

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP No.979 of 2021

ORDER:

1. This Civil Revision Petition is filed by the plaintiff under Article 227 of the Constitution of India, assailing the order dated 29.04.2021 in I.A. No.219 of 2021 in OS No.23 of 2003 on the file of the Principal Senior Civil Judge, Warangal.

2. This application in IA No.219 of 2021 was filed by the defendants 1 & 2 under Section 151 of the Civil Procedure Code, 1908 (for short 'CPC') to de-exhibit the document marked as Ex.A.1-unregistered sale deed, dated 14.04.1993. The trial Court has allowed the said application and de-exhibited Ex.A.1 subject to payment of costs of Rs.10,000/- payable by the defendants 1 & 2 to the plaintiff, within a week from the date of the order.

3. Feeling aggrieved by the said order, the plaintiff has filed this civil revision petition alleging that the application filed u/s.151 of CPC is not maintainable, but the trial Court has failed to consider the same, the defendants 1 &

2 ought to have filed an application under Order-13 Rule-3 of CPC. The defendants 1 & 2 have not raised any such objection in the cross-examination of PW.1 or in the written statement about the genuineness of Ex.A.1 and that they have also filed IA No.176 of 2019 to send the said document to the expert at Nasik Printing Press, but the same was dismissed. Aggrieved by the same, the defendants have filed CRP No.216 of 2020 it was also dismissed confirming the orders of the trial Court. The Ex.A.1 was executed by the General Power of Attorney holder of the pattadars and in view of the death of vendors of the petitioner, the GPA is ceased and if the Ex.A.1 is de-exhibited, nothing remains in the suit and requested to set aside the impugned orders.

4. Heard the learned counsel for the revision petitioner/ plaintiff and respondents/defendants. Perused the material available on record. The detailed submissions made on either side have received due consideration of the Court.

5. For the sake of convenience, the parties are hereinafter referred to as plaintiff and defendants as arrayed in the original suit.

6. The plaintiff has filed the original suit in OS No.23 of 2003 for perpetual injunction against the defendants. After completion of pleadings, issues settled and evidence on both sides is also concluded. At this stage, when the matter is being adjourned for arguments, the defendants 1 & 2 have filed IA No.219 of 2021 u/s.151 of CPC to de-exhibit Ex.A.1-unregistered sale deed dated 14.04.1993. The said application was considered by the trial Court and Ex.A.1-unregistered sale deed was de-exhibited.

7. i) The learned counsel for the plaintiff submitted that the order impugned is against facts and law, liable to be set aside. The first objection raised by the learned counsel for the plaintiff is that the application is filed u/s.151 of CPC and it is not maintainable when there is a specific provision in CPC. The trial Court ought to have rejected the application, since there is a relevant/specific provision

under Order-13 Rule-3 CPC for de-exhibiting the documents, if any marked.

7. ii) The second objection of the learned counsel for the plaintiff is that the document was marked as Ex.A.1 without any objection by the defendants 1 & 2, though it is unregistered simple sale deed, defendants have cross-examined PW.1 and that earlier when the defendants have requested to refer Ex.A.1-document to Nasik Printing Press, vide IA No.176 of 2019, the trial Court has dismissed the application and in CRP No.216 of 2020 the said order was confirmed by this Court and at this belated stage, after concluding the trial, while submitting the arguments, the defendants are not entitled for the relief of de-exhibiting the document.

8. The learned counsel for the revision petitioner/plaintiff relied on the principles laid in the following decisions:

- i) ***Javer Chand and others v. Pukhraj Surana***¹;

¹ AIR 1961 SC 1655

- ii) ***Bondar Singh and others v. Nihal Singh and others***²;
- iii) ***Tamilnadu Mercantile Bank Ltd., Hyderabad v. Sunita Industries, Hyderabad and others***³;
- iv) ***National Textile Corporation Ltd v. Nareshkumar Badrikumar Jagad and others***⁴;
- v) ***C. Prithvi Raj Reddy and another v. GPR Housing Pvt. Ltd., Hyderabad and others***⁵;
- vi) ***P.C. Purushothama Reddiar v. Perumal***⁶;
- vii) ***State of Uttar Pradesh and others v. Roshan Singh (dead) by LR's and others***⁷;
- viii) ***Rameshkumar Nathmal Chordiya v. Learned Principal District Judge, Wardha and others***⁸;
- ix) ***Ramkarandas Radhavallabh v. Bhagwandas Dwarkadas***⁹.

9. *Per contra*, the learned counsel for the respondents/ defendants 1 & 2 strenuously contends that the document exhibited Ex.A.1 is inadmissible in evidence for want of stamp duty and registration and PW.1 was cross-examined

² (2003) 4 SCC 161

³ 2016 (1) ALD 56 (DB)

⁴ AIR 2012 SC 264

⁵ 2011 (6) ALD 128

⁶ AIR 1972 SC 608

⁷ (2008) 2 SCC 488

⁸ AIR 2014 Bombay 1 (Nagpur Bench)

⁹ AIR 1965 SC 1144

at length on this document. Despite objection raised by the defendants, this document was exhibited as Ex.A.1 unregistered simple sale deed and it cannot be looked into even for collateral purpose, as the same is neither impounded nor registered and it hit by Section 36 of the Indian Stamp Act 1899 and Section 17 of the Registration Act. The trial Court has rightly appreciated the facts with reference to the settled principles of law and de-exhibited the said document and there are no grounds to interfere with the order impugned.

10. The learned senior counsel appearing on behalf of respondents/defendants 1 & 2 relied on the principles laid in the following decisions:

- i) ***Avinash Kumar Chauhan v. Vijay Krishna Mishra***¹⁰;
- ii) ***V. Radha and others v. A. Pattamuthu***¹¹;
- iii) ***Syed Yousuf Ali v. Mohd. Yousuf and others***¹²;
- iv) ***Sultan Saleh Bin Omer v. Vijayachand Sirimal***¹³; and

¹⁰ (2009) 2 SCC 532

¹¹ 2018 SCC OnLine Mad 2326

¹² 2016 (3) ALD 235

¹³ AIR 1966 AP 295

v) ***Srinivasa Builders v. A. Janga Reddy (died) by LRs***¹⁴.

11. In view of the rival contentions, the following points arise for consideration of this Court:

- i) whether the application filed u/s.151 of CPC instead of filing under Order-13 Rule-3 CPC is maintainable?
- ii) whether the order impugned de-exhibiting Ex.A.1-unregistered simple sale deed is sustainable”

Point No. (i):

12. The plaintiff has set up his title and possession in a suit for perpetual injunction on Ex.A.1-an unregistered sale deed. Nowhere it is mentioned in the order impugned that the trial Court has collected the stamp duty and penalty. Admittedly, the defendants earlier made a request, vide IA No.176 of 2009 for referring Ex.A.1 to Nasik Printing Press disputing the genuineness of the stamp paper used for Ex.A.1, it was dismissed and the said order

¹⁴ 2016 (3) ALD 343

was confirmed by this Court in CRP No.216 of 2020. Now again the defendants 1 & 2 have filed IA No.219 of 2021 before the trial Court by the defendants 1 & 2 to de-exhibit Ex.A.1. This IA No.219 of 2021 is filed u/s.151 of CPC, but not under Order 13 Rule 3 of CPC.

13. In this context, I may refer to the following decisions relied by the learned counsel for the revision petitioner/plaintiff.

i) In **State of Uttar Pradesh's** case (7th supra), the Supreme Court while dealing with the scope and object of Section 151 of CPC, held that it is only to supplement and not to override or evade other express provisions of CPC or other statutes.

ii) In **Rameshkumar Nathmal Chordiya's** case (8th supra), a learned single Judge of Bombay High Court, Nagpur Bench while dealing with inherent powers u/s.151 of CPC held that when there is a specific provision u/s.9 of the Arbitration and Conciliation Act, 1996, provisions of Section 151 of CPC cannot be invoked to do indirectly what is not permitted to be done directly.

iii) In **Ramkarandas Radhavallabh**'s case (9th supra), the Apex Court has held that the inherent powers are to be exercised by the Court in very exceptional circumstances, for which the Code lays down no procedure. The express provision is made for setting aside a decree passed under Order-37, there is no scope to resort to Section 151 of CPC for setting aside of such orders.

14. *Per contra*, the learned counsel for the respondents/defendants relied on the following decision:

In **Sultan Saleh Bin Omer**'s case (13th supra), a learned single Judge of this Court while dealing with the provisions of Order-18 Rule-17 of CPC and the inherent powers u/s.151 of CPC held that if circumstances warrant, the Court can grant an opportunity for recall of the witnesses by exercising the jurisdiction conferred u/s.151 of CPC.

15. I have given my anxious consideration to the principles laid in the above decisions. It is true that the defendants have filed the application in IA No.219 of 2021 only u/s.151 of CPC and not filed under Order-13 Rule-

CPC. It is a procedural irregularity and when there is a separate provision meant in CPC, the defendants ought to have filed the application under Order-13 Rule-3 of CPC, instead of filing u/s.151 of CPC.

16. In this context, I may refer to the principles laid by the Hon'ble Supreme Court in the following decisions:

16. i) ***Sital Prasad Saxena v. Union of India***¹⁵ as the procedure is meant only to facilitate the administration of justice and not to defeat the same, unless such procedural violation causes a serious prejudice to the adversary party, the courts must lean towards doing substantial justice.

16.ii) Recently, the Hon'ble Supreme Court in ***Sugandhi (dead) by LRs and another v. P. Rajkumar represented by his Power Agent Imam Oli***¹⁶ held that such procedural and technical hurdles shall not be allowed to come in the way of court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing

¹⁵ (1985) 1 SCC 163

¹⁶ (2020) 10 SCC 706

substantial justice rather than relying upon the procedural and technical violations.

17. In that view of the matter, considering the principles laid by the Hon'ble Supreme Court in the above decisions, and the scope of review under Article 227 of the Constitution of India, I am of the considered view that mere filing of application u/s.151 of CPC instead of filing the Order-13 Rule-3 CPC may not cause any prejudice to the petitioner herein who is the plaintiff in the original suit. Accordingly, the point is answered against the petitioner/plaintiff.

Point No.(ii):

18. Undisputedly, Ex.A.1 is unregistered sale deed. The plaintiff has based the suit claim only on Ex.A.1 to prove his possession and title incidentally in a suit for perpetual injunction. Chapter-IV of the Stamp Act deals with instruments not duly stamped. Section 33 obligates the persons having authority to receive and to impound an instrument not duly stamped. Section 35 says that no instrument chargeable with duty shall be admitted in

evidence for any purpose, by any person having authority to receive evidence unless such instrument is duly stamped. Whereas, Section 36 says that when an instrument has been admitted in evidence, such admission shall not be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped, but subject to Section 61 of the Act.

19. Similarly, Section 61 of the Stamp Act empowers the appellate or revisional court to review a decision of the Court of original jurisdiction with regard to admission of any instrument in evidence. Order-13 of CPC provides for production, impounding and return of documents. Rule-3 of Order 13 CPC provides that the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible.

20. In the light of above provisions, now it has to be considered whether the trial Court, which has admitted the document initially in the evidence of PW.1, can reject the document at a later stage, since the said document is hit

by Sections 35 and 36 of the Stamp Act and Section 17 of the Registration Act.

21. Assailing the order impugned, the learned counsel for the revision petitioner/plaintiff relied on **Javer Chand's** case (1st supra), wherein the Hon'ble Supreme Court of India has held that when an unstamped document is marked as exhibit and used by parties in examination and cross-examination of witnesses, such order admitting the document in evidence is not reliable to be reviewed or revised at a later stage.

ii) In **Bondar Singh's** case (2nd supra), it is held by the Apex Court that under 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 that a document like a sale deed, even though not admissible in evidence, can be looked into for collateral purpose such as to explain the nature of possession of the plaintiff over the suit land.

iii) In **Tamilnadu Mercantile Bank Ltd., Hyderabad's** case (3rd supra), a learned single judge of this Court while

dealing with Section 65 of Indian Evidence Act, 1872, held that objection as to the admissibility or marking the photocopy cannot be sustained after the document is exhibited by the trial Court without any objection being raised at the time of marking. When the trial Court has applied its mind and received, admitted the documents in evidence assigning exhibit number, it amounts to applying mind and impliedly permitting the plaintiff to adduce secondary evidence, though no specific order is passed permitting to adduce the secondary evidence.

iv) In ***National Textile Corporation Ltd's*** case (4th supra), the Apex Court while dealing with the Order-6 Rule-1 of CPC held that pleadings and particulars are necessary to enable the Court to decide the rights of the parties in the trial and pleadings are more of help to the Court in narrowing the controversy involved and to inform the parties concerned the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”.

v) In **C. Prithvi Raj Reddy's** case (5th supra), a learned single Judge of this Court while dealing with Section 36 of the Stamp Act held that party having failed to raise objections at the time of marking document, is not entitled to raise objection as to the admissibility of such document at a later stage.

vi) In **P.C. Purushothama Reddiar's** case (6th supra), the Apex Court held that it is not open to a party to object to the admissibility of documents which are marked as exhibits without any objection from such party.

vii) Whereas, in **Avinash Kumar Chauhan's** case (10th supra) relied by the learned counsel for the respondents/defendants 1 & 2, the Apex Court has held that when a document is inadmissible in evidence, the same cannot be marked for any purpose.

viii) Relying on the above principle in **Avinash Kumar Chauhan's** case (10th supra), a learned single Judge of Madras High Court in **V. Radha's** case (11th supra), on identical facts held that the objections as to admissibility of documents in evidence may be classified into two classes,

a) an objection that the document which is sought to be proved is itself inadmissible in evidence; and b) where the objection does not dispute the admissibility of the document in evidence, but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', the objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving a document is irregular cannot be allowed to be raised at any subsequent stage, to the marking of document as an exhibit.

ix) In **Syed Yousuf Ali** (12th supra), a learned single Judge of this Court while dealing with the scope of Order-13 Rule-3 of CPC and Section 36 of the Stamp Act held that when a document is liable for payment of stamp duty

as if it is a sale deed, but only executed on a stamp paper worth Rs.100/-, such document cannot be admitted in evidence except after collecting stamp duty and penalty or impounding the document under Order-13 Rule-1 of CPC. In such circumstances, the Court can reject the document as it is inadmissible by exercising the powers conferred under Order-13 Rule-3 of CPC.

x) In **Srinivasa Builders's** case (14th supra), an application was filed under Order-13 Rule-3 of CPC to de-exhibit the agreement of sale filed by the defendants in a suit for specific performance raising objection regarding marking of improperly stamped documents, a learned single Judge of this Court while interpreting the provisions of Sections 35 & 36 of the Stamp Act and Order-13 Rule-3 of CPC read with Section 61 of the Stamp Act held that regarding admissibility of improperly stamped document, it does not become final on receiving the said document in evidence. The Court on its own or at the instance of objector or by the appellate or revisional Court may review the decision of admissibility of such document at any time.

22. In the above case, the learned single Judge relied on the principles laid in the decision of a Full Bench of this Court in ***the Land Acquisition Officer, Vijayawada Thermal Station v. Nutalapati Venkata Rao***¹⁷ wherein the issue with regard to raising of objection as to the mode of proof subsequently on the ground that nobody connected with the deed was examined. It was a case arising under the Land Acquisition Act, wherein the Full Bench has held that if the objection is as to the admissibility of the document, then the mere marking of the document as an exhibit, does not preclude any objection being raised later as to its admissibility. But so far as the mode of proof is concerned, it is well-settled that, if an objection as to the mode is not raised at the stage when the document is marked as evidence, such objection cannot be raised at a subsequent stage.

23. In the above decision, the learned single Judge also relied on the principles laid down by the Hon'ble Supreme Court in ***RVE Venkatachala Gounder v. Arulmigu***

¹⁷ 1990 (3) ALT 305 (FB)

Viswesaraswami and VP Temple¹⁸, wherein the Apex Court has held that the objections as to the admissibility of documents in evidence may be classified into two classes, (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision.

24. Reverting back to the facts of the present case, Ex.A.1 is only marked in the evidence of PW.1, it appears at the time of marking the document, the defendants have not raised any objection and allowed the document to be exhibited, but at a later stage, they have requested the trial Court to send the document to Nasik Printing Press disputing the genuineness of the stamp paper used for

¹⁸ 2004 (1) ALD 18 (SC)

scribing said Ex.A.1 and the application filed by the defendants was dismissed. However, the defendants continued to raise objection as to the admissibility of the document in the evidence stating that it is inadmissible document, hit by Section 36 of the Stamp Act and Section 17 of Registration Act and liable to be rejected /de-exhibited under Order-13 Rule-3 of CPC.

25. In **SML Tea Estates Private Limited v. Chandmari Tea Company Private Limited**¹⁹, the Supreme Court on identical facts dealing with admissibility of compulsorily registerable document which was not registered and not duly stamped held that where a document is compulsorily registereable, but not registered, such document may be dealt with in the manner set out under sections 35 & 40 of the Stamp Act before admitting for acting upon the same.

26. A learned single Judge of this Court in **Boggavarapu Narasimhulu v. Sriram Ramanaiah**²⁰ while considering an unregistered agreement of sale exhibited, following the

¹⁹ 2011 (15) ALD 149 (SC)

²⁰ 2014 (2) ALD 426

above judgment of the Full Bench of this Court in ***the Land Acquisition Officer, Vijayawada Thermal Station*** (17th supra) held that the objector can raise objection with regard to admissibility of a document on the ground that it has been not duly registered despite the fact that the said document has already been exhibited and admitted in evidence.

27. Therefore, considering the principles laid by the Full Bench of this Court and the Hon'ble Supreme Court in the above decisions, I find no force in the contention of the learned counsel for the revision petitioner/plaintiff. When the facts of the present case are tested on the touchstone of the principles laid by the Full Bench of this Court in ***the Land Acquisition Officer, Vijayawada Thermal Station*** (17th supra) and the Hon'ble Supreme Court in ***RVE Venkatachala Gounder*** and ***SML Tea Estates Private Limited***'s cases (18th & 19th supra), the answer is in the negative and the order of the trial Court is sustainable and it does not warrant any interference. Accordingly, the Ex.A.1 an unregistered sale deed not executed on sufficient

stamp paper, hit by Sections 35 & 36 of Indian Evidence Act and Section 17 of the Registration Act, liable to be rejected under Order-13 Rule-3 of CPC. In that view of the matter, I do not find any irregularity or infirmity in the order impugned passed by the trial Court and it is sustainable.

28. Be it stated that on perusal of the order impugned, it is found that the plaintiff was compensated with costs of Rs.10,000/-. In such circumstances, he cannot agitate or challenge the order before the appellate Court or revisional Court, in view of the principles laid by a Division Bench of this Court in ***The Metal Press Works Ltd., Calcutta v. Guntur Merchants Cotton Press Co. Ltd.***²¹, and a Division Bench of Punjab and Haryana High Court in ***Amar Singh v. Perhlad and others***²². The point is accordingly answered against the plaintiff.

29. In the result, in view of my findings on point Nos.(i) & (ii), the Civil Revision Petition is dismissed, confirming the

²¹ AIR 1976 AP 205

²² AIR 1989 Punjab and Haryana 229

order impugned dated 29.04.2021 in I.A. No.219 of 2021 in OS No.23 of 2003 on the file of the Principal Senior Civil Judge, Warangal. In the circumstances of the case, the parties shall bear their respective costs. However, considering the fact that the original suit is filed in the year 2003, evidence on both sides is concluded at long back, and the matter is being posted only for arguments, the learned Principal Senior Civil Judge, Warangal, shall expedite the disposal of the original suit in OS No.23 of 2003, shall make every endeavour to dispose of the same within three months from the date of receipt of a copy of this order. Both the parties to the suit shall cooperate with the trial Court for expeditious disposal of the original suit, as directed.

As a sequel, interlocutory applications, if any pending, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 12.04.2022

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***THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY**

+ CRP No.979 of 2021

% 12-04-2022

#Sirikonda Madhava Rao

.. Petitioner

v.

\$N. Hemalatha

.. Respondents

! Counsel for the petitioner: Sri Y. Krishna Mohan Rao

Counsel for the Respondents: Sri J. Venkateshwar Reddy

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? Cases referred:

¹ AIR 1961 SC 1655

² (2003) 4 SCC 161

³ 2016 (1) ALD 56 (DB)

⁴ AIR 2012 SC 264

⁵ 2011 (6) ALD 128

⁶ AIR 1972 SC 608

⁷ (2008) 2 SCC 488

⁸ AIR 2014 Bombay 1 (Nagpur Bench)

⁹ AIR 1965 SC 1144

¹⁰ (2009) 2 SCC 532

¹¹ 2018 SCC OnLine Mad 2326

¹² 2016 (3) ALD 235

¹³ AIR 1966 AP 295

¹⁴ 2016 (3) ALD 343

¹⁵ (1985) 1 SCC 163

¹⁶ (2020) 10 SCC 706

¹⁷ 990 (3) ALT 305 (FB)

¹⁸ 2004 (1) ALD 18 (SC)

¹⁹ 2011 (15) ALD 149 (SC)

²⁰ 2014 (2) ALD 426

²¹ AIR 1976 AP 205

²² AIR 1989 Punjab and Haryana 229