THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.3624 & 3591 of 2018

COMMON ORDER:

These two revision petitions, under Article 227 of the Constitution of India, are filed by the unsuccessful petitioners - defendants 2 & 3 assailing the orders, dated 23.01.2018, in IA.No.602 of 2017 in OS.No.172 of 2004 and orders, dated19.03.2018, in IA.No.143 of 2018 in the aforesaid suit.

1.1 IA.No.602 of 2017 is filed by the petitioners/D2 & D3 under Order VIII Rule 1(A) and Section 151 of the Code of Civil Procedure, 1908 ['the Code', for brevity] read with Section 63 of the Indian Evidence Act, requesting to receive the Photostat copies of unregistered partition agreements, dated 21.09.1966, and, 15.08.1973, as secondary evidence.

1.2 IA.No.143 of 2018 is filed by the petitioners/D2 & D3 under Section 47-A of the Indian Stamp Act and Section 151 of the Code requesting to send the afore-said Photostat copies of unregistered partition agreements to the Sub-Registrar, Ongole, [Stamp Duty Collector] for impounding the said documents and collecting the duty chargeable on the said documents as well as penalty.

2. I have heard the submissions of Sri T. Sreedhar, learned counsel appearing for the revision petitioners - defendants 2 & 3, and of Sri K. Rajeshwar Rao, learned counsel appearing for the 1st respondent – plaintiff. 2nd defendant is the 1st defendant. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: 'The plaintiff filed the suit against the defendants for partition and other reliefs. Defendants 1 & 3 filed written statements resisting the suit. During the pendency of the suit, the defendants 2 & 3 filed the afore-stated two Interlocutory Applications for the above-mentioned purposes. The plaintiff filed counter in both the applications and resisted the said applications. On merits and by the orders impugned in these two revisions, the learned I Additional Junior Civil Judge dismissed the said petitions. Aggrieved thereof, the defendants 2 & 3 are before this Court.'

4. The case of the defendants 2 & 3 in support of their requests is as follows:

The suit is filed by the plaintiff for partition. Defendants 2 & 3 are resisting the suit. In the written statement of the 3rd defendant, it is pleaded that there was a written partition agreement, dated 21.09.1966, entered into between the plaintiff and the father of the 3rd defendant – Venkata Krishnaiah and that the original of the said document was retained by the plaintiff and that a Photostat copy of the same is supplied to the father of the 3rd defendant. It is also pleaded in the written statement that when the plaintiff raised a dispute relating to the Eastern side property, a further agreement was executed, on 15.08.1973, pursuant to the mediation of well wishers of both families to avoid litigation and rivalry and that the original of the said document, dated 15.08.1973, was retained by the plaintiff and a Photostat copy of the same was supplied to the father of 3rd defendant and that the plaintiff as well as Venkata

Krishnaiah, the father of 3rd defendant, signed on both the said original documents. During the pendency of the present suit, earlier, the defendants 2 & 3 filed IA.No.802 of 2011 seeking a direction to the plaintiff to produce those two unregistered documents, dated 21.09.1966 and 15.08.19073. The plaintiff resisted the said application stating that he is not having custody of those documents. The trial Court dismissed the said petition by its order, dated 22.08.2014, *inter alia*, observing that there is an option for the defendants 2 & 3 to obtain certified copies. Since the documents are not registered documents, the question of obtaining certified copies does not arise. Under the circumstances, the defendants 2 & 3 are constrained to produce the Photostat copies of the said partition agreements and make a request to permit them to file the Photostat copies and receive the same as secondary evidence on their behalf. Therefore, defendants 2 & 3 filed IA.No.602 of 2017 under Section 63 of the Indian Evidence Act read with Order VIII Rule 1(a) and Section 151 of the Code for the said purpose. The trial Court by the order that was impugned in CRP.No.3624 of 2018 dismissed the application of defendants 2 & 3 and refused to accord permission to adduce secondary evidence by filing the Photostat copies of unregistered partition agreements, dated 21.09.1966 and 15.08.1973. Therefore, the defendants 2 & 3 filed IA.No.143 of 2018 requesting to send the Photostat copies of the afore-said two unregistered partition agreements to the sub-registrar, Ongole, (Stamp-duty Collector) for collection of stamp duty and penalty on the said documents. The defendants 2 & 3 are willing to pay stamp duty and penalty on the Photostat copies as the originals are in the custody of the plaintiff and the same are not produced despite requests by the defendants 2 & 3.

5. Per contra, the case of the plaintiff is this: 'The material averments in the affidavits filed in support of the petitions of the defendants 2 & 3 are false. The averments that in the circumstances alleged, the partition agreements were executed between the plaintiff and the father of the 3rd defendant and that the alleged original agreements are given to the plaintiff and that the Photostat copies of the same were supplied to Venkata Krishanaih, the father of the 3rd defendant, and that the said original agreements are signed by the plaintiff and the father of the 3rd defendant and that in view of the dismissal of the petition in IA.No.802 of 2011 by the trial Court, the defendants 2 & 3 have no option but to file the Photostat copies and make a request to receive the same as secondary evidence and that as the said petition was dismissed by the trial Court they are entitled to make a request to the trial Court to send the photostat copies of the said agreements to the stamp duty collector for collection of duty and penalty are all false. In view of the dismissal of IA.No.803 of 2011, the defendants 2 & 3 are put to strict proof that their present applications are maintainable. A notice to produce documents was issued, on 12.07.2004, with false allegations for arguments sake. After receipt of the notice, a reply was given, on 14.07.2004, with true facts. The contentions of the defendants 2 & 3 in the affidavits filed in support of the two petitions are contrary to their pleadings in the written statements. Defendants 2 & 3 are not taking a consistent stand in the suit proceeding. In the cross examination, PW1 clearly stated that he is not having possession of any such documents. The petitions are un-necessarily filed and are liable to be dismissed.'

6. Learned counsel for the defendants 2 & 3 contended as follows: - 'The trial Court grossly erred in rejecting both the requests of the defendants 2 & 3. The trial court erroneously rejected the request of the defendants 2 & 3 to file Photostat copies of the partition agreements in question as secondary evidence despite the fact that they are contending that the originals of the same are in the possession of the plaintiff and that it is impossible for them to produce the originals. The law permits to file Photostat copies when the originals are not within the control and reach of the person, who is seeking permission to file Photostat copies. The trial Court having refused to grant permission to file Photostat copies as secondary evidence on the ground that stamp duty cannot be collected on the Photostat copies, further, did not permit the request of the defendants 2 & 3 to send the said documents to the stamp duty collector for collecting of stamp duty though the said authority is having power to collect duty collectable on a document which is either not stamped or insufficiently stamped. In-fact, a reading of the agreement of the year 1966 clearly shows that it does not require to be stamped and it can be admitted in evidence. The trial Court ought to have considered admission of the said document which is a Photostat copy by according permission to file the same as secondary evidence as the said document is not chargeable with any duty. Therefore, the orders of the trial court impugned in these two revisions are liable to be set aside.'

7. Learned counsel for the plaintiff contended as follows: 'The defendants 2 & 3 having admitted that the original documents in question are chargeable with duty and having filed a petition before the trial Court

with a request to send the said documents to stamp duty collector for collection of stamp duty and penalty, cannot now be permitted to contend that the document of the year 1966 is not at all required to be stamped. Such a contention is not available to the defendants 2 & 3 as they are estopped by their conduct. Moreover, it is the finding of the trial Court that a reading of the said document shows that it is liable to be charged with duty and is required to be stamped. The said well considered finding needs no interference. Further, the law is well settled that the provisions of the Indian Stamp Act are concerned with the instruments, which are original instruments, and any copy of an instrument cannot be allowed to be relied upon as there is no scope for inclusion of a copy of a document within the meaning of Section 2(14) of the Indian Stamp Act. As per the settled legal position, a copy of the instrument cannot be validated by impounding and such a copy cannot be admitted as secondary evidence under the Indian Stamp Act.'

8. In reply, learned counsel for the petitioners/defendants 2 & 3 submitted that as there is no estopple against law, the defendants 2 & 3 can be permitted to contend that the document of the year 1966 is not at all required to be stamped.

9. I have given earnest consideration to the facts and submissions. On detailed and thoughtful consideration, this Court finds that the revisions can be disposed of on a short point.

10. Admittedly, both the documents in question are Photostat copies of agreements said to be partition agreements. As the trial Court found that

no stamp duty & penalty can be collected on photostat copies of the said partition agreements and further, as the trial Court did not agree with the contention of the defendants 2 & 3 that the original partition agreements are with the plaintiff, no permission is accorded to file photostat copies of the same as secondary evidence. On the premise that the original documents namely unregistered partition agreements, dated 21.09.1966 and 15.08.1973, are chargeable with duty, IA.No.143 of 2018 was filed with a request to send the Photostat Copies of the said original documents to the stamp duty collector (Sub-Registrar, Ongole) for collection of stamp duty and penalty. The other application, IA.No.602 of 2017, was filed for permission to adduce secondary evidence by filing the Photostat copies of the said original documents. Going by the contentions of the defendants 2 & 3, the first short question is as to whether their request to send the Photostat copies of documents to stamp duty collector for collection of stamp duty and penalty can be considered or not. The next question is whether the Photostat copies of the unregistered partition agreements in question can be permitted to be filed by according permission to the defendants 2 & 3 to adduce secondary evidence. The answers to these questions are no longer *res integra*. In **Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao**[1], the Supreme Court emphatically held that stamp duty cannot be collected on a copy of document, if the original was not subjected to stamp duty at all. The ratio in this cited decision is as follows:

> **"The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for**

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[1] AIR 1971 SC 1070

allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instalment for the purpose of Section 35. 'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

If Section 35 only deals with original instruments and not copies, Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words 'an instrument' in Section 36 must have the same meaning as that in Section 35. The Legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding."

In the said decision, the Supreme Court quoted and approved the judgment of the Privy Council in **Raja of Bobbili v. Inuganti China Sitaramaswami Garu**[2]. The same principle was followed by this Court in **Akkam Laxmi v. Thosha Bhoomaiah**[3]. Further, in **Hariom Agrawarl v. Prakash Chand Malviya**[4] rendered by a bench of three Hon'ble Judges of the Supreme Court, the Supreme Court, while referring to the earlier decision in **Jupudi Kessavara Rao** [1 supra] held as follows:

'It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the

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[2] (1900) ILR 23 Madras 49
[3] 2002 (4) ALD 808
[4] AIR 2008 SC 166

instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899.'

11. In view of the facts and settled legal position referred to supra, this Court finds that the orders impugned of the trial Court do not brook interference.

12. In the result, the revision petitions are dismissed. Nevertheless, it is made clear that this order shall not preclude the defendants 2 & 3, if they so desire, from contending before the trial Court that the original partition agreement of the year 1966 is not chargeable with any duty. And, it is needless to state that it is for the trial Court to deal with any such contention, if advanced, in strict accord with the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M. SEETHARAMA MURTI, J

05.09.2018
Vjl