

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.4042 & 4043 OF 2018

Date: 27.11.2018

Between:

Bolla Taraka Ramu, s/o. Ram Babu @ Ramu,
Aged about 30 years, r/o.Yalamarthi Vari Street,
Ramaraopet, Tadepalligudem and another.

.....Petitioners/
plaintiffs

and

Y.Rama Murthy, s/o. Swamy, Aged 67 years,
Prakasharaopalem, Nallajerla Mandal,
West Godavari district and others.

.....Respondents/
defendants



The Court made the following:

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COMMON ORDER:

First plaintiff is the petitioner. O.S.No.321 of 2007, pending in the Court of I Additional Junior Civil Judge at Tadepalligudem, is filed praying to grant decree by declaring that the plaintiffs are absolute owners of plaint schedule property and that plaintiffs are in possession and enjoyment of the same with absolute rights and perfected their title by adverse possession; and to grant permanent injunction against defendants.

2. Plaint averments would disclose that 1st plaintiff is the son of 2nd plaintiff. 2nd plaintiff married the daughter of defendant no.1. Defendants 2 and 3 are the sons of defendant no.1. Plaintiffs allege that defendant no.1 executed settlement deed dated 15.02.1992 in favour of his daughter, wife of 2nd plaintiff, three items of property mentioned in the plaint schedule as 'Pasupukunkuma' while performing the marriage with 2nd plaintiff. Possession was also handed over to them and they are in possession and enjoyment of said properties. The plaint averments would go to show that entire basis of the case of plaintiffs is, the alleged settlement deed executed by defendant no.1 in favour of wife of 2nd plaintiff. During the examination of PWs, said document was not marked. The evidence was closed. At that stage, plaintiffs filed I.A.No.34 of 2018 praying to reopen the suit for further re-examination of P.W.1 to mark document dated 15.02.1992 and I.A.No.35 of 2018 is filed to mark the settlement deed dated 15.02.1992. Both I.As., were considered and by common order dated 11.06.2018, trial Court

dismissed both I.As. Aggrieved thereby, these revision petitions are filed.

3. In support of I.A.No.35 of 2018, brief affidavit is filed by the 1st plaintiff. It is contended that the same document marked in I.A.No.1880 of 2007 filed by plaintiffs to grant temporary injunction was not opposed by the defendants. In view of the same, by placing reliance on Section 36 of Indian Stamp Act, 1899, it is contended that once a document is admitted in evidence, it cannot be opposed for marking at the subsequent stage of the proceedings and, therefore, it is just and necessary to mark the said document as Exhibit A3. Said prayer was opposed contending that merely because document was marked in I.A., and no objection can be raised while marking the document in the suit, is not valid in law.

4. On appreciating the respective contentions and the precedent decisions cited at the bar, trial Court rejected the applications. Trial Court observed that settlement deed is unregistered document and the same cannot be admitted as Section 17 of the Registration Act, 1908 requires compulsory registration. It was further held that, though it was marked as exhibit A1, during enquiry in I.A.No.1880 of 2007 as it was not marked during the course of trial, Section 36 of the Indian Stamp Act do not come to the aid of plaintiffs.

5. Learned counsel for first plaintiff sought to contend that in view of law laid down in the decisions cited at the bar, the view taken by the trial Court is not valid. He would submit, merely because document was not registered is no ground to reject the prayer of plaintiffs to recall P.W.1 and to grant permission to mark the document. He would submit that the document do not require

registration as it is only a recital of what is given to daughter by defendant no.1 in 'pasupukunkuma'. He would further submit that as document was already marked at the interlocutory stage, no objection can be raised at the stage of marking in the suit.

6. Learned counsel for plaintiffs placed reliance on following decisions:

i) **SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited**¹;

ii) **Trinadha Patro v. Lingaraj Rana**²;

iii) **S.Mohan Krishna v. V. Varalakshamma and others**³;

iv) **Stella Mary v. M.Devender Reddy**⁴; and

v) **Tatineni Venkata Subba Rao (died LRs brought on record) v. Kodali Jayalaxmi Devi, Kanur, Krishna District**⁵

7. *Per contra*, learned counsel for defendants would submit that in view of law laid down by learned single judge of this Court in **Doddapaneni Chennakesava Rao v. Nannapaneni Narendra and another**⁶, it is no more open to plaintiffs to contend that as document was marked at the interlocutory stage, it need not be marked. She would further submit that the document in issue is compulsorily registerable and, therefore, not admissible in evidence. She placed reliance on Full Bench decision of this Court in **Gandevalla Jayaram Reddy v. Mokkala Padmavathamma and others**⁷.

¹ (2011) 14 SCC 66

² 2016 (1) ALT 174

³ 2017 (5) ALT 264

⁴ 2017 (5) ALD 593

⁵ 2018(4) ALT 1

⁶ 2006 (4) ALD 263

⁷ 2001 (5) ALD 402 (FB)

8. Two issues arise for determination:

i) Once a document is marked in an interlocutory application whether opposite party can object to marking the same document in the suit?; and

ii) whether trial Court erred in holding the document in issue is not admissible in evidence ?

ISSUE NO.I:

9. Same plea was raised in **Doddapaneni Chennakesava Rao**.

In the said case also, the concerned document was marked at the interlocutory stage while considering I.A., and reliance was placed on Section 36 of the Stamp Act against objection to marking of document in the suit. Learned Judge held as under:

“8. The marking of a document during interlocutory proceedings is different from the marking of a document at the stage of trial. In fact, the Court is not expected to and does not mark documents in the interlocutory proceedings, because as per Rule 51 of the Civil Rules of Practice the deponent to the affidavit, who wishes to rely on a document, has to mark it as an exhibit, and those documents should contain a certificate in Form 16 made by the officer attesting the affidavit. Since all the documents marked during interlocutory proceedings may not be marked at the time of trial, and documents marked during interlocutory proceedings cannot be said to have been marked during the course of trial of the suit, and since the documents in the interlocutory stage, when not marked at the time of trial, cannot be taken into consideration for disposal of the suit, marking of documents during interlocutory proceedings, has nothing to do with the marking of documents during the course of trial. In fact, the point for consideration in this revision is not res integra because in Rajamanickam and three Ors. v. Elangovan and four Ors. 1998 (1) Mad. LW 443, it is held that marking a document in interlocutory proceedings is not admission of

document during the course of trial and so objection regarding the document being insufficiently stamped can be taken at the stage of trial.”

10. The opinion expressed by this Court in **S.Mohan Krishna** goes against the submission of learned counsel for petitioners. Defendant filed I.A. to reject the registered and unstamped sale letter, as it evidences agreement of sale coupled with delivery of possession and thus, hit by provisions of Stamp Act and Registration Act. Trial Court directed levying stamp duty and penalty. Primary objection raised by the petitioner was document once marked without raising objection cannot be rejected. Refuting the said contention, learned Judge observed as under:

“20.....Though facts are different, the law laid down by the Courts time and again is that to admit a document in evidence the Court has to apply its mind and decide the admissibility of document in evidence, judicially, mere marking for convenience of reference itself would not amount to admitting the document by applying judicial mind and it is not a judicial determination as to the admissibility of document in evidence. Section 35 created clear embargo against acting upon insufficiently stamped document for any purpose. Any purpose would include collateral purpose. Even if both parties gave consent for marking insufficiently stamped document, it shall not be acted upon, more particularly to enforce the right of parties under contract of sale, unless it falls under any clauses of proviso. The present document does not fall within any of the clauses of proviso to Section 35 of the Act, when document shall not be acted upon admitting the same by consent would mean that it is the duty of the Court to decide admissibility of document in evidence judicially.”

11. I am in respectable agreement with the view taken by the learned Judge in **Doddapaneni Chennakesava Rao**. Mere marking of a document at interlocutory stage for consideration of prayer in on I.A. is not a bar for the opposite party to raise objection while the

same is sought to be marked in the suit. The trial Court has come to correct conclusion on this aspect.

ISSUE NO.II:

12. Though prayer and pleadings in I.A.No.35 of 2018 are limited to Section 36 of the Stamp Act, the defendants opposed the prayer of plaintiff also on the ground that as the document is not registered and not duly stamped, is not admissible in evidence. In this Civil Revision Petition also, arguments are advanced on admissibility of the document by both sides. Learned counsel for plaintiffs cited several decisions in support of the claim that trial Court erred in observing that the document is not admissible in evidence as it is not in compliance of Section 17 of the Registration Act. Learned counsel for defendants placed reliance on Full Bench judgment to contend that settlement deed transferring the property as 'pasupukunkuma' also requires registration.

13. Though, matter is at the stage of seeking leave to mark the document in issue, the contentions on admissibility of document is considered having regard to the fact that the suit is of the year 2007, said document was not presented for marking when evidence of P.Ws was recorded and these applications are filed after the evidence was closed praying to reopen the evidence to mark the said document.

14. The decisions cited at the bar discussed hereunder:

14.1. In **SMS Tea Estates Private Limited**, the lease deed provided for settlement of disputes between the parties by arbitration. The lease deed was not registered. One of the issues

considered by the Supreme Court was whether arbitration agreement clause in an unregistered document which is compulsorily registrable is enforceable. Supreme Court held:

“13. Similarly, when an instrument or deed of transfer (or a document affecting immovable property) contains an arbitration agreement, it is a collateral term relating to resolution of disputes, unrelated to the *transfer* or transaction affecting the immovable property. It is as if two documents—one affecting the immovable property requiring registration and the other relating to resolution of disputes which is not compulsorily registrable—are rolled into a single instrument. Therefore, even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer.

.....

16. An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of the Registration Act read with Section 16(1)(a), an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration.”

(Note: Section 16(1)(a) referred to herein above is from the Arbitration and Conciliation Act, 1996)

14.2. In **Trinadha Patro**, learned single Judge of this Court observed that mortgage deed which was not duly stamped and not registered was presented with a request to impound. This Court observed that the trial Court should impound, collect requisite stamp duty and penalty under Section 35 of the Stamp Act. Court

further observed that, whether the said document would pass the test of relevancy to be admissible in evidence and whether said document can be admitted in evidence for collateral purpose under Section 49 of Registration Act, can be looked into at the time when the document is actually tendered in evidence.

14.3. In **Stella Mery**, the Trial Court treated the document as unstamped and held that the document can be permitted to be marked subject to payment of stamp duty and penalty. This Court observed that it is an instrument written in contravention of the provisions of Stamp Act and should be deemed to be unstamped. Court observed that such instrument not duly stamped is liable for impounding and such instrument can be admitted in evidence on payment of duty with penalty, if any.

14.4. In **Tatineni Venkata Subba Rao**, application to receive a document was opposed on the ground that it was not validly stamped and was not registered. The Trial Court rejected the said objection. Learned single Judge of this Court observed,

“If an insufficiently stamped document comes before a Court, a duty is cast upon the Court to impound the document by following the procedure under the Stamp Act and ensure that the requisite stamp duty is paid. Only after the requisite stamp duty is paid, the document becomes admissible in evidence. If the duty/penalty is not paid, it is wholly inadmissible.”

14.5. In **Gandevalla Jayaram Reddy**, Full Bench considered the issue whether transfer of immovable property by way of ‘pasupu kumkuma’ requires registration. Full Bench observed:

“7.The Division Bench, in our opinion, further committed a manifest error in holding that the 'pasupu

kumkuma' being both involuntary as well as for consideration, the same would not be a gift within the meaning of Section 122 of the Transfer of property Act. Evidently such a transaction would create right in immovable property in one and the right of the owner thereof shall be extinguished and thus the same would attract the provisions of Section 17(1)(b) of the Registration Act. No authority has been cited by the learned Division Bench in support of their opinion that pasupu kumkuma could very well be done orally.

8. Furthermore, the learned Judges proceeded on a wrong premise in holding that the pasupu kumkuma is not a gift. 'Pasupu Kumkuma' as defined in P. Ramanatha Iyer's Law Lexicon means a gift, a settlement or assignment of land to a daughter. Inevitably therefore, such a gift of immovable property, the consideration whereof would be love and affection could come within the meaning of Section 123 thereof."

15. Section 17(1)(b) of Registration Act mandates that a non-testamentary instrument which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest should be compulsorily registered. Section 49 of the Registration Act imposes fetters on admissibility of a document having above characteristics, as evidence. However, proviso appended to Section 49 of the Registration Act holds carves out exception. According to this proviso, such document can be received as evidence for collateral purposes, even if it is not registered.

16. According to Section 35 of the Stamp Act, 1899, instrument not duly stamped is inadmissible in evidence for any purpose, by any person. In other words, there is complete prohibition under Section 35 of the Act, 1899 for admissibility of document in evidence unless stamp duty is paid.

17. It is consistently held by this Court and the Supreme Court that in any civil suit, other than suit for specific performance, even for collateral purpose, the document, which is compulsorily

registerable and attracts duty, cannot be relied upon unless required duty is paid.

18. In **RACHAKONDA RAMAKOTESHWARA RAO**, the question was whether a document not duly stamped/ unstamped can be received in evidence even for a limited purpose. This Court answered the issue in the negative. This Court held:

“3. A perusal of the said provision shows that once the document, which is chargeable with duty is not duly stamped, shall not be admitted in evidence. The bar engrafted under Section 35 of the Stamp Act is an absolute bar and, therefore, the document cannot be used for any purpose, unlike the bar contained in Section 49 of the Indian Registration Act (for brevity 'the Registration Act'). Under the proviso incorporated under Section 49 of the Registration Act, the document can be looked into even if it is not registered for collateral purpose or other purpose specified inter alia in the proviso. The learned Counsel appearing for the first respondent endeavours to make a distinction between the expression "as evidence" and the other expression "in evidence" and contends that although a document cannot be received as evidence, the same can be looked into for a collateral matter for the purpose of showing the signature, I am afraid, I cannot accede to the said contention of the learned Counsel appearing for the first respondent, having regard to the fact that it is an absolute bar engrafted under Section 35 of the Stamp Act. Without receiving the document in evidence, it cannot be used even for the limited purpose. For admitting the document in evidence, it is got to be duly stamped although the purpose might be a different one. Therefore, the document in the first instance shall have to be received or admitted in evidence. Even for that the bar contained under Section 35 of the Stamp Act operates.” (emphasis supplied)

19. In **Avinash Kumar Chauhan v. Vijay Krishna Mishra**⁸, respondent, a member of Schedule Tribe, intended to transfer a house and land for consideration. The entire sale consideration was paid and possession was also delivered. However, permission of the Collector in terms of Section 165(6) of M.P.Land Revenue Code, 1959 was rejected. The appellant filed suit for recovery of

⁸ (2009) 2 SCC 532

2,70,000/-. In support of his claim that the entire sale amount was paid, which he sought to recover, he intended to rely on the agreement dated 4.8.2003. By order dated 09.01.2007, said document was directed to be impounded. The decision of the trial Court was upheld by the High Court. Before Supreme Court, it was contended that the said unregistered deed of sale was sought to be put in evidence not for the purpose of enforcement of the contract, but only for the purpose of recovery of the amount of consideration and that being a collateral one, the provisions of Sections 33 and 35 of the Stamp Act are not attracted. Reliance was placed on proviso appended to Section 49 of the Registration Act. Supreme Court held as under:

“17. The Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions.

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23. The contention of learned Counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In Bondar Singh (supra) this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined: (SCC p.163, para 5)

“5. The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present

case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized...

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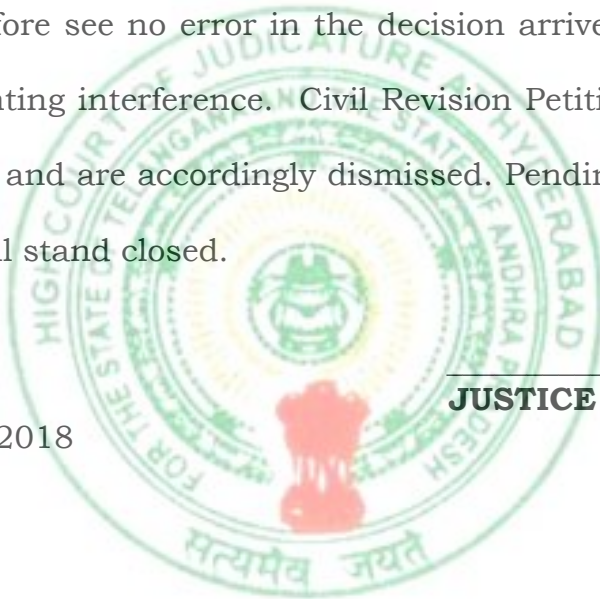
25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.”

20. The document in issue is an instrument which is compulsorily registerable and must be duly stamped.

21. I therefore see no error in the decision arrived at by the trial Court warranting interference. Civil Revision Petitions are liable to be dismissed and are accordingly dismissed. Pending miscellaneous petitions shall stand closed.

Date: 27.11.2018
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JUSTICE P.NAVEEN RAO



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