

**HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CIVIL REVISION PETITION No.1585 of 2018**

**ORDER :**

This Civil Revision Petition is arising out of the order dated 01.02.2018 in E.A.No.249 of 2017 in E.A.No.225 of 2016 in E.P.No.61 of 2015 passed by the Principal District Judge, Khammam.

The petitioner is respondent No.1, respondent No.1 is the petitioner/Decree Holder and respondent Nos.2 and 3 are respondent Nos.2 and 3 in E.A.No.249 of 2017. For the sake of convenience, the parties in this revision are referred to as they were arrayed in E.A.No.249 of 2017 before the Court below.

The brief facts of the case are that petitioner/Decree holder in O.S.No.69 of 2016 filed a claim petition in E.A.No.225 of 2016 in E.P.No.61 of 2015 under Order 21 Rule 58 r/w. Section 97 of C.P.C. and filed chief affidavit placing reliance on Ex.A.13, which was styled as Original Deed of Agreement executed among co-brothers i.e., P.N. Subrahmanyam, P.N.N. Kuti, P.N. Parameswaran Kutti and P.N. Venkata Krishnan. The said document was marked as Ex.A.13 when the senior counsel for the petitioner/Decree holder was absent and in the presence of junior counsel, who could not raise objection as to the inadmissibility of the

document since it is under-stamped and unregistered. Therefore, the petitioner filed an application in E.A.No.249 of 2017 seeking to demark document - Ex.A.13 and permit her to raise objection regarding admissibility of the document. The respondent filed counter stating that the petitioner/Decree holder cannot take shelter claiming that the junior advocate was unaware of inadmissibility of the document and that the Decree holder was properly represented and he did not raise any objection for marking of the document Ex.A.13 and after marking the document, it cannot be objected. After hearing both sides, placing reliance on a decision of this Court in BOGGAVARAPU NARASIMHULU Vs. SRI SRIRAM RAMANAIAH AND ORS.<sup>1</sup> and also the decision of the Apex Court in KALE Vs. DY. DIRECTOR OF CONSOLIDATION<sup>2</sup>, the Court below held that merely because a document is marked and which is under-stamped, it is not a ground to demark the document. The Court is always empowered to collect the stamp duty at any stage instead of demarking the document. The document is ordered to be sent to the District Registrar to assess the stamp duty treating it as a family settlement arrangement deed.

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<sup>1</sup> 2014(1) L.S. 35

<sup>2</sup> AIR 1976 SC 807

While holding as above, through the impugned order dated 01.02.2018, the Court below disposed of E.A.No.249 of 2017 with the following observations:

- (i) Ex.A.13/document is treated as family settlement arrangement and held to be required registration.
- (ii) Ex.A.13 is under stamped since the document is classified as a family settlement arrangement deed where-under the interest either extinguish or creating in respect of immovable property.
- (iii) The document shall be sent to District Registrar for calculation of stamp duty.
- (iv) Upon the calculation of the stamp duty, the claim petitioner shall pay the duty and penalty in terms of the orders of this Court.
- (v) The District Registrar is directed to assess the stamp duty and send the same within ten days from the date of receipt of the document.
- (vi) The request of the petitioner to demark the document is rejected.
- (vii) In the circumstances no costs.

Heard Sri P. Rama Sharana Sharma, learned counsel for the petitioner/respondent No.1, Sri J. Prabhakar, learned counsel for respondent No.1/Decree holder and Sri Surendra Desai, learned counsel for respondent No.3/Judgment debtor. Perused the order under challenge.

Learned counsel for the petitioner/respondent No.1 mainly submitted that Ex.A.13, which was styled as Original Deed of Agreement, is a Memorandum of Understanding (MOU), which neither creates any right nor extinguishes the

rights of the parties, but it only contemplates how to execute the division of properties. It is further submitted that as the subject document do not convey any property, it does not require any stamp duty or registration, as ordered by the Court below. The learned counsel also submitted that the subject document is only a family arrangement between the family members and there are no third parties involved in the said document, and as such the impugned order passed by the Court below is not in accordance with law.

In support of his submissions, learned counsel for the petitioner/respondent No.1 placed reliance on a judgment of the Apex Court in JAVER CHAND AND ORS. Vs. PUKHRAJ SURANA<sup>3</sup>, wherein the Apex Court observed as under:

“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, 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. Once a document has been marked as 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. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.”

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<sup>3</sup> AIR 1961 SC 1655

Learned counsel for the petitioner/respondent No.1 also placed reliance on a decision of the Apex Court in V.E.A. ANNAMALAI CHETTIAR AND ANOTHER Vs. S.V.V.S. VEERAPPA CHETTIAR AND OTHERS<sup>4</sup>, wherein the Apex Court in para Nos.6, 9 and 10 observed as under:

“6. It was first contended that the cadjan voucher was not proved before the Trial Court and that P. W. 1 who deposed to the handwriting of Ramanatha was not competent to do so and his testimony in that behalf was unreliable. The Trial Court accepted the testimony of P. W. 1 and also brought to aid the presumption under Section 90; [Evidence Act](#), held that the cadjan voucher was duly proved and admitted it as Ex. P. 8.

The High Court concurred in the same finding and there were thus concurrent findings of both the courts below in regard to the genuineness and validity of the document. It was ~~however~~ urged that the defendants represented the junior branch of the joint family and that they were not the ~~representatives~~ of Ramanatha who had executed the document in favour of Shanmugham.

This argument could not avail the appellants, Ramanatha was the karta and the managing member of the joint family and as such had the authority to execute the document evidencing the deposit and if he did so, his act was binding on all the members of the joint family. Neither the senior branch nor the junior branch of the joint family could be heard to say that they were not bound by the transaction and the defendants were liable to Shanmugham and the plaintiffs for the amount due at the foot of the deposit along with the other members constituting the senior branch of the family. This contention of the defendants is therefore unsound.

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<sup>4</sup> AIR 1956 SC 12

9. The words "we shall pay the said sum" did not make any difference to the position. Even though the transaction was a transaction of deposit as above stated the deposit could be coupled with an agreement that it would be payable on demand. Such an agreement could be express or implied and if an express agreement in that behalf was recorded in the document in the terms above, the transaction of deposit could not be thereby converted into a transaction of loan and the words "we shall pay the said sum" could not convert the document into a promissory note.

The promise to pay would be involved in a promissory note as well as in a deposit within the meaning of [Article 60, Limitation Act](#) and the court would have regard to the intention of the parties and the circumstances of the case in order to arrive at the conclusion whether the document was a promissory note. We are of the opinion that the conclusion reached by both the courts below in regard to the cadjan voucher was correct and the contention of the appellants to the contrary is untenable.

10. There is also a further difficulty in the way of the appellants and it is that the document having been admitted in evidence such admission could not be called in question at any stage of the proceedings on the ground that it had not been duly stamped. The provisions of [Section 36, Stamp Act](#) preclude the appellants from raising any objection against the admission of the document at this stage and the appellants are not entitled now to urge this objection before us."

Placing reliance on the above decisions, learned counsel for the petitioner/respondent No.1 submitted that when a document has been admitted in evidence, such admission cannot be questioned at any stage of the proceedings on the

ground that it has not been duly stamped, as the provisions of Section 36 of the Stamp Act precludes raising of any objection against the admissibility of the document at any stage.

Learned counsel for the petitioner/respondent No.1 further submitted that the document in question is not a Settlement Deed as contended by the learned counsel for respondent No.1/Decree holder. It is contended that as the document does not create or extinguish any right or title in respect of immovable or movable property and as it is only an understanding that the elder brother has to shoulder the burden of the family debt, it is not liable for stamp duty. Therefore, it is contended that Article 49 of Schedule I-A of the Stamp Act is not applicable to the present case.

On the other hand, learned counsel for respondent No.1/Decree holder submits that as per Article 49 Schedule I-A of the Stamp Act, the subject document Ex.A.13 is liable for stamp duty, as it is a Settlement Deed among the family members, which is liable for stamp duty.

Article 49 Schedule I-A of the Stamp Act reads as under:

**STAMP ACT SCHEDULE  
ANNEXURE  
SCHEDULE 1-A**

| Article No |   |    | DESCRIPTION OF INSTRUMENT                                                                                                                                                                                                                                                                                    | PROPER STAMP DUTY                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------|---|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 49         |   |    | SETTLEMENT :-                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|            | A |    | Instrument of ( including a deed of dower)                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|            |   | a) | Settlement in favour of a member or members of a family.<br><br>EXPLANATION<br><br>For the purpose of this Article “Family “ means father, mother, husband, wife, brother, sister, son daughter, and includes grand-father, grand- mother, grand-child, adoptive father or mothers, adopted son or daughter. | The same duty as Bottomry Bond ( No:14) for a sum equal to the amount or market value of the property settled as set forth in such settlement;<br><br>Provided that where and agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall be the duty as mentioned in the Article 6. |

On consideration of the arguments advanced by the learned counsel for the respect parties and a perusal of the order under challenge, it is obvious that once a document is marked as an exhibit in a proceeding, it cannot be demarked merely because it is under-stamped. Therefore, the observation of the Court below in that regard does not require any interference.

The question as to the nature of the document, whether it is a Settlement Deed or not is concerned, the Court below has already held that Ex.A.13 document is a family

settlement/arrangement, which requires registration. As far as the said aspect of registration is concerned, there cannot any objection for respondent No.1/Decree holder that the family settlement requires registration as per the provisions of the Registration Act.

As far as the direction of the Court below to send the document Ex.A.13 to the District Registrar for calculation of stamp duty is concerned, the decisions relied upon by the learned counsel for the petitioner/respondent No.1 reveal that when once the document is admitted in evidence, it cannot be called in question at any stage of the proceedings on the ground that it has not been duly stamped or under-stamped. Therefore, in the light of the decisions of the Apex Court in V.E.A. ANNAMALAI CHETTIAR's case and JAVIER CHAND's as referred above, once a document has been admitted in evidence, it is not open either to the trial Court or to the Court of appeal or revision to go behind that order. Such order is not one of those judicial orders, which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction. Therefore, as far as stamp duty is concerned, the Court below cannot invoke the provisions of Section 36 of the Stamp Act to impose stamp duty.

In fact, the trial Court held that the document in dispute is a family arrangement and directed to be

impounded the document for stamp duty. The trial Court, however, refused to demark the document. Once the document is marked, it cannot be impounded or demarked in the light of the judgment in JAVER CHAND. As per the ratio laid down in the decision in BOGGAVARAPU NARASIMHULU of this Court, inadmissibility of the document can be raised at any time, and marking of the document do not take away the right of the party to question the inadmissibility of the document. The evidentiary value of the document can be considered in the judgment after receiving entire evidence.

The trial Court, on one hand, held that it cannot be demarked, but ordered to send the document for calculating the stamp duty considering the document as a family arrangement.

In the light of the judgment in JAVER CHAND, it is clear that once the document is admitted, it cannot be questioned at any stage. In fact, when the trial Court had decided not to demark the document, it cannot even send the document for calculating the stamp duty and impounding. The admissibility and relevancy of the document can be decided by the Court after receiving entire evidence in the proceedings.

**IN THE RESULT,** the civil revision petition is disposed of setting aside the findings of the trial Court with a direction to consider the document which is already marked in evidence as per its evidentiary value, taking into consideration the provisions of the **Registration Act, Stamp Act** and the Evidence Act.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

28.09.2018.  
Msr

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GUDISEVA SHYAM PRASAD, J



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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28.09.2018  
Msr