

236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4662-2017

Date of Decision :27.04.2023

Susheela Verma and another ...Petitioners

versus

Surendra Singh and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Kunal Dawar, Advocate and
Mr. Mayank Aggarwal, Advocate for the petitioners.

Mr. Dhirinder Chopra, Advocate for
Mr. Baldev SinghBadhran, Advocate for the respondents.

B.S. Walia, J. (Oral)

1. Prayer in the petition under Article 227 of the Constitution of India is for setting aside order Annexure P/1 dated 23.01.2017, passed by the learned Civil Judge (Junior Division), Gurugram, accepting the application under Section 35 of the Indian Stamp Act, 1899 (for short 'the Act'), moved by the respondents-plaintiffs, for impounding documents Ex.P-3 and P-4 i.e. Special Power of Attorneys executed by the petitioners for the purpose of filing the suit.

2. Learned counsel for the petitioners relies upon the decision of Hon'ble the Supreme Court in Sirikonda Madhava Rao vs. N. Hemalatha and others 2022 (6) ALT 128 as also Shyamal Kumar Roy vs. Sushil Kumar Agarwal 2006 (11) SCC 331, to contend that once an instrument even though insufficiently stamped, is admitted in evidence and marked as exhibit, without any objection in respect thereto by the opposite party, the

same cannot subsequently be held to be inadmissible in evidence on the ground of being insufficiently stamped. Relevant extract of the decision in Sirikonda's case (supra) is reproduced as under:-

“In view of the aforesaid position, we do not think that the impugned judgment passed by the High Court directing that the aforesaid document should be de-marked and not be treated as an exhibit, is correct and in accordance with law. Once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped. Objection as to admissibility of a document on the ground of sufficiency of stamp, has to be raised when the document is tendered in evidence. Thereafter, it is not open to the parties, or even the court to re-examine the order or issue. To this extent, the impugned judgment is set aside and the appeal is allowed.”

3. A perusal of the impugned order reveals that petitioner No.1 appeared as PW-1 and tendered affidavit in her evidence and exhibited power of attorneys as Ex.P-3 and P-4 respectively without any objection by the respondents. Subsequently, an application was moved by the respondents-defendants stating that the power of attorneys were not properly stamped as per the Act, therefore, the documents could not be taken on record without complying with the mandate of Sections 33 and 35 of the Act therefore the documents were liable to be impounded and sent to the

4. Learned trial Court by relying upon the decision of Hon'ble the Supreme Court in **Yellapu Uma Maheshwar and another vs. Buddha Jagdeshwararao and others 2015 (4) CCC 578 (SC)**, held that the special power of attorneys had not been stamped as per the requirement of the Act, therefore, were required to be dealt with under Section 33 and 35 of the Act and that while Section 33 of the Act provided for impounding the document which was not duly stamped and Section 35 of the Act stipulated that such instrument was not admissible in evidence, on said reasoning held that since the documents Ex.P-3 and P-4 were not stamped at all, the same could not be read into evidence on behalf of the petitioners-plaintiffs.

5. Learned counsel contends that the documents Ex.P-3 and P-4 had been exhibited by the petitioners-plaintiffs without any objection in respect thereto of the same being insufficiently/not being stamped and that in the circumstances, in view of the bar contained in Section 36 of the Act, the objection raised by the respondents-defendants was legally unsustainable. Section 36 of the Act, is reproduced as under:-

Section 36 in The Indian Stamp Act, 1899

36. Admission of instrument 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 duly stamped.

6. A perusal of Section 36 reveals that where an instrument has been admitted in evidence without any objection in respect thereto in accordance with Section 35 of the Act, such admission shall not be called in question at any stage of the suit or proceedings on the ground that the

instrument has not been duly stamped except under Section 61 of the Act. Learned counsel contends that at best recourse could be had to Section 61 of the Act, which provides for revision of decision of Court regarding the insufficiency of the stamp duty but said option was not exercised, therefore in the circumstances, the impugned order has altogether ignored the provisions of Section 36 and 61 of the Act.

7. Learned counsel for the respondents concedes that the impugned order is legally unsustainable in the absence of recourse having been taken to the provisions of Section 61 of the Act, as once the documents had been exhibited as Ex.P-3 and P-4 respectively, without any objection in respect of the documents not being stamped having been taken by the respondents-defendants, no subsequent objection could have been taken.

8. Accordingly, in view of the position noted above especially of the documents already having been exhibited without any objection from the respondents-defendants as also in view of the bar contained in Section 36 of the Act and no recourse having been taken under Section 61 of the Act, the instant revision petition is allowed and impugned order Annexure P/1 dated 23.01.2017, holding the documents Ex.P-3 and P-4 as not readable in evidence, set aside.

(B.S. Walia)
Judge

27.04.2023
rajesh

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No