

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.2769 of 2009

ORDER ::

The 1st plaintiff is the revision petitioner herein. At the time of cross-examination of PW1, when an objection was taken by the learned counsel for the 2nd defendants-respondent herein as to the admissibility of the agreement of sale, marked as Ex-A7, on the ground that it is inadmissible for want of proper stamp duty and penalty, the trial Court, by the impugned the docket order dated 07-04-2009, upheld the objection and observed that unless proper stamp duty and penalty is paid, Ex-A7 agreement of sale is to be eschewed from consideration. Hence, this civil revision petition.

2. Sri B. Venkat Rama Rao, learned counsel for the petitioner contended that when once the document is admitted in evidence and marked as an 'exhibit', and no objection for such marking of the document as an 'exhibit' was raised, the statutory embargo envisaged under Section 36 of the Indian Stamp Act, 1899, (for short, 'the Act') operates and except as provided under Section 61 of the Act, it cannot

be called in question at any stage of the suit or proceeding on the ground that the instrument has not been duly stamped. It is further contended that since no objection was taken either by the defendants or by the Court when Ex-A7 was marked, it is not open for the 2nd defendant now to contend that it is insufficiently stamped and it is also not open for the Court to recall the order. Decisions in **R.V.E VENKATACHALA GOUNDER vs. ARULMIGU VISWESARASWAMI & VP TEMPLE¹**, **PHOOLCHAND AGARWAL vs. D. NARAYANA SWAMY²**, **C. PRITHIVI RAJ REDDY vs. GPR HOUSING PVT. LTD³**, **POLAMRAJU RAMA SESHAGIRI RAO vs. CHENNAPAGADA VENKATA NAGA SATYAVATHI⁴** are relied on.

3. Sri J. Prabhakar, learned counsel for the 2nd respondent contended that mere receiving of a document may not be construed as the admissibility or proof of a document and the trial Court, inasmuch as, the instrument Ex-A7 contains a recital about the

¹ AIR 2003 SC 4548

² 2006 (1) ALD 289

³ 2011 (1) ALD 289

⁴ 2007 (4) ALD 62

delivery of possession of property in question, rightly required the petitioner to pay the stamp duty and penalty and unless it is paid, it has to be eschewed from consideration. It is also contended that under Order 13, Rule 3 CPC, the trial Court is empowered to reject any document which is found to be irrelevant and inadmissible in evidence at any stage of the suit and, therefore, no exception can be taken to the impugned order. Decisions in **SRINIVASA BUILDERS vs.**

A. JANGA REDDDY⁵ & SYED YOUSUF ALI vs. MOHD. YOUSUF⁶ are relied on.

4. Heard learned counsel for the parties and perused the impugned order.

5. The point that arises from consideration is whether the trial Court which admitted the document in evidence as Ex-A7, can now reject on an objection being raised by the learned counsel for the 2nd defendant to eschew the instrument from consideration on the ground it is insufficiently stamped; moreso in the light of the fact that the 2nd defendant did not raise any such objection, at the time of marking the document as Ex-A7.

⁵ 2016 (2) ALT 321

⁶ LAWS (APH) 2016 28

6. In this connection, reference to relevant provision of law would be required for better appreciation. Section 36 of the Stamp Act reads thus:-

36. Admission of instruments, where not to be questioned---Where an instrument has been admitted in evidence, such admission shall not, except as provided in 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.

7. The words “admitted in evidence” contemplate the procedure under Order 13, Rules 3 & 4 CPC is followed. Order 13, Rules 3 and 4 CPC reads thus:-

“3. Rejection of irrelevant or inadmissible documents:- *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.*

4. Endorsements on documents admitted in evidence:- *(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—*

- (a) the number and title of the suit,*
 - (b) the name of the person producing the documents,*
 - (c) the date on which it was produced, and*
 - (d) a statement of its having been so admitted;*
- and the endorsement shall be signed or initialled by the Judge.*

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

8. It is to be seen that the trial Court has received the affidavit of examination in chief of PW1 on 16-12-2008 and posted the matter for marking of documents shown in the affidavit to 02-01-2009 and on the said date, as many as 34 documents were marked as exhibits, among them Ex-A7 is one such document. It is borne out from the record that learned counsel for the 2nd defendant in the trial Court took three adjournments, that too on payment of costs, for the purpose of cross-examination of PW1. Learned counsel for the 2nd defendant did not raise any objection whatsoever to the marking of the document, but raised such an objection only during the course of cross examination of PW1.

9. In **R.V.E VENKATACHALA GOUNDER's** case (1 supra), the Supreme Court observed that objection as to admissibility of documents in evidence, may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence, but is directed towards

the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been 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. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence, or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering

the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence and such a procedure and practice is fair to both the parties. In another decision relied on by the learned counsel for the petitioner in **PHOOLCHAND AGARWAL's** case (2 supra) wherein this Court considering the decision in **R.V.E VENKATACHALA GOUNDER's** case (1 supra) at para 9 and 10 mentioned as follows:-

"9. The petitioner, admittedly did not challenge the order of the Judge marking Ex.A27-lease deed in evidence in any higher forum and now, by this application, he sought to reject Ex.A27-lease deed on the ground that it is not registered and as such, inadmissible in evidence and inasmuch as Ex.A27-lease deed, is in itself inadmissible in evidence, he contends that the Judge ought not to have marked the same in evidence and inasmuch as the Ex.A27-lease deed was marked, without providing opportunity to object to its making, the same has to be rejected. I am unable to accept this contention of the petitioner. Admittedly, Ex.A27-lease deed, which is not a registered document, is a secondary piece of evidence. As per the provisions of Section 65 of the Evidence Act, 1872, the objections as to admissibility of documents can be raised at two stages and this was classified by the apex Court in RVE Venkatachala Gounder vs. Arulmigu Viswesaraswami and VP Temple, (supra) namely (i) objection that the document sought to be proved is itself inadmissible and (ii) objection directed not against the admissibility of the document but against the mode of proof thereof on the ground of irregularity or insufficiency. In relation to the first category, the Apex Court held that the objection can be raised even after the document has been marked as "an exhibit" or even in appeal or revision and in relation to the second category, it held that the objection can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. In the instant case, the petitioner contends that the Ex.A27-lease deed, which is

marked in evidence, is in itself inadmissible as it is unregistered and insufficiently stamped and his objection to Ex.A27-lease deed not be with regard to the mode of proof on the ground of irregularity or insufficiency, as per the ratio of the apex Court in *RVE Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple*, (supra) on which he placed heavy reliance, he can raise objection even after the document has been marked as "an exhibit" or even in appeal or revision. Now that Ex.A27-lease deed has already been marked as an exhibit, the only course open to the petitioner is to take objection as to its consideration at the time of arguments and more so having regard to the judgment of the Apex Court in *Roman Catholic Mission vs. State of Madras*, wherein it was held that a document not admissible in evidence, if brought on record, has to be excluded from consideration.

10. In *Smt. Sunkari Srujana v. Chikkala Bhavani Shankar*, 2004 (1) LS 830 : 2004 (2) ALD (NOC) 151, a learned Judge of this Court held that it is the duty of the Court to look into whether a document is properly stamped or not before admitting the document or giving the document an exhibit mark, but when once the document is exhibited and admitted, the Court cannot recall the said order by reviewing the same. Inasmuch as in the case on hand, the Ex.A27-lease deed was already admitted in evidence, the same cannot be recalled and more so by way of a review, which the petitioner by reason of the application, in principle sought."

10. The other decisions of this Court in **C. PRITHIVI RAJ REDDY's** case (3 supra) & **POLAMRAJU RAMA SESHAGIRI RAO's** case (4 supra) are also to the effect that when once document is marked as exhibit without any objection regarding sufficiency of stamped duty payable, having failing to raise objection at appropriate stage at the time of marking the document, it is not open to the parties to raise objection with regard to admissibility of the document at a later stage.

11. In **SRINIVASA BUILDERS's** case (5 supra) at para 21 it was mentioned as under:

“21. In the decision of Shyamal Kumar Roy, 2006 11 SCC 331 and the decisions of this Court in Isra Fatima, 2006 4 ALT 216 and C. Prithvi Raj Reddy, 2011 6 ALT 671, there is no reference to the case of RVE Venkatachala Gounder, 2003 8 SCC 752 and the consideration of effect of Rule 3 of Order 13 CPC and Section 61 of the Indian Stamp Act. Hence, those decisions cannot be taken in aid for the purpose of deciding the present issue.”

12. It is laid down in a catena of decisions of the Supreme Court and as well as this Court that once the document is marked as exhibit in the case, Section 36 of the Act operates. The language of Section 36 of the Act clearly bars calling in question the admissibility of an instrument on the ground of its being insufficiently stamped at any stage of the suit. In the case on hand, no doubt the 2nd defendant's counsel did not take objection as to the marking of the document ExA-7 when it was specifically posted for such a purpose on 02-01-2009, it is not open for the 2nd defendant to take such a plea at any stage thereafter in the light of the bar contained under Section 36 of the Act.

13. But, a look at the recitals of the Ex.A-7, as is evident from the impugned order, the said Ex.A-7 contains a recital about the delivery of possession of property in question, and in such a situation Article 47-A in Schedule 1-A takes effect and stamp duty has to be paid on an agreement of

sale as if sale, in this case Ex.A-7, when the document is followed by delivery of possession of the property agreed to be sold. This Court in **Syed Yousuf Ali's** case (5 supra) referred to the ratio laid down in **Athapuram Raghuramaiah vs. Dyava Ramaiah**, (2012 6 ALT 271) and the decision in **Vemireddy Kota Reddy vs. Vemi Reddy Prabhakar Reddy** (2004 3 ALD 187) which considered the scope of ambit of Section 36 of the Indian Stamp Act and Order 13, Rule 4 CPC. The ratio laid in **Athapuram Raghuramaiah's** case and **Vemireddy Kota Reddy's** case was mentioned at paras 20, 21, 24 & 25 of **Syed Yousuf Ali's** case which is as under:-

“20. Learned counsel for the petitioner further drawn the attention of this Court to [Athapuram Raghuramaiah and another v. Dyava Ramaiah](#), wherein this Court considered the scope of Section 36 of the Indian Stamp Act and Order XIII Rule 4 CPC for impounding documents and held that mere marking of a document or showing it to the witness would not amount to admissibility of document in evidence, after judicial consideration as to its admissibility, unless the endorsement made on the document at the time of marking contains a specific statement as to its admission in evidence and signed or initialled by the Judge as prescribed under Order 13 Rule 4 CPC, it cannot be said to be admitted. This Court further held that the words admitted in evidence as appearing in Section 36 of the Indian Stamp Act mean admitted after judicial consideration of objections relating to its admissibility. Thus, there shall be a judicial determination of the question whether it can be admitted in evidence or not for want of stamp, on the day when the document was shown to the witnesses and marked. Merely because a document was marked or shown to the witness would not mean that the objection raised by the opposite party was rejected by judicial determination.

21. In **Vemireddy Kota Reddys** case (6th supra), this Court held that the objection as to admissibility of the document has to be decided before assigning exhibit number. When the documents were marked as exhibits in the absence of defendant or his counsel and without considering the nature of the document by

the Court, assigning exhibit number cannot be said to be admitted in evidence and interdict contained in [Section 36](#) would not come to the aid of the party in whose evidence the document was marked as exhibit without any judicial determination, totally debarring the adversary to challenge the admissibility of document in evidence. In the said judgment, single Judge of this Court relied on [Javer Chand and others v. Pukhraj Surana](#) to conclude that marking of a document is assigning exhibit number without judicial determination would not amount to admitting document in evidence and such objection can be raised at later point of time.”

“24. According to Order 13 Rule 3 CPC the Court may at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds for such rejection. Order 13 Rule 4 CPC prescribes the endorsement to be made on the document when a document is admitted in evidence. According to it, there shall be an endorsement on every document which has been admitted in evidence containing number and title of the suit, the name of the person producing the document, the date on which it was produced and a statement of its having been so admitted and the endorsement shall be signed or initialled by the Judge.

25. Here there is an endorsement on the reverse of possessory contract of sale consisting the details under Order 13 Rule 4(1)(A) to (C), 1(D) is absent. Therefore, the document cannot be said to be admitted after judicial determination, in such a case, exercising power under Order 13 Rule 3 CPC, the Court can reject any document which it considers irrelevant or in-admissible, recording reasons.”

14. At para 32 of the decision in **SYED YOUSUF ALI's** case (5 supra) it was summarised as under:-

“32.A co-joint reading of section 36 of the Indian Stamp Act and Order XIII, Rule 3 CPC, there is little conflict as to rejection of any document which is already marked on the ground that the document is irrelevant or inadmissible in evidence after recording reasons. If really the bar contained in Section 36 is absolute which preclude the Court to entertain any objection as to admissibility at any subsequent stage, after

the document is marked in evidence, Order XIII, Rule 3 become redundant...”

15. Division Bench of this Court by order dated 12-02-2014 in WP No.29434 of 2013 drawn distinction between admitting a document in evidence and marking a document as evidence. Marking of a document is only for convenient reference, whereas, admitting a document is admitting the document as evidence, after applying judicial mind. In the instant case, it may not be open for the party to raise objection as to its admissibility when once the document is marked as exhibit in the light of the bar contained under Section 36 of the Act, but still it is open for the Court, under Order 13, Rule 3 CPC to unfold the same if it is found in non-compliance of the other provision of law, in this case it is contrary to Article 47-A in Schedule 1-A. Both Section 36 of the Act and Order 13, Rule 3 CPC have to be read harmoniously, since both the provisions sought to achieve cause of justice. If the Court is divested to use its discretion under Rule 3 of Order 13 CPC, the Court would not have any choice, but to consider it as evidence, once a document is received/admitted in evidence, without any objection from the other side.

16. The facts emerging in this case are similar to the facts in **SYED YOUSUF ALI's** case (5 supra). In the circumstances, it is to be held that the impugned order of the trial Court does not suffer from any illegality of irregularity warranting interference by this Court in exercise of

jurisdiction under Article 227 of the Constitution. The civil revision petition fails and it is accordingly dismissed. Miscellaneous petitions, if any pending in cases shall also stand disposed of. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 25-01-2018
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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