The manner, in which, the affidavit is articulated in fact does not make out what the petitioners - plaintiffs really intended to plead. But, it appears that after marking the documents as Exs.B-14 to B-19, the petition in I.A. No.79 of 2017 was filed to de-exhibit them by invoking inherent power under Section 151 of the Code.

6. It was resisted to by the respondent No.3 by filing a separate counter. Respondent No.3 - defendant No.3 would submit in his counter that the evidence on behalf of petitioners - plaintiffs and respondent No.2 - defendant No.2 was completed and suit was coming up for leading his evidence. On 05.02.2016, his affidavit-in-chief examination was filed before the Court below and since then the matter was being dragged on by the petitioners and their counsel. He states that on 29.06.2017, when the case was posted for his evidence, neither the petitioners, nor their counsel was present and, thus, there was no representation on behalf of the plaintiffs. The Court after due care marked the documents through him as Exs.B-14 to B-42, and it is settled law that once documents are exhibited, question of admissibility cannot be reopened. Filing of the petition is nothing but abuse of process of law and, therefore, sought to dismiss the petition.

7. The learned Junior Civil Judge referring to the contentions raised by both sides, having referred to the averments in the affidavit and counter filed by rival parties, formulated the point for determination in paragraph No.5 and observed in paragraph No.9 that Exs.B-14 to B-17 and B-19 are certified copies produced from the office of the Assistant Commissioner, Endowments Department, Nizamabad and Ex.B-18 is also a certified copy issued by the Inspector of the Endowments and Assistant Commissioner of Endowment Department duly describing the particulars of the suit

lands showing that the suit lands stand in the name of the institution “Hanuman Mandir” Eklara village, Madnoor Taluq of Nizamabad District, wherein the interests of suit lands were not transferred in favour of any person. The learned Junior Civil Judge referred to the decision in **Dr. S. P. Allora v. Satbir Singh** [decided on 17.02.2009 in Civil Revision No.2629 of 2006 (O&M) and extracted what has been observed by the High Court of Punjab and Haryana thus:

“In this case, the order De-exhibiting documents on the ground that no permission had been previously sought for cannot stand this scrutiny of law. The Hon’ble Supreme Court in Bipin Shanti Lal Panchal Vs. State of Gujarat, (2001) 3 S.C.C. 1 had particularly castigated the practice of stalling proceedings at the time of trial by taking objections relating to reception of documents. The Hon’ble Supreme Court would characterize it as archaic practice to invite a ruling of the court regarding the admissible document. Though this decision was rendered while addressing a case under code of criminal procedure, the case has been followed in several decision in civil cases also. Dynamic of the procedure that addressed the Malady of delays during the trial have resulted in an approach, which would allow proceeding to go without any obstruction. The reception of the document and the attempt of the party to exhibit them could not have been thrown out at the threshold even before the party tenders evidence regarding the admissibility of the same.”

8. The learned Junior Civil Judge then referred to the decision of this Court in **G. Sudhakar Reddy v. M. Pullaiah** [decided on

06.03.2015 in Civil Revision Petition No.4998 of 2014], extracting the points summarized thus:

“

- i) A list of documents should be filed along with the plaint or written statement and if the parties want to file documents subsequently, they have to take leave of the Court.
- ii) The documents, which are marked, does not dispense with their proof.
- iii) There is a difference between marking of a document and admitting the same in evidence.
- iv) As held by the Supreme Court in R.V.E. Venkatachala Gounder (supra), the objection that the document which is sought to be proved is itself inadmissible in evidence can be raised even at a later stage or even in appeal or revision. When the objection relates to mode of proof alleging the same to be irregular or insufficient, the objection should be taken before the evidence is tendered and cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This later objection is an objection relating to the irregularity or insufficiency.
- v) In order to avoid delay in the trial of the suit, the Court can tentatively mark a document and examine its admissibility and the objection raised to it along with the pronouncement of judgment.”

Then in paragraph No.14, the learned Junior Civil Judge would observe what this Court has observed mentioning that the objection relating to relevancy of the document need not be decided at the time

of marking of documents and if it relates to admissibility, can be raised by the defendants at a later stage and should be decided by the Court at the time of pronouncement of judgment. Then the learned Junior Civil Judge would refer to Ex.B-18 and the objection raised by the petitioners - plaintiffs that it requires registration and it is not sufficiently stamped. But, the learned Junior Civil Judge would observe that under Ex.B-18, no interest of the property was transferred and it is a mere certificate issued by the Assistant Commissioner of the Endowments after inspecting the temple lands at Eklara village of Madnoor Mandal and does not require any registration and since the documents were already exhibited under Exs.B-14 to B-17 and B-19, they cannot be de-exhibited and, thus, dismissed the petition.

9. Heard Sri P. Bhaskar, learned counsel for the petitioners, and Sri P. Suman, learned counsel for respondent No.1 and Sri T. Sujan Kumar Reddy, learned counsel for respondent No.2.

10. The learned counsel for the petitioners would submit that secondary evidence without following the procedure prescribed under Sections 64 and 65 of the Act, 1872 cannot be allowed to be admitted, even if no objection is raised by a party. It is according to him, that no consent was given by the petitioners and Exs.B-14 to B-19 are photostat copies of un-registered documents. He would submit that the learned Junior Civil Judge was not right in omitting to appreciate that the Assistant Commissioner of Endowment himself is defendant

No.3 in the suit and cannot certify the document by himself and the same cannot be issued as certified copy and, therefore, seeks to de-exhibit Exs.B-14 to B-19.

11. The learned counsel for the respondents would seriously object to the submissions made by the learned counsel for the petitioners contending that the objection ought to have raised by a party through his advocate at the time when they were exhibited. According to the learned counsel that the documents admitted were with regard to certain details from the Registers and defendant No.3 being the concerned authority, the extracts thereof were certified by him as true copies and marked by the Court through him at an appropriate stage. Therefore, once the documents are exhibited, the question of de-exhibiting them does not arise. Such a relief cannot be sought for under Section 151 of the Code and, therefore, sought to dismiss the revision.

12. As could be seen from the counter averments, referred to in the above, the affidavit in-chief examination of defendant No.3 was filed on 05.02.2016, and till 29.06.2017 almost more than one year four months after the affidavit in-chief examination was filed, defendant No.3 was allowed to proceed with further. In paragraph No.3 of the counter, respondent No.3 specifically averred that the petitioners - plaintiffs and their counsel dragged on the case without due cause. When defendant No.3 stepped into witness box to

continue his examination after filing the affidavit in-chief examination, certainly, the learned counsel for the petitioners ought to be present and ought to have raised objection, in which case, the learned Junior Civil Judge would have had the occasion to record the nature of objection raised in relation to a particular document that was sought to be admitted and he would have heard the respondents' side and then would have given a finding then and there itself. Even, if a finding is not tendered immediately, the learned Junior Civil Judge would have reserved tendering finding till final hearing in the suit and would have disposed of the said objection while rendering the judgment. At the appropriate occasion, the petitioners - plaintiffs having failed to raise objection by availing of opportunity and later making an application of the nature, referred to in the petition filed under Section 151 of the Code, reflects the conduct of the petitioners, when viewed in the context of the cause for the delay in defendant No.3 continuing his evidence in continuation of his chief examination affidavit filed by him.

13. Now, the question is, whether the finding recorded by the learned Junior Civil Judge that Ex.B-18 is merely a certificate issued by the Assistant Commissioner of Endowment after inspecting the temple lands, and no transfer of interest is effected there-under and, therefore, it does not require any registration can be sustained, or otherwise.

14. It is to observe that such a finding ought not to have recorded and once the documents have already been exhibited be ought to have reserved the finding by giving an opportunity of hearing during final hearing of the suit. Therefore, to the extent of that finding recorded by the learned Junior Civil Judge requires to be set aside and, accordingly, set aside, observing that during final hearing in the suit, both parties are at liberty to tender arguments in regard to the admissibility or otherwise of Ex.B-18 or Exs.B-14 to B-19 to be decided while rendering the judgment by the learned Junior Civil Judge.

15. Thus, the present Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision, stand disposed of.

A. SHANKAR NARAYANA, J

October 30, 2017.

Mgr