

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.6002 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed impugning the course of action adopted by the learned VII Additional District Judge, holding Full Additional Charge of the post of the learned II Additional District Judge, (Judge, Fast Track Court), Mahabubnagar, in OS.no.51 of 2011, whereby the learned Additional District Judge while recording the deposition of DW1 permitted the said witness to file and exhibit, the certified copy of the registered sale deed, dated 24.02.1993, executed in favour of DW1 by his father, as exhibit B1, 'subject to objection on admissibility'.

2. I have heard the submissions of Sri Mohd.Imran Khan, learned counsel representing Sri C. Narender, learned counsel for the petitioner-plaintiff, and of Sri Md.Naymathullah, learned counsel representing Sri G. Pedda Babu, learned counsel for the 1st respondent. Though the respondents 2 to 4 are served with notices, none appeared. I have perused the material record.

3. Considering the narrow compass of the issue involved in the revision, it is necessary to refer to, infra, certain core facts as a prelude to this order.

The plaintiff brought the suit against the defendants for partition of the plaint schedule property and allotment of a 2/ 9th share to the plaintiff and for other reliefs. The 1st defendant is resisting the suit. While so, after the conclusion of recording of the evidence on the side of the plaintiff, the 1st defendant filed an interlocutory application to grant leave to file certain documents and receive the same on file. One of such documents is the certified copy of registered sale deed, dated 24.02.1993, (hereinafter, 'CC of the registered sale deed' for brevity). The said IA was resisted by the plaintiff by filing a counter. The trial Court allowed the said petition on payment of

costs and granted leave to the 1st defendant to file documents including the CC of the registered sale deed. Aggrieved thereof, the plaintiff preferred CRP.No.4513 of 2014 before this Court. This Court disposed of the said revision by an order, dated 12.09.2016. The operative portion of the said order verbatim reads thus:

10) The law is fairly settled from the expression of the Apex Court in ***Bipin Shantilal Panchal vs State of Gujarat***¹, that whenever an objection is raised during evidence taking stage regarding admissibility and relevancy 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 (on record), subject to such objections to be decided at the last stage of final judgment.

11) Having regard to the above, there is nothing to sit in revision against the impugned order but for to observe that the documents received is without prejudice to such contest on the contents of the documents in dispute to decide during trial, after the documents that to be exhibited are subject to such objections of the plaintiff, if any, for the 1st defendant to prove.

Thereafter, when DW1 was further examined in chief before the trial Court, on 10.11.2016, the CC of registered sale deed was tendered for being marked as exhibit B1. The plaintiff raised an objection for its marking. However, the trial Court noted in the deposition of DW1 as follows: 'Ex.B.1: is Certificate copy Registered Sale deed Dt.24-2-1993 executed by my father in my favour (subject to objection on admissibility)'. Thus, the document is permitted to be exhibited by making a cryptic observation – 'subject to objection on admissibility'. Aggrieved thereof, the plaintiff filed the present revision.

4. Learned counsel for the plaintiff would submit as follows: 'This Court in the earlier orders passed in CRP.No.4513 of 2014 having referred to the decision of the Supreme Court in *Bipin Shantilal Panchal v. State of Gujarat*¹, clearly noted that whenever an objection is raised during evidence taking stage regarding admissibility and relevancy 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 subject to such

¹ AIR 2001 SC 1158

objection to be decided at the last stage of final judgment. Though such a categorical observation is made by this Court, the trial Court nonetheless marked the CC of the registered sale deed 'subject to objection on admissibility' and did not state or observe that the marking is tentative and that the objection would be considered/decided at the last stage of final judgment. Therefore, the said course adopted by the Court below in marking the said CC of the registered sale deed 'subject to objection on admissibility' is opposed to settled legal position and also the directions of this Court in the earlier orders in the afore-stated CRP. Therefore, the trial Court committed a grave error in the matter. The said error causes great prejudice to the plaintiff. Hence, the plaintiff is obliged to file the present revision for redressal and appropriate relief.'

5. Per contra, learned counsel for the 1st defendant would submit that CC of the registered sale deed is marked as exhibit B1 'subject to objection on admissibility' by following the directions of this Court only.

6. Now the question for consideration is as to whether the course adopted by the trial Court in permitting to exhibit the CC of the registered sale deed as exhibit B1 'subject to objection on admissibility' is sustainable?

7. In this regard, it is necessary to refer to the legal position in the decision in Bipin Shantilal Panchal (supra) wherein the Supreme Court has made 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. In the case on hand, the trial Court did not note as to what was the objection of the plaintiff for marking of the CC of the registered sale deed and also did not note as to what was the reply submission made on behalf of the 1st defendant in answer to the objection raised by the plaintiff. If the objection as now being canvassed before this Court is related to marking of CC of the registered sale deed and its admissibility as secondary evidence without explaining the

non availability of the original registered sale deed and laying a foundation for reception of secondary evidence, then it is for the 1st defendant to explain the non availability of the original sale deed and account for its non production and thus lay a factual foundation as required under law to bring the 1st defendant's case within one of the cases provided for in Section 65 of the Indian Evidence Act for reception of the CC of the registered sale deed. The copy of the deposition that is produced before this court, does not lay bare as to whether any such explanation was offered for the inability to produce the original and whether any foundation is laid for reception of CC of the registered sale deed as secondary evidence in the place of the original registered sale deed. Provision of Section 65 of the Act, 1872, provides for permitting the parties to adduce secondary evidence. However, such a course is subject to a number of limitations. In a case where any factual foundation has not been laid for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (See: State of Rajasthan and others v. Khemraj and others [2000 (5) Supreme 125 = AIR 2000 SC 1759].

8. Viewed thus, this Court finds that the course adopted by the trial Court in permitting to exhibit CC of the registered sale deed by making a cryptic mention 'subject to objection on admissibility' without stating what is the objection and what is the reply to the objection and without even mentioning that the marking is tentative and the objection would be decided at the last

stage of final judgment, is contrary to settled legal position and the earlier order of this Court passed in CRP.no.4513 of 2014, which is binding on the parties to the *lis*.

9. On the above analysis, this Court finds that the revision can be disposed of with appropriate directions.

10. In the result, the Civil Revision Petition is allowed in part. The trial Court is directed to *suo motu* recall DW1 and make a note in the deposition of DW1 as what is the precise objection of the plaintiff for marking CC of the registered sale deed and what is the reply submission of the 1st defendant to the objection of the plaintiff and also that the marking given as 'exhibit B1' to the CC of registered sale deed is tentative and that the said objection would be decided at the last stage of final judgment. It is made clear that since the document marked is a certified copy of the registered sale deed and not the original sale deed, the trial Court may give an opportunity to the 1st defendant, if the 1st defendant so chooses and desires, to file an application explaining the circumstances for the inability to produce the original sale deed and to permit reception of secondary evidence, that is, the CC of the registered sale deed. Needles to state that if such an application comes to be filed the trial Court shall dispose of the same in strict accordance with the procedure established by law, however, after giving an opportunity of hearing to the plaintiff.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed.

There shall be no order as to costs.

M.Seetharama Murti, J

20.03.2017
Vjl