THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.6366 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the second respondent in the suit challenging the orders in I.A.Nos.1019 & 1839 of 2015 in O.S.No.215 of 2013 dated 02.11.2016, passed by the VII Additional District Judge (FTC), Visakhapatnam, wherein the Appellate Court ordered as follows:

> "**IA 1839/2015**: is allowed directing the petitioners/ laintiffs to pay stamp duty and penalty on the disputed document i.e., 'Khararnama Angeekara pathram' dated 18.11.2007 and office is directed to levy stamp duty and penalty on the above referred document as per law and collect the same from the plaintiffs on or before 24.11.2016 without fail; and
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> **IA 1019/2015**: is also allowed recalling Pw1 for the purpose of continuation of chief examination on 24.11.2016 without fail; else both the petitions stand dismissed. For compliance of condition call on 24.11.2016."

Smt. Routhu Annapoorna and 13 others filed I.A.No.1839 of 2015 under Section 35(1) of Indian Stamp Act requesting the Trial Court to impound the document dated 18.11.2007 and I.A.No.1019 of 2015 is filed under Order 18 Rule 17 CPC to recall PW-1 for the purpose of continuation of chief examination. The Trial Court, after hearing the rival contentions, allowed both the applications holding that the petitioners are liable to pay stamp duty and penalty on the disputed document as per law and directed the office to levy stamp duty and penalty on the disputed document as per law and collect the same from the plaintiffs on or before 24.11.2016 and also allowed the other petition, recalling PW.1 for the purpose of continuation of chief examination.

Now, the petitioner challenged both the orders in I.A.Nos.1019 & 1839 of 2015 on the ground that the Court did not decide admissibility of document for want of registration. In fact, the Court recorded a finding that the document does not require any registration, as it would not create any interest in the property in present. Now, the same finding is challenged before this Court on the ground that the Court is not expected to record such finding, deciding the very validity of the document, though it is not registered at this stage and it is contrary to the judgment of the Supreme Court in **Bipin Shantilal Panchal vs State Of Gujarat And Anr**[1]**,** wherein, the Apex Court held as follows:

> 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 fall out 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 of the case finally. If the appellate or revisional court, when the same question is re-canvassed, 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 practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

[1] AIR 2001 SC 1158

> 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.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.
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> We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

In **Bipin Shantilal Panchal[1]** case, the Apex Court issued certain directions to be followed by the Court while trial is going on. The Apex Court directed the officers to decide the admissibility of document only on the ground of want of stamp duty while postponing other objections regarding registration etc., deferring the decision on admissibility of the document for want of registration, permitting the Courts to decide at the time of judgment. Therefore, recording a finding as to the admissibility of the document, though it is unregistered during trial is against the guidelines issued by the Apex Court in **Bipin Shantilal Panchal[1]** case.

Therefore, the finding regarding admissibility of the document, though it is unregistered, it is hereby set-aside while permitting the Court to proceed with the trial, deferring the findings on admissibility, directing the Trial Court to decide the same at the time of pronouncing the judgment.

Hence, the order passed by the Trial Court in I.A.No.1839 of 2015 is set-aside, while directing the Trial Court to record its finding as to the admissibility of the document though not registered and if the Court finds that the document is inadmissible, the Court can exclude the document from consideration and pass appropriate orders.

I.A.No.1019 of 2015 is filed under Order 18 Rule 17 CPC for recalling PW.1 for purpose of continuation of chief examination, as a consequence of receiving the document in evidence, after impounding the document.

To mark a document, the witness has to be recalled. Otherwise, it is difficult for the petitioner to prove the document. Therefore, for the limited purpose of marking the document, recalling of witness P.W.1 is permitted. Hence, I find no error in the order passed by the Trial Court and the same is dismissed.

With the above direction, civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:22.06.2017
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