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Court : Karnataka Kalaburagi

Decided On : Nov-27-2015

Judge : A.N. Venugopala Gowda

Appeal No. : Regular Second Appeal No. 7136 of 2013

Appellant : Sharanabasappa

Respondent : Umesh

Judgement :

(Prayer: This RSA is filed under Section 100 of CPC, against the Judgment and Decree dated: 26.02.2013 passed in R.A. No. 13/2012 on the file of the Senior Civil Judge and J.M.F.C at Muddebihal wherein, the appeal was partly allowed and the Judgment and Decree dated 25.06.2012 passed in O.S. No. 235/2009 on the file of the Civil Judge at Muddebihal was modified.)

1. This is the defendant's appeal arising from a suit for recovery of money, based on a handloan agreement dated 11.05.2007. The respondent instituted the suit, to pass decree for recovery of Rs. 2,71,000/-, with interest at 18% p.a. from the date of loan and the costs. Suit was contested on multiple grounds. 4 issues were raised. During the course of trial, suit document-handloan agreement dated 11.05.2007 was produced. Marking of the suit document was objected, on the ground that it is insufficiently stamped and is liable to be impugned. The said document was marked subject to the objection. At the conclusion of the trial,

without deciding the objection raised on the said document, the suit was decreed and the defendant was directed to pay Rs. 2,71,000/- with interest at 6% p.a. from the date of loan till the date of realization, to the plaintiff.

2. An appeal was filed by the defendant, assailing the decree, inter alia contending that the Trial Judge should have received the suit document and admitted it in evidence as Ex.P1. It was contended that the suit document having been marked subject to objection', without passing the order on the objection, the decree passed is illegal. Considering the rival contentions, three points were raised for consideration. However, no point was raised with regard to the aforesaid material ground. Despite observing that the objection raised ought to have been decided first i.e., before admitting the document, it was erroneously concluded that objection was not raised while marking the document. The said finding being contrary to the record is perverse. The appeal was allowed in part and the impugned Decree was modified, entitling the plaintiff to interest at 6% p.a. from the date of the suit till realization.

3. This second appeal was filed to set aside the said decrees by raising substantial question of law with regard to the illegality committed in the matter of receiving the suit document in evidence and its marking as Ex.P1.

4. Considering the rival contentions and the record of the case the following substantial question of law arises for consideration.

Whether there is breach of the provisions as per Ss. 33 and 34 of the Karnataka Stamp Act, 1957 (Act for short), in the matter of receiving and admitting as evidence the suit document and in passing the impugned decrees? ?

5. With the consent of the learned advocates, by dispensing with the filing of paper book the appeal is taken up for final hearing. Heard the arguments of the learned advocates appearing for the parties and perused the record.

6. S. 33 of the Act provides for examination and impounding of an instrument which is not duly stamped. Once, on examination, it is found that the instrument is not duly stamped, S.34 comes into operation and places a completed embargo on

the admissibility of such instrument in evidence.

7. In the case of RAM RATHAN (DEAD) BY LRS. VS. BHAJARANGLAL AND OTHERS, (1978) 3 SCC 236, Apex Court, after considering the observations made in the case of JAVER CHAND AND OHTERS Vs. PUKHRAJ SURANA, AIR 1961 SC 1655, has held as follows:

6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however, would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, S. 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The Court, and of necessity it would be trial Court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and where a document has been inadvertently admitted without the Court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting S. 36 (see Javer Chand v. Pukhraj Surana, AIR 1961 SC 1655). The endorsement made by the learned trial judge that objected, allowed subject to objections ?, clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation S. 36 would not be attracted. ?

(emphasis supplied)

8. In the case of RIYAZ KHAN AND ORS. VS. MODI MOHAMMED ISMAIL AND ORS, ILR 2002 KAR 3369, this Court has held as under:

When the objection is raised for admitting the document in evidence and the document is admitted or marked subject to such objections and it clearly indicates that at that stage objection raised was not judicially determined and the document was merely tentatively marked and taking decision on the objection as a later stage cannot be said to be impermissible or without jurisdiction. Non-consideration of the objection and marking the document at the stage of admitting it is a mistake of the Court and the litigating parties cannot be made to suffer for the same. ?

(emphasis supplied)

. From the decisions noticed supra, it is clear that, if the objection is raised with regard to admissibility of a document, on the ground that the document is not duly stamped, the Court has the duty to decide the objection judicially, then and there itself. Even if the document was marked, by mistake, subject to objection, it should be construed that the document was tentatively marked and that the objection for making was not judicially determined and for the mistake of the Court, no party shall be made to suffer and is required to be decided without delay and at any event, prior to the suit being decided. The well known legal maxim actus curiae neminem gravabit(no person shall be prejudiced by an act of Court) shall be kept in mind.

10. On a careful consideration of the matter, this Court is convinced, that serious mistake has been committed in the case, both by the Trial Court and also the lower Appellate Court. The Trial Court should not have admitted the suit document as Ex.P1, in the face of the objection raised by the defendant. The objection raised ought to have been decided then and there itself, by keeping in view, the settled position of law in catena of decisions by the Apex Court and this Court.

11. The finding of the lower Appellate Court, on the aforesaid aspect, is perverse. Though the contention urged by the defendant/appellant has been taken note of,

the same has not been answered. There is lack of application of mind with regard to the material ground raised in the appeal memorandum and also urged for consideration. Without deciding the said material aspect, the appeal has been decided, which is illegal. Hence, the appellant has legitimate grievance in this aspect about the way the Courts below have proceeded in the matter.

12. The statutory duty case on the Trial Judge in the matter of examination and impounding of the instrument, tendered in evidence, before it is received in evidence, despite the raising of the objection by the defendant i.e., regarding its marking on the ground that it is insufficiently stamped and as such, is liable to be impounded, has not been discharged. Without deciding the objection at least at a later stage of the suit and by solely relying upon the objected document, marked as Ex.P1, the suit has been decreed and thus, there is breach of S.34 of the Act. Substantial question of law stands answered accordingly.

13. At this stage, Sri Ashok S. Kinagi, learned advocate, by taking instructions from the respondent, conceded that Ex.P1 is insufficiently stamped and that the plaintiff would pay the deficit stamp duty and penalty. There being no dispute that the suit document has not been drawn on the stamp paper of sufficient value, the instrument stands impounded.

14. For the mistake of the Trial Judge, in not deciding the objection raised on the said instrument, when tendered in evidence and before it is received in evidence, the parties cannot be made to suffer. Since the said document is inadmissible in evidence and as there is complete prohibition for admitting such insufficiently stamped document in evidence and in view of the submission made that the deficit stamp duty and penalty would be paid in the Trial Court itself, the case for remand, to proceed further by keeping in view the procedure indicated in the case of DIGAMBAR WARTI Vs. DIST. REGISTRAR, BANGALORE URBAN DISTRICT, REPORTED IN (2013) 4 KLJ 247.

In the result, the appeal is allowed and the impugned decrees passed by the Courts below are set aside. The suit is remanded to the Trial Court for proceeding from the stage at which objection for receiving the suit document in evidence was raised by the defendant i.e., on 01.07.2010. The Trial Court shall proceed with the

case in accordance with law.

Pursuant to an interim order passed on 14.08.2013, in the Trial Court, Rs.1,35,500/-. The said amount shall be invested by the Trial Court, in a Fixed Deposit, in any Nationalised Bank, for a period of one year. The final outcome of the suit shall regulate the payment of the amount in deposit along with the accrued interest. The suit shall be decided with expedition and within a period of six months from the next hearing date.

Both the parties are directed to appear before the Trial Court on 02.01.2016 and receive further orders.

The court fee, as per S. 64(1) of the Karnataka Court Fees and Suits Valuation Act, 1958, be refunded to the appellant, both on this appeal and the Regular Appeal filed in the Court below.

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