

4.4.2024
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Ct. no. 652
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CO 1719 of 2017

**Dataji Rice Mills Pvt. Ltd. & Ors.
Vs.
M/s. Purti Basapati Pvt. Ltd.**

Mr. Uttiya Ray
Mr. Arnab Mandal ..for the Petitioners

Mr. Shounak Mukhopadhyay
Mr. Amit Muhuri ...for the Opposite party

The plaintiff/opposite party herein filed money suit being Money suit no. 3 of 2016 before the learned Civil Judge, Senior Division, Burdwan claiming decree for a sum of Rs. 40,00,000/- along with compensation and for permanent injunction against the petitioners herein. The petitioners herein as defendants are contesting the said suit by filing a joint written statement whereby they have denied all material allegations as set out in the plaint. In the said suit, Mr. Kishore Kumar Agarwal was examined on behalf of plaintiff on 28th February, 2017 and was also cross examined in part. On the same day, some documents were filed by the plaintiffs by separate 'Firisti' which were marked as exhibit and such documents include one purported agreement for sale which was not duly stamped and though it is titled as sale deed but it is not a registered document. Without proving such document and without calling for any objection from the

defence side, the learned court below accepted the unstamped document and marked the document as exhibit.

According to the petitioners, said document is required to be impounded in accordance with law by the Trial Court. The petitioners strongly objected to such admission and they filed one application on 14.3.2017 under Section 151 of the Code praying for expunging the same, as once it will be marked as exhibit, the defendant will be debarred from praying said unstamped document to be impounded. Unfortunately, the court below after hearing the parties, was pleased to reject the said application by the order impugned.

Being aggrieved by that order, the petitioners herein submits that the court below has exceeded his jurisdiction in marking the documents as exhibit. In fact, the learned court below has failed to exercise his jurisdiction following the provision laid down in the Indian Evidence Act, 1872 and has disposed of the same with unnecessary haste and without calling any objection from the other side. Accordingly, the petitioners have prayed for setting aside the order impugned.

In this context, he relied upon a Judgement of **Bipin Shantilal Panchal Vs. State of Gujarat and another** reported in **AIR 2001 SC 1158** and another judgment of **Gyanti Devi & ors. Vs. Shanti Devi** passed

by a co-ordinate Bench of this court in **C.O. 2500 of 2011.**

Mr. Mukhopadhyay, learned counsel for the opposite party raised strong objection contending that the contents of the documents do not suggest that it is an agreement for sale and the court below rightly marked the said document as exhibit with objection keeping open the admissibility of the said document at the time of final disposal of the suit. He further submits that the suit is for realization of certain sum of money and as such the document is not required to be impounded in the context of adjudication of the suit.

I have considered the submissions made by both the parties. It appears that the court below while passed the order impugned, has relied upon the judgment of Bipin Shantilal Panchal's case (*supra*).

On perusal of the copy of the document, it appears that it has been titled as sale deed though it is neither registered nor written on stamp paper. Learned court below while passed the order, has relied upon Bipin Shantilal Panchal's case (*supra*) but in the said judgment also, it has been specifically observed that while adopting the course of marking the document, in respect of which objection has been raised, tentatively as an exhibit, keeping open such objection to be decided at the last stage in the final judgment but subject to exception, where objection relates to deficiency of stamp duty of a

document, the court has to decide the objection before proceeding further. In the present context, it appears that the court below has not considered the objection relating to deficiency of stamp duty as raised by the petitioners herein and accordingly, he has exceeded his jurisdiction and has practically misinterpreted the observation made in Bipin Shantilal Panchal's case (*supra*).

In such view of the matter, the impugned order no. 21 dated 14.3.2017 and the portion of the order dated 28.2.2017 by which the court below has marked the impugned document as exhibit are hereby set aside. The court below is directed to consider afresh the objection raised by the petitioners in his application under Section 151 of the Code regarding the issue of non payment of stamp duty in connection with the impugned document within a period of 30 days from the date of communication of the order and if it appears to the court below that the document has not been properly stamped, then the court below is directed to take appropriate steps under relevant provisions of the Stamp Act. The court below will dispose of the application under Section 151 of the Code afresh without being influenced by any observations made herein.

C.O. 1719 of 2017 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)