

• THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

+ CIVIL REVISION PETITION No.5423 OF 2011

% 30th October , 2017.

CIVIL REVISION PETITION No.5423 OF 2011

Sri.K.Raja Gopal Reddy

.. PETITIONERs

VS.

\$ K.Sreenivasa Reddy and four others

... RESPONDENTs

! Counsel for the petitioner :Sri Ambadipudi Satyanarayana

^ Counsel for the respondents : Sri C.Prakash Reddy

< Gist:

> Head Note:

- ? CITATIONS: 1.2015 (5) ALT 795
2. CRP.No.1850 of 2015, dated 23.08.2016
3. (2003) 8 SCC 752
4. CRP.Nos.4384 & 4385 of 2015, dated 29.09.2016
5. (2001) 3 SCC 1 = AIR 2001 SC 1158
6. (2014) 10 SCC 473
7. (2017) 8 SCC 518
8. (2017) 8 SCC 570
9. (2005) 11 SCC 600.

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**CIVIL REVISION PETITION NO.5423 OF 2011****ORDER:**

Heard learned counsel for the petitioner/plaintiff and also counsel for respondents.

2. Perused the docket order of the lower court dated 14.10.2011 in the pending suit O.S.No.433 of 2007. The suit is filed for the relief of declaration of plaintiffs – 1st and 2nd defendants respectively each entitled to 1/3rd share in the plaint schedule properties and thereby consequently for division and passing of final decree by allotment accordingly. During pendency of the suit, 1st defendant among the two defendants died on 25.10.2009 and defendants 3 to 5 came on record as LRs of late 1st defendant. The 3rd defendant, who is one of the LRs of the late 1st defendant, after closure of the evidence of plaintiff from 2nd defendant, did not adduce any independent evidence of his own but for common and what 1st defendant in his lifetime filed the chief affidavit is appears to be referred as DW.1, leave about whether taken on oath or not and if taken on oath at whose instance it was coming for cross-examination and what is its evidentiary value if any, now not necessary to discuss; said 3rd defendant filed chief affidavit as DW.2 and sought for marking of some documents already in the court record by

referring in his chief affidavit, the plaintiff raised an objection for not marking saying DW.2 - D3 has no personal knowledge of the documents and thereby those cannot be exhibited by him in his evidence. No doubt as held by this Court in ***Bachu Laxmi Pathi Vs. Bachu Kistaiah***¹ and in ***Budha Jagadeswara Rao Vs. Sri Ravi Enterprises***² held that when original itself is to be impounded, question of adducing secondary evidence by production of a Photostat copy of original un-impounded does not arise, when it is the original that to be impounded for not duly stamped and as such for question of impounding a copy does not arise and without impounding on original, question of marking copy of a document thereby does not arise. It does not mean secondary evidence subject to objection on admissibility cannot be marked, but for where it requires stamp duty and registration.

3. Said petition was rejected by the trial court after elaborate discussion of the facts and rival contentions. Needless to repeat, those, for suffice herein from the well settled law from ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Another***³ say marking of document involves two aspects, one is procedural and the other is substantial. The procedural aspects are relating to the nature of the document primary or secondary

¹ 2015 (5) ALT 795

² CRP.No.1850 of 2015, dated 23.08.2016

³ (2003) 8 SCC 752

and once marked without objection on the procedural aspects, later it is not left open. So far as substantial aspects concerned, even document marked without objection where it requires proof besides to decide relevancy for admissibility otherwise, these are all always left open and mere marking without objection is not even waiver of such objection on proof and relevancy from mere admissibility even, much less to allow contention of a document which required to be proved, from mere giving of exhibit number in marking, tantamounts to proof. This Court also reiterated the same referring to the above among several other expression on the scope of law and in detail in **Sri Kaitha Narsing Rao Vs. Kodi Supriya and others**⁴.

4. Having regard to the above, there is nothing to interfere with the order of the lower court, but for to say, while marking any objection is left open to raise for the court ultimately to decide other than stamp duty and registration and anything relating to the electronic evidence as contemplated from production with certification in regard to it of any secondary evidence under section 65(b)(4) of the Evidence Act, as per the settled expressions of the Hon'ble Apex Court in **Bipin Shantilal Panchal Vs. State of Gujarat**⁵ and **Anwar P.V. Vs. P.K.Basheer and Others**⁶ and the latest three Judge Bench expression at Paras 25 and 26

⁴ CRP.Nos.4384 & 4385 of 2015, dated 29.09.2016

⁵ (2001) 3 SCC 1 = AIR 2001 SC 1158

⁶ (2014) 10 SCC 473

referring to Paras 22 to 24 of **Anwar Supra** in **Vikram Singh @ Vicky Walia Vs. State of Punjab**⁷ saying original tape recorded conversation is an original and compliance of Section 65(B)(4) of the Evidence Act does not arise, leave about the other two Judge Bench expression of the Hon'ble Apex Court in **Sonu @ Amar Vs. State of Haryana**⁸ referring to **RVEV Gounder & Anwar Supra**, that objections that may be raised as to admissibility and relevancy to mode and method of proof, and thus for not raising objection to the marking of the CDRs of mobile phone conversation recorded recovered as second evidence without compliance of Section 65(B)(4) of the Evidence Act, cannot be permitted to be raised in appeal, leave about **Anwar's** expression is a prospective overruling or retrospective overruling of the earlier expressions particularly of **State (NCT Delhi) Vs. Navjot Sandhu**⁹

4. Accordingly and in the result, this civil revision petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR.B.SIVA SANKARA RAO, J

30.10.2017

Note: L.R. copy to be marked.
B/o.SS

⁷ (2017) 8 SCC 518

⁸ (2017) 8 SCC 570

⁹ (2005) 11 SCC 600.