THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2016 OF 2016

ORDER:

This civil revision petition is filed by the petitioners-defendants, under Article 227 of the Constitution of India, assailing the order dated 23.2.2016 passed in I.A. No.764 of 2015 in O.S. No.183 of 2012 on the file of the Court of V Additional District Judge, Karimnagar.

2. Heard Sri V.V.Raghavan, learned counsel representing Sri V.Srikantha Rao, learned counsel for the petitioners and Sri N.Ashok Kumar, learned counsel for the respondent.

3. The parties to this revision petition are hereinafter referred to as they were arrayed before the trial Court, to avoid confusion.

4. The petitioner filed O.S.No.183 of 2012 seeking a direction to the respondents to pay jointly and severally a sum of Rs.1,00,00,000/- (Rupees one crore only) towards unliquidated damages along with interest at 18% per annum from the date of filing of the suit till realisation. During the pendency of the suit, the petitioner filed I.A.No.764 of 2015 under Section 63 of Indian Evidence Act, to mark photocopy of the agreement dated 14.11.1993 as secondary evidence. The trial Court, after affording reasonable opportunity to both parties, allowed the petition. Aggrieved by the same, the respondents filed the present civil revision petition.

5. The contention of the learned counsel for the respondents (revision petitioners) is two fold: (1) Photocopy of the agreement is not admissible in evidence; and (2) the trial Court has not properly considered the case-law cited on behalf of the revision petitioners and allowed the petition on assumptions and presumptions.

6. The learned counsel for the petitioner (respondent herein) submitted that the respondents themselves torn the original agreement dated 14.11.1993; therefore, the trial Court rightly allowed the petition. He further submitted that it is not a fit case to interfere with the impugned order.

7. Now the point that arises for consideration in this revision is:

> *Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?*

8. To substantiate the contentions, learned counsel for the respondents (revision petitioners) has relied upon the following decisions:

(i) **Akkam Laxmi v Thosha Bhomaiah**[1], wherein this Court held at paragraph No.9 as follows:

> 9. ... ... When the original instrument which is required to be stamped, in view of the peremptory language in Section 35 of the Act, shall not be allowed to be introduced in evidence when it is not duly stamped and a copy of it need not be stamped and cannot be acted upon in view of the bar contained in the second limb of Section 35 of the Act, allowing a copy of the instrument to be introduced as secondary evidence is nothing but circumventing the

[1] 2002 (4) ALD 808

> provisions of Section 35 of the Act. If a Xerox copy were to be permitted, it would certainly circumvent the mandatory provisions of Section 35 of the Act. Therefore, notwithstanding the legal position that a copy of the instrument need not be stamped, the same cannot be permitted to be introduced by means of secondary evidence when the original itself is not duly stamped inasmuch as such a document cannot be acted upon.

(ii) **Obelisetty Ramanadham v Obelisetty Bhaskar Rao**[2], wherein this Court held at paragraph No.8 as follows:

> 8. From the above it is clear that the stamp duty that is to be paid is much higher than what has been paid. In the light of the said insufficiency, it is clear that the said document requires impounding and without the same it is inadmissible in evidence in view of the prohibition provided for under Section 35 of the Stamp Act. When once the original itself is inadmissible in evidence, the question of accepting a Xerox copy of the same into evidence does not arise. Of course, there is force in the contention of learned Counsel for respondents, Mr. Krishna Murthy, that a Xerox copy made from the original by mechanical processes, which in itself ensure the accuracy of the copy, and copies compared with such copies, and the same is admissible in view of Section 63 of the Act. There cannot be any dispute to the said provision of law. If the original of Ex.B-1, which is sought to be marked as an exhibit, is properly stamped, is admissible in evidence and it is not prohibited under Section 35 of the Stamp Act and the same can be accepted. But here is a case where the original itself is inadmissible for want of proper stamp duty and when once the original itself is inadmissible, the question of accepting a Xerox copy of the same under Section 65 of the Act, does not arise.

(iii) **Tatineni Venkata Subba Rao v Kodali Jayalaxmi Devi**[3], wherein this Court held at paragraph Nos.14 and 23 as follows:

> 14. Next judgment cited is Avinash Kumar Chauhan v. Vijay Krishna Mishra, (2009) 2 SCC 532. In this case also the Hon'ble Supreme Court held that under Section 35 of the Stamp Act, unless the document is properly stamped, it cannot be received in evidence. The Hon'ble Supreme Court held that either for collateral purpose or for a main purpose, an insufficiently stamped document cannot be used in evidence. Therefore, the Court held that an insufficiently stamped agreement of sale cannot be acted upon by the Court. The word any purpose whatsoever were interpreted to mean both main and collateral purpose.
>
> 23. Therefore, on a review of the entire case law available on record, this Court is of the opinion that an insufficiently

[2] 2008 (2) ALT 24
[3] 2018 (4) ALD 173

> stamped document cannot be received in evidence for any purpose (main or collateral). 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.

(iv) **J.Yashoda v K.Shobha Rani[4]**, wherein the Hon'ble apex Court held at paragraph No.7 as follows:

> 22. Therefore, on a review of the entire case law available on record, this Court is of the opinion that an insufficiently stamped document cannot be received in evidence for any purpose (main or collateral). 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.

As per the principle enunciated in the cases cited supra, an unstamped document cannot be received in evidence.

9. Let me consider the facts of the case on hand, in the light of the above legal principle.

10. The petitioner filed the suit claiming unliquidated damages from the respondents. A perusal of the record reveals that the second respondent is the wife of the first respondent, who are defendant Nos.1 and 2 in the suit. The record further reveals that the petitioner initiated criminal proceedings against the first respondent under Section 376 of IPC. Due to the intervention of the elders, the matter was settled between them. It is the case of the petitioner that the first respondent executed agreement dated 14.11.1993 in her favour and paid an amount of Rs.20,000/- by way of cash.

[4] (2007) 5 SCC 730

The further case is that the first respondent torn the original agreement. Therefore, the petitioner came up with photocopy of the agreement dated 14.11.1993.

11. The crucial question that falls for consideration is:

> *Whether a photocopy of the unstamped agreement can be received as secondary evidence under Section 63 of the Indian Evidence Act?*

12. A perusal of the impugned order clearly reveals that the trial Court allowed the petition basing on the head-note of the judgment in **Obelisetty Ramanadham** (2nd cited supra), without going through the principle enunciated in the judgment. Even as per the principle enunciated in **Obelisetty Ramanadham**, photocopy of the document is not admissible in evidence. It is needless to say that a document, which requires stamp duty, if not paid, cannot be admitted in evidence. The document in question requires stamp duty. It is not the case of the petitioner that she paid the stamp duty on the original document. It is not in dispute that no stamp duty was paid on the original document dated 14.11.1993; therefore, it is not admissible in evidence. When the original document itself is not admissible in evidence, question of marking of photocopy of such inadmissible document does not arise at all. The facts of the case on hand are almost identical to the facts of the cases referred supra.

13. Taking into consideration the facts and circumstances of the case and also the principle enunciated in the cases

cited supra, this Court is of considered view that the photocopy of the agreement dated 14.11.1993 is not admissible in evidence, in view of non-payment of requisite stamp duty on the original agreement. The trial Court, without considering various provisions of the Stamp Act, simply allowed the petition as if the matter is covered by the judgment in **Obelisetty Ramanadham**. Viewed from factual or legal aspects, the impugned order is not sustainable and is liable to be set aside.

14. In the result, the civil revision petition is allowed, setting aside the order dated 23.2.2016 passed in I.A. No.764 of 2015. Consequently I.A.No.764 of 2015 in O.S. No.183 of 2012 on the file of the Court of V Additional District Judge, Karimnagar is dismissed. Miscellaneous petitions, if any pending in this revision petition, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 07.8.2018
YS