THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3495 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 12.04.2016 in I.A. No.301 of 2016 in O.S. No.866 of 2014 passed by the XV Additional District Judge, Ranga Reddy District dismissing the petition filed by the petitioner under Section 33 of Indian Stamp Act (for short 'the Act') to impound the insufficiently stamped document i.e., memorandum of family arrangement dated 21.03.2001.

It is the case of the petitioner that memorandum of family arrangement dated 21.03.2001 was tendered for marking during trial and learned counsel for the petitioner raised objection that it is an instrument of partition as defined under Section 2 (15) of the Act, not sufficiently stamped, thereby the document is inadmissible in evidence.

Respondents 1 and 2 filed separate counters raising specific contentions that the document was already marked before the Civil Court in a different proceeding and therefore, such objection regarding admissibility of the document cannot be sustained as the said document is said to be insufficiently stamped has already been admitted and marked as Ex.A1 in other suit, and therefore, it cannot be held that it requires stamp duty at this stage, and prayed for dismissal of the petition.

The trial Court, upon hearing argument of both the counsel, dismissed the application by order dated 12.04.2016, while observing in para No.13 of the order that the document in question was already marked in one of the suits i.e., in O.S. No.1121 of 2014 on the file of II Additional Senior Civil Judge, Ranga Reddy District as Ex.A1 and such admission of the document and its marking as Ex.A1 is not challenged by the petitioner/ plaintiff in that suit, and in such a case, the admissibility of document on any ground cannot be challenged, thereby the objection raised by the learned counsel for the petitioner is without any substance.

Aggrieved by the said order dated 12.04.2016, the present revision is filed on the ground that the document in question is an instrument as defined under Section 2 (15) of Act after amending the Indian Stamp Act, 1899 and it is liable to be rejected as inadmissible in evidence being unregistered, however it was admitted in evidence contrary to the principles laid down by this Court and hence, prayed to set-aside the said order.

During the course of hearing, learned counsel for the petitioner brought to the notice of this Court that the document in question is marked as exhibit in the present suit, subject to objection on later date. The objection regarding admissibility of the document is sustainable as the document is insufficiently stamped and unregistered and, therefore when the very marking of the document itself is an illegality, marking of the document cannot be permitted and hence prayed to set-aside order under revision.

Whereas learned senior counsel for respondents would contend that the document is already marked as exhibit in view of the bar under Section 36 of the Act, the admissibility of document cannot be raised at any subsequent stage in support of his contention, placed reliance on two judgments in *Javer Chand vs Pukh Raj Surana*[1] and *Pilla Narasimhaswamy Patrudu and others vs Bank of Baroda*[2]. By the date of order under challenge, the document was not marked but later, marked the documents subject to objections by the trial Court, the revision petition has become infructuous and therefore requested to dismiss this petition.

Undisputedly, the document is a memorandum of past partition and an instrument of partition is also liable to be impounded within the meaning of Section 2 (15) of Indian Stamp Act, as amended by A.P (Amendment) Act 17 of 1986 w.e.f. 16.08.1996, wherein an instrument of partition is defined as follows:

> *"Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition (and a memorandum recording past partition).*

Here the document in question is tendered in the evidence for marking as a memorandum recording past partition and the same is not in dispute. So, when it is an instrument of partition as defined

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[1] AIR 1961 SC 1655
[2] AIR 1982 AP 240

under Section 2 (15) of the Act as amended by Act 17 of 1986 w.e.f 16.08.1986, the first ground raised by learned counsel for the petitioner that when the document is marked subsequent to filing of the revision, subject to objection cannot be sustained and the petitioner is precluded from raising such objection, at any subsequent stage, in view of the bar contained under Section 36 of the Act.

Section 36 of the Act created an interdict on the power of the Court in questioning the admissibility of the document, once it is marked as an exhibit. According to Section 36 of the Act, once an instrument has been admitted in evidence, such admission shall not, except as provided under Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Taking advantage of the bar contained under Section 36 of the Act, learned Senior counsel contended that such objection is not open to be raised for the petitioner, at this stage, to contend that the document is inadmissible in evidence. Despite the bar contained under Section 36 of Act, Order XIII Rule 3 C.P.C postulates that where a document is irrelevant or inadmissible under law, it can be objected at any stage. The objection as to admissibility and relevancy can be raised at any stage and if the Court satisfies that the document is inadmissible for any reason, the Court can reject such document. In the judgment of Apex Court in *Javer Chand's case (1 supra)* and relying on the same judgment of this Court in *Pilla Narasimhaswamy Patrudu's case (2 supra)* held that *"12. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. S.35, Stamp Act, is in the nature of a penal provision and has far reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exs.P-1 and P-2 and bore the endorsement 'admitted in evidence' under the signature of the Court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S.36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of Appeal or revision to go behind that order."*

In view of the law declared by the Apex Court and this Court, once the document is marked as an exhibit, it cannot be contended that the same is inadmissible in evidence in the same suit at any subsequent stage. But in this case, the document in question was marked in other suit in O.S. No.1121 of 2014 without raising any objection between the same parties, that will not preclude the petitioner in raising such an objection regarding admissibility of document in the present suit. Therefore, the conclusion arrived by the trial Court for admitting the document in evidence in the order under challenge before this Court is unsustainable under law.

Further, the Apex Court in *R.V.E. Venkatachala Gounder vs Aurlmigu Viswesaraswami and V.P.Temple and another*[3] and *Ram Rattan (dead) by legal representatives vs Bajranlala and others*[4] held that the parties can raise objection as to the admissibility of a document and mere marking of document for convenience of reference would not preclude the parties to raise objection as to its admissibility. In *R.V.E. Venkatachala Gounder's case* (3 supra) the Apex Court is of the view that merely because a document is marked as an exhibit an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. Similarly, in *Ram Rattan's case* (4 supra) the Supreme Court is of the view that when the document was tendered in evidence by the plaintiff

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[3] AIR 2003 SC 4548
[4] AIR 1978 SC 1393

while in witness box, objection has been raised by the defendants that the document was inadmissible in evidence as it was not only insufficiently stamped, but also for want of registration, it was obligatory upon the learned trial judge to apply his mind to the objection raised and decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. However, it would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation, at a later stage before the suit is finally disposed of, it would none-the-less be obligatory upon the Court to decide the objection. Therefore, the objection as to admissibility of a document can be raised at any stage, in view of the decision rendered by the Apex Court in *R.V.E.Venkatachala Gounder's case* (3 supra) and *Ram Rattan (dead) by legal representatives' case* (4 supra).

According to Section 33 of the Act, every person having by law or consent of parties authority to receive evidence, and every person-in-charge of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

The Stamp Act is fiscal enactment and the provisions of the act have to be strictly construed to see that the Government shall not lose its revenue. But in the present case on the limited point that admission of document in another suit and its marking as exhibit without any objection, the trial Court concluded that the petitioner is precluded from raising such objection of its admissibility. But the trial Court has not followed the procedure contemplated under Section 33 of Indian Stamp Act before coming to such a conclusion.

In the present case, the trial Court recorded the finding, which is baseless, for the reason that the document is challenged before the Court which is authorised to receive such document in evidence and in such case, the procedure to be followed by the Court is to impound the document under Section 33 of the Act, if it is found insufficiently stamped and requires stamp duty and penalty. The Full Bench judgment of the Apex Court in *Bipin Shantilal Panchal vs State of Gujarat and another*[5], while deciding the similar issue, held that it is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes

[5] 2001 (3) SCC 1

of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practises, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute is this: 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.)

However, it is made clear by the Apex Court that the Court has to pronounce the decision on the deficit stamp duty and penalty payable on a document without postponing the decision before proceeding further. But in respect of other objections, the Court can consider such objections at the end of trial while pronouncement of judgment and the Court can consider whether such objection is sustainable and such evidence can be excluded from consideration and pronounce judgment.

But in this case, the objection raised by the learned counsel for the petitioner was not considered by the trial Court and passed order without recording such the objections raised with regard to stamp duty or registration or any other objection as to its admissibility. Such marking is against the procedure laid down by the Apex Court in *Bipin Shantilal Panchal's case* (5 surpa).

However, it is evident from the objection filed before the Court, the petitioner raised an objection with regard to admissibility of document as an exhibit on the ground of non payment of stamp duty on it. Therefore, it is obligatory on the part of the trial Court to decide admissibility of the document impound and collect stamp duty and penalty payable on it.

At this stage, though it is contended by the learned senior counsel for the respondents that when the document is marked as Ex.B1 subject to objection, the petitioner can file an application under Order XIII Rule III C.P.C., in the order under challenge with regard to admissibility of the document but on account of marking the same as an exhibit in other suit in O.S. No.1121 of 2014 between the same parties is not a ground to admit the document and bar under Section 36 of the Act will not apply. Therefore, the order under challenge dated 12.04.2016 in I.A. No.301 of 2016 in O.S. No.866 of 2014 is hereby set-aside, leaving it open to the petitioner to file application under Order XIII Rule 3 C.P.C and on filing such application and after hearing both the parties, the trial Court is directed to decide the admissibility of document with reference to Sections 2 (15), 33 to 35 of the Act.

With the above direction, the revision is disposed of. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY,J

Date:20.06.2017
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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