

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

CIVIL REVISION PETITION No. 5673 of 2007

ORDER: (*Per VRS,J*)

On an order of reference made by the learned single Judge before whom this revision came up, the same has been placed before us to resolve the conflict between two decisions of two different learned Judges.

2. Heard Mr. N. Pramod, learned counsel for the petitioner, and Mr. M. Venkata Ramana Reddy, learned counsel for the respondents.

3. The petitioner herein filed a suit in O.S.No.166 of 2007 for a bare injunction, along with an application in I.A.No.799 of 2007 for an interim order of injunction.

4. At the time of hearing of the interlocutory application for injunction, the respondents/defendants attempted to mark a document, dated 20.06.1998, as exhibit. The said document was styled as an agreement of sale accompanied by delivery of possession.

5. Therefore, the petitioner/plaintiff objected to the said document being taken on record, even for the purpose of deciding the application for injunction. The trial Court overruled the objection, on the ground that the filing of a document at the interlocutory stage does not tantamount to admission of the document in evidence, and

that, therefore, the same did not require stamping and registration. As against the said order, the plaintiff has come up with the above revision.

6. After notice was ordered in the revision and the respondents entered appearance, the revision was heard by a learned Judge of this Court. The learned Judge found that there were two decisions of this Court, one in *Doddapaneni Chennakesava Rao Vs. Nannapaneni Narendra and another*¹, and another in *Chaganti Venkata Bhaskar Vs. C. Chandrasekhar Reddy*², where the learned Judges had taken opposite views about the admissibility of such a document at the interlocutory stage. Therefore, the learned Judge directed the matter to be placed before a Division Bench for resolving the conflict.

7. Before proceeding further, it should be pointed out that the learned single Judge did not frame any question of law to be answered by the Division Bench. On the contrary, the learned Judge placed the revision itself before the Division Bench. Therefore, our task is not merely to answer the reference, but to dispose of the revision itself.

8. Before taking note of the decisions, which purportedly air conflicting views, it is necessary to take note of the statutory provisions. Section 35 of the Indian Stamp Act, 1899 makes it clear that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, the

¹ 2006 (4) ALT 683

² 2010 (3) ALT 101

authority to receive evidence, or shall be acted upon, unless it is duly stamped. Two sets of expressions appearing in Section 35 are of importance. The first set of expression is “*admitted in evidence*”. The second set of expression is “*shall be acted upon*”. Therefore, the bar under Section 35 is not merely to the admission of a document in evidence, but also for the document being acted upon. Keeping this fundamental position under Section 35 in mind, let us now see the decisions, which apparently air conflicting views.

9. In *Doddapaneni Chennakesava Rao*, a learned Judge of this Court was dealing with a case where a document was allowed to be marked at the interlocutory stage. At the time of trial of the suit, the marking of the document was objected to, on the ground that it was not sufficiently stamped. When the objection was sustained and the matter was carried to this Court, it was contended that once the document was permitted to be marked at the interlocutory stage, it cannot be refused to be marked at the stage of trial of the suit. Overruling the said contention, the learned Judge held in Paragraph No.8 of his judgment in *Doddapaneni Chennakesava Rao*, that the marking of a document during interlocutory proceedings is different from the marking of a document at the stage of trial. The learned Judge also observed that the Court is not expected to and does not mark documents in evidence in the interlocutory proceedings, in view of Rule 51 of the Civil Rules of Practice.

10. At the outset, we should point out that the decision in ***Doddapaneni Chennakesava Rao***, is not on the point as to whether a document, which is chargeable with duty but not duly stamped, can be marked at the interlocutory stage or not. The question before the learned Judge was whether there can be any objection to the marking of a document at the stage of trial, when the document had already been marked at the interlocutory proceedings. Therefore, the question that has now arisen in this case was not the question that was answered in ***Doddapaneni Chennakesava Rao***.

11. In any case, Rule 51 of the Civil Rules of Practice relied upon by the learned Judge in ***Doddapaneni Chennakesava Rao***, does not lead to the conclusion that the learned Judge had drawn. All that Rule 51 of the Civil Rules of Practice states is that documents referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the Court. It does not follow from Rule 51 of the Civil Rules of Practice that a document is not required to be marked at all at the interlocutory stage. Today, if Rule 51 of the Civil Rules of Practice is read in the manner in which the learned counsel for the respondents wants to read it, any document can be marked in chief-examination at the time of trial. Today, no witness is examined in chief in the box. Every witness files only an affidavit in lieu of chief-examination. If Rule 51 is read in the same manner as read by the learned Judge in ***Doddapaneni Chennakesava Rao***, all documents filed along with the affidavits of P.W.1, P.W.2,

etc., in lieu of chief-examination even at the stage of trial, will pass the test, and Section 35 of the Stamp Act will become redundant. Therefore, we do not think that the reading of Rule 51 by the learned Judge in *Doddapaneni Chennakesava Rao* is correct.

12. In *Chaganti Venkata Bhaskar*, the question that arose was whether an insufficiently stamped document can be rejected at the pre-trial stage. After extracting Section 35, a learned Judge of this Court held that rejection of inadmissible documents under Order XIII Rule 3 of CPC can be made at any stage of the suit proceedings. This view appears to be the correct view. This is in view of the fact that Section 35 uses two sets of expressions, which we have already extracted above.

13. Mr. M. Venkata Ramana Reddy, learned counsel appearing for the respondents, contended that the power to impound the document cannot be invoked by the Court at a stage when the document was not sought to be marked. In support of this contention, the learned counsel relied upon a decision of the Supreme Court in *District Registrar and Collector, Hyderabad Vs. Canara Bank*³.

14. But, a careful look at the said decision, particularly Paragraph No.14 of the judgment, would show that the Supreme Court was concerned in that case with the power of the Court to impound the document. Impounding of a document comes at a stage later than the

³ (2005) 1 SCC 496

question of examining the admissibility of the document. If the respondents still persist that an inadmissible document should be admitted, they can always take the chance requesting the Court to impound the document. At the first stage, the question is as to whether Section 35 of the Stamp Act would apply or not. On this question, the answer is too obvious, as could be found out from Section 35.

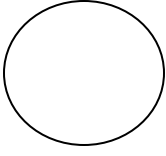
15. Therefore, we hold that even at the stage of interlocutory proceedings, a document, which is inadmissible in evidence, cannot be relied upon. Hence, the Civil Revision Petition is allowed and the order of the trial Court is set aside. Since the suit is of the year 2007, the trial Court shall endeavour to dispose of the suit, within a period of two (2) months, if the cause still survives.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J.

10th August, 2017
cbs



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓
AND
THE HON'BLE SMT. JUSTICE T. RAJANI



C.R.P.No.5673 of 2007
(allowed)

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+C.R.P.No. 5673 of 2007

% 10-08-2017

Uddandam Ramanna

.. Petitioner

Vs.

\$ Esamadugu Nagarathnamma and others

.. Respondents

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>HEAD NOTE:



! Counsel for petitioner : Mr. N. Pramod

^ Counsel for respondents : Mr. M. Venkata Ramana Reddy

? CASES REFERRED :

- 1) 2006 (4) ALT 683
- 2) 2010 (3) ALT 101
- 3) (2005) 1 SCC 496