THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.440 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the defendant is directed against the intermediary orders, dated 21.11.2016, of the learned Junior Civil Judge, Nandikotkur, passed in O.S.No.195 of 2008, whereby, the learned Junior Civil Judge overruled the objections raised by the defendant for marking of a document and permitted the plaintiff to mark the said document through PW1 and adjourned the matter to a future date for the said purpose.

2. I have heard the submissions of *Sri C.Prakash Reddy*, learned counsel appearing for the petitioner/defendant ('the defendant', for brevity) and of *Sri S.Venkata Subba Rao*, learned counsel appearing for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The preliminary facts, in a nutshell, are as follows:

The plaintiff brought the suit against the defendant for perpetual injunction in respect of Ac.5.48 cents of land situated at 80-Bannuru village limits, Jupadu Bunglow Mandal, Nandikotkur, more fully described in the schedule annexed to the plaint. The defendant is resisting the said suit. While so, during the course of trial, after the plaintiff/PW1 was examined in part and exhibits A1 to A9 were marked on his side and the matter is adjourned for further examination-in-chief of PW1, the defendant raised an objection for exhibiting the true copy of the adangal/pahani of Fasli 1408, which was issued by the Village Revenue Officer and is not counter signed by the Tahasildar of Jupadu

Bunglow Mandal. The crux of the objection of the defendant is that private copies or true copies of revenue records like adangal/pahani issued by the Village Revenue Officer, who is not competent to issue the same, cannot be accepted even as secondary evidence and such private copies or true copies are inadmissible in evidence; and that the party like the plaintiff, who wishes to rely upon any revenue records must produce certified copies of those documents issued by the competent authority. In reply, learned counsel for the plaintiff stated that the true copy of the Adangal/pahani of Fasli 1408 can be received on record and its evidentiary value or the weight to be attached to the said document can be considered at an appropriate later stage, i.e., at the stage of evaluation of the evidence and adjudication of the *lis*. The learned Judge of the trial Court having heard the submissions of the learned counsel for both the parties, *inter alia*, observed in the impugned orders that mere production and marking of a document does not confer any right and make the document credible and that proof and relevancy of the said document is a mixed question of fact and law, which cannot be dealt with during the cross examination and that in view of the Government Order of the year 2007 the document can be received on record and can be marked/exhibited. Having so held the trial Court overruled the objection of the defendant and permitted the plaintiff (PW1) to mark the said document. Aggrieved thereof, the defendant filed this revision petition.

4. Learned counsel for the defendant while reiterating the afore-stated case of the defendant submitted as follows: 'The objection was raised for marking of the true copy or a private copy of the Adangal issued by the Village Revenue Officer, as he is not competent to issue such copy. It has no status of a certified copy and hence, it cannot be

marked in evidence either as primary evidence or as secondary evidence and therefore, it is inadmissible in evidence and hence, the same cannot be marked through PW1. The Court below observed in its orders that the objection relates to mixed question of fact and law and it cannot be considered at the time of cross-examination. Having held so, the trial Court ought not to have overruled the objection and instead ought to have postponed the decision, if necessary, on the objection, if the law permitted the Court to do so, and the trial Court ought to have observed in the orders that the document will be permitted to be marked subject to the objection regarding its admissibility or otherwise and ought to have further held that the probative value of the said document would be considered at an appropriate later stage. Thus, the impugned order overruling the objection and permitting the plaintiff to mark the document, which is inadmissible in evidence, is unsustainable under facts and in law and therefore, the same is liable to be set aside.

5. Learned counsel for the plaintiff while reiterating the case of the plaintiff, which is already stated supra, and while supporting the orders of the Court below, would submit that the document is not a private copy and it is a copy certified as true copy by the Village Revenue Officer and that it is a copy of Adangal/Pahani of 1408 Fasli and that as per G.O.Ms.No.1059, Revenue (VA) Department, dated 31.07.2007, the Government of Andhra Pradesh has empowered the Village Revenue Officers like VROs and VAOs to issue certified copies of documents like nativity certificate, solvency certificate, residence certificate as well as pahani/adangal extracts and that therefore, the Village Revenue Officer is also enjoined with a duty and is empowered to issue copies of Adangal/pahanies, and therefore, the contention that the VRO is not competent to issue the said document is incorrect and that in any view

of the matter, the stage of evaluation of evidence and the weight to be attached to the documentary evidence will come at a later stage and hence, the trial Court was correct in overruling the objection of the defendant.

5.1 In reply, learned counsel for the defendant having placed reliance on a decision of this Court in Chalasani Satyanrayana Murthy v. Chalasani Rama Koteswararao[1], contended that this Court in the afore-stated decision categorically held that true copies of revenue records issued by the Village Revenue Officer cannot be accepted even as secondary evidence and that private copies or true copies issued by the VRO are inadmissible and that the party who wishes to rely upon any revenue records must produce certified copies of those documents issued by a competent authority and that when the documents are legally inadmissible under the provisions of the Indian Evidence Act, 1872, the Court cannot admit such evidence. He would further submit that in view of the precedential guidance, the provisions of the Indian Evidence Act will have precedence over the Government Order (GO supra) and that the ratio in the precedent and the provisions of the Indian Evidence Act shall only be considered but not the contents of the G.O.

6. I have given earnest consideration to the facts and submissions.

7. The only question that arises for consideration in this revision is:

> Whether true copy of adangal/pahani of Fasli 1408, issued by the Village Revenue Officer and which is not counter signed by the Tahasildar of Jupadu Bunglow Mandal can be permitted to be marked through PW1? And, if so, what shall be the appropriate order to be made in the matter?

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[1] 2010 (5) ALT 502

8. <u>POINT</u>:

The subject document is a copy of adangal/pahani of Fasli 1408 and it was issued by the VRO and it is not counter-signed by the Tahasildar. The objection regarding its admissibility is raised on the ground that the VRO is not competent to issue the same and that it is not a certified copy and that the document being a copy of revenue record, if the plaintiff wants, he shall produce only a certified copy of the revenue record issued by a competent authority and the subject document is inadmissible in evidence. In Chalasani Satyanarayana Murthy's case (1 supra), this Court having referred to the provisions of the Indian Evidence Act, held as follows:

> "A Village Officer like V.A.O., is neither custodian of those original documents nor is a person who is authorised by law to give copies thereof. The question of admitting true copies or private copies of public documents in evidence during trial is not provided by the Evidence Act. In the case on hand, the plaintiff did not examine V.A.O., who has issued the said private copies or true copies. It is not as if those private copies or true copies were made from or compared with the original. In case, they were made copies from or compared with the originals, then the party who produces the same in court has to make out existence of any of the conditions prescribed under Section 65 of the Act for receipt of such secondary evidence. When the original documents are available for copying the same or for comparing the same with true copies or private copies, the question of receiving those private copies or true copies of revenue records as secondary evidence will never arise. It follows that in case any party wishes to rely upon any revenue records or village records, then such party has to produce certified copies of those documents issued by the competent authority whose office is in possession of original records thereof. No true copy or private copy of any public document is admissible as secondary evidence."

The facts of the cited case show that at a much later stage of the matter, that is, at the time of disposal of the first appeal suit on merits, the lower appellate Court excluded from consideration the private copies or true copies of revenue records issued by the Village Administrative Officer and did not place reliance on the said documents, though marked, as they are inadmissible in law. This Court approved the said course adopted by the lower appellate Court. Therefore, it is not a case where the objection was either considered or overruled during the course of trial. Be that as it may.

9. In the case on hand, the plaintiff intends to produce and exhibit in his evidence, a copy of the adangal of Fasli 1408, dated 28.08.2008, issued by the Village Revenue Officer, 80-Bannuru village, which is not counter-signed by the Tahasildar of Jupadu Bunglow Mandal. It is admittedly not a certified copy issued in accordance with the provisions of the Indian Evidence Act. But it is a copy endorsed as true copy by the Village Revenue Officer. The competency of the said officer to issue the same is also in dispute. However, the plaintiff relies upon a GO referred to supra in support of the contention that a duty is also enjoined upon the VROs and VAOs to issue extracts of pahanies/adangals and therefore, the VRO is competent to issue the document in question, which is certified by him as a true copy. The trial Court has to now consider as to whether primacy shall be given or not to the GO relied upon by the plaintiff. Moreover, the objection does not relate to sufficiency or deficiency of stamp duty and requirement of registration of the document, it being a true copy of adangal/pahani.

10. It is now necessary to refer to the decision in Bipin Shantilal Panchal vs. State of Gujarat and Anr.[2] Wherein a Bench of Three Hon'ble Judges of the Supreme Court held as follows:

> Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided "at the last stage" in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed).

11. In view of the facts and precedential guidance and as the objection relates to only the competency of the officer who issued the document and its admissibility, the objection can be considered at an appropriate later stage, by permitting the plaintiff to mark the document subject to objection, giving of-course, liberty to the plaintiff, if the plaintiff so desires, to produce a certified copy of the said document to avoid any complaints later that he has not been given opportunity to produce the admissible evidence, in the event the document in question comes to be excluded from consideration after upholding the objection of the defendant at an appropriate later stage and while disposing of the suit either way on merits.

12. On the above analysis, this Court finds that the civil revision petition can be disposed with appropriate directions.

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[2] AIR 2001 SC 1158

13. In the result, the Civil Revision Petition is disposed of and the findings of the trial Court in the impugned order that 'the objection is overruled' are set aside. The trial Court is directed to permit the plaintiff to mark the copy of the adangal/pahani of fasli 1408, i.e., the document in question, after recording the objection regarding its admissibility in evidence and other valid objections, if any, raised by the defendant at the time of marking the said document. It is needless to state that the trial Court shall appropriately decide the said objection at a later stage in the final judgment, i.e., at the stage of evaluation of evidence and adjudication of the issues settled for determination in the suit. It is made clear that the plaintiff is at liberty, if he is so advised and so desires, to produce the certified copy of the document, to avoid complaints at a later stage that he has not been given an opportunity to produce the admissible evidence, in the event the document in question comes to be excluded from consideration after upholding the objection of the defendant at an appropriate later stage and while disposing of the suit either way on merits.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

13th September, 2017
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