

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NOS.3559 & 3297 OF 2011

CRP NO.3559 OF 2011:

Between :

Dammu Eswara Rao S/o Demudu
30 years, R/o D No 32-9-79/1,
Netaji Nagar, Visakapatnam.

.... Petitioner

And

Gorli Gouresh S/o late Appanna
50 yrs, R/o D No. 32-9-39, Netajinagar,
Visakapatnam.

....Respondent

DATE OF JUDGMENT PRONOUNCED : 14.12.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ CIVIL REVISION PETITION NOS.3559 & 3297 OF 2011

%14.12.2017

CRP No.3559 of 2011:

Dammu Eswara Rao S/o Demudu
30 years, R/o D No 32-9-79/1,
Netaji Nagar, Visakapatnam.

... Petitioner

Vs.

\$ Gorli Gouresh S/o late Appanna
50 yrs, R/o D No. 32-9-39, Netajinagar,
Visakapatnam.

.... Respondent

!Counsel for the petitioners : Sri K.V.Subrahmanya Narusu

Counsel for the Respondents : Sri G.Rama Gopal

<Gist :

>Head Note:

? Cases referred:

1. 2007 (1) ALT 460
2. AIR 1962 SC 110(1)
3. 1972(1) ALT 232
4. AIR 1946 PC 51

HONOURABLE SRI JUSTICE P. NAVEEN RAO**CIVIL REVISION PETITION Nos. 3559 & 3297 of 2011****COMMON ORDER:**

Heard learned counsel for petitioners Sri K.V.Subrahmanya Narasu and learned counsel for respondent Sri G.Ram Gopal.

2. Revision petitioners are defendants. For the sake of convenience, parties are referred to as they are arrayed before the Court below. As the issue is common in both CRPs, they are disposed of by this common order.

3. According to Plaintiff, Government allotted house sites to needy people. These persons formed Sangam called 'Netaji Yuvajana Seva Sangam' (for short Sangam) to develop the plots and to take care of common interests of members of the Sangam. Sangam entrusted the work of constructing the houses to the plaintiff on those house sites allotted to all its members. Accordingly, plaintiff constructed houses to all members including the defendants. Though, other members of the Sangam paid the amount to the plaintiff, the defendants failed to pay the amount. Hence, he filed O.S.Nos.1599 and 1600 of 2009 on the file of the I Additional Junior Civil Judge, Visakapatnam against defendants for recovery of 70,000/- each with subsequent interest.

4. In the said suits, plaintiff sought to mark certified copy of agreement written on the letter head of the Sangam and signed by some members. According to plaintiff, this document is in proof of entrusting the work of construction of houses to him and construction made thereof. According to plaintiff, the very same document was admitted in evidence in O.S.No.1136 of 2007 on the

file of the II Additional Junior Civil Judge, Visakapatnam and therefore certified copy of said document can be admitted in evidence in this suit. The defendants objected to marking of the said document on the ground that it is not duly stamped and in view of Section 35 of the Indian Stamp Act, (for short the Act) is inadmissible in evidence. Over-ruling the said objection, the trial Court held that certified copy of the document marked in another suit cannot be subjected to test of admissibility under Section 35 of the Indian Stamp Act once again. In support of the said decision, the trial Court relied on the judgment of this Court in **Lakka Raju Radha Krishna Vs.Pyarle Sri Rama Sarma and others¹**.

5. Learned counsel for petitioners-defendants contended that defendants are not party to the said document, therefore whatever settlement arrived at by the Sangam and contractor, is not binding on them. He would further submit that the provision in Section 36 of the Act is applicable only with reference to the same proceedings but not in independent proceedings. Section 35 of the Act mandates that unless the document is duly stamped, it cannot be admitted in evidence and therefore trial Court erred in over-ruling the objection and allowing marking of the document.

6. Per contra, learned counsel for respondent-plaintiff submitted that as parties to O.S. 1136 of 2007 on the file of the II Additional Junior Civil Judge, Visakhapatnam and to the present suit are same and very same document was admitted in evidence on behalf of the plaintiff who is defendant in the said suit and a

¹ 2007 (1) ALT 460

certified copy of the said document was obtained from the trial Court in the said case, the same can be marked as document in the subsequent proceedings and question whether it is stamped or not, cannot be gone into in collateral proceedings. In support of the said contention, learned counsel placed reliance on the decision of the learned single Judge of this Court in **Lakka Raju Radha Krishna**, decision relied by the trial Court and **State of Bihar Vs. M/s. Karam Chand Thapar and Brothers Ltd**².

7. The document which is sought to be marked is written on a letter head of the Sangam. The contents of the documents would show that plaintiff was authorized to undertake construction of houses on plots allotted by government. It may be loosely called as an agreement between members of Sangam and the plaintiff and plaintiff seeks enforcement of terms of said document and is chargeable to duty. As per Section 35 of the Act, no instrument chargeable with duty shall be admissible in evidence, for any purpose, by any person. However, according to *Section 36 of the said Act "where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any **stage of the same suit or proceeding** on the ground that instrument has not been duly stamped"*. A bare reading of these two provisions would make it clear that instrument chargeable with duty cannot be admitted in evidence for any purpose but if such an instrument was already admitted in evidence in a suit the same cannot be called in question at any stage of the same suit. In other words, once a document is marked in evidence in a suit finality has to be

² AIR 1962 SC 110(1)

assigned to such marking and no objection can be raised subsequently.

8. In the case on hand, the said document was not admitted in evidence earlier. Admittedly, the document in issue is not duly stamped as required under Section 35 and is not registered as required under Section 17 of the Indian Registration Act. Thus, mere admission of document in another suit is not a bar for a party to raise an objection in another suit. Section 36 of the Act has limited application and the language employed therein would make it clear that it has no application to any other suit, though the document may be same. Thus, it is permissible for a party to a suit to raise an objection on the marking of the document if the same is not duly *stamped*. This aspect was not considered by the trial Court while over-ruling the objection.

9. At this stage, it is **necessary** to consider the decision of this Court in **Lakka Raju Radha Krishna**, relied by the trial Court. A certified copy of the document which was marked in another suit was obtained and was sought to be marked in the subsequent suit. It was contended on behalf of the respondents therein that even secondary evidence of an instrument, which was required to be stamped, is inadmissible, unless it is properly stamped. It was contended, petitioner was not a party to the transaction nor does he propose to enforce any rights and obligations under it. The objection against marking of the document was allowed and trial Court held the document inadmissible as same was not duly stamped as required by Section 35 of the Stamp Act. It appears, the document relied upon by the respondents was marked in

evidence in LGC 93 of 2003 by lessee and petitioner obtained a certified copy of the said document. This Court while upholding the contention that no document which is not duly stamped can be admissible in evidence brought a finer distinction between 'collateral purpose' and 'collateral matter'. According to the learned single Judge, if a party intends to prove the transaction covered by the document, or any purpose collateral to it, or relies on it, in a totally different, but 'collateral matter', same can be received in evidence. The court held that the document sought to be relied on only to establish the tenancy on the property, which being a 'collateral matter', same can be admitted in evidence in the subsequent proceedings.

10. In the case on hand, plaintiff relies on the document in issue to establish that he was entrusted with work to construct houses for defendants on the plots allotted to them. The document is not sought to be used for 'collateral matter' but seeks enforcement of the agreement and to demand money from the defendants towards alleged construction of houses stated to have been made by the plaintiff. Thus, it is an instrument which has to be registered and requires stamp duty. Thus, above decision of this Court is not applicable to the facts of the case.

11. The decision of the Supreme Court in **Karam Chand Thapar** (supra) also has no application to the facts of the case. In the said case, the Arbitrator has prepared three sets of award and sent one award set to petitioner, another set to respondents and third set to the Court. All the three sets were duly signed by Arbitrator and when the third copy was received in Court, the

requisite stamp duty was paid under Section 35 of the Act and validated. Contention was sought to be urged that it was a certified copy and that under Section 35 of the Act, validation can be only of the original but not of the certified copy and therefore cannot be acted upon. The said objection is over-ruled holding that it is also original and not a certified copy.

12. On the contrary scope of admissibility of document requiring stamp duty was considered by this Court in **Sanjeeva Reddi vs. Johanputra Reddi**³. By relying on the decision of the Privy Council in **Ram Rattan v. Parma Nand**⁴, this Court held:

“There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purposes, it would amount to receiving such a document in evidence for a purpose, which Section 35 prohibits”.

12.1. It is further held:

“No part of a document be it is single sentence, a word or a signature, which is chargeable with duty, can be received in evidence and to do so is to do violence to Section 35”.
[emphasis supplied]

13. At this stage, it is useful to note the decision of the Privy Council in **Ram Rattan**. Privy Council held:

“A document admitted in proof of some collateral matter is admitted in evidence for that purpose, and the statute enacts that it shall not be admitted in evidence for any purpose. Their Lordships see no reason why the words “for any purpose” in the Indian Act of 1879 should not be given their natural meaning and effect. Such words may well have been inserted by the Legislature in order to get rid of the difficulties surrounding the question of what amounted to a collateral purpose.”
[emphasis supplied]

³ 1972(1) ALT 232

⁴ AIR 1946 PC 51

14. Further, when an objection was raised on admissibility of document in evidence, it is mandatory for the Court to consider such objection and assign reasons in support of the decision. A reading of the order of Court below would show, it simply accepted the contention of plaintiff and relied on the decision of this Court in **Lakkaraju Radha Krishna**, without considering the applicability of the said decision to the facts of this case.

15. Having regard to the statutory mandate and principle laid down in **Ram Rattan** (*supra*) and **Sanjeeva Reddi** (*supra*) and the fact that the document in issue was not already admitted in evidence in the same suit, the trial Court erred in over-ruling the objection of the defendants on the admissibility of the document. The orders of the Court below are set aside and Civil Revision Petitions are allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 14-12-2017

Note: LR copy to be marked: Yes
(B/o)
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO



CIVIL REVISION PETITION Nos. 3559 & 3297 of 2011

Date : 14.12.2017

Tvk