**Sanjeeva Reddi Vs. Johanputra Reddi**

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**SooperKanoon Citation** : sooperkanoon.com/425418

**Court** : Andhra Pradesh

**Decided On :** Aug-30-1971

**Reported in** : AIR1972AP373; MANU/AP/0060/1972

**Judge** : Obul Reddi, J.

**Acts** : Stamp Act, 1890 - Sections 35; Registration Act, 1908 - Sections 17 and 49

**Appeal No.** : Civil Revn. Petn. No. 824 of 1970

**Appellant** : Sanjeeva Reddi

**Respondent** : Johanputra Reddi

**Advocate for Def.** : M.S.R. Subrahmanyam, Amicus Guriae, Adv.

**Advocate for Pet/Ap.** : K. Mahipathi Rao, Adv.

**Judgement** :
ORDER

1. This revision is directed against the order of the subordinate Judge, Mahbubnagar admitting two documents, an unregistered sale deed and an unregistered adopted deed subject to the payment of stamp duty and penalty as required under proviso (a) to Section 35 of the Indian Stamp Act.

2. The fats as appear from the order of the subordinate Judge are these: The 2nd defendant in the suit (petitioner herein) wanted to press into service two

documents, an unregistered sale deed and an unregistered adoption, deed to prove the signature of the plaintiff appearing either as a scribe or an executant as the case may be of the said sale deed or adoption deed. That was opposed by the plaintiff on the ground that the two documents are document chargeable with duty and inasmuch as they are unstamped, they cannot be admitted in evidence for any purpose under Section 35 of the Act. The case of the petitioner (2nd defendant) was that he is not seeking to use the documents for the purpose for which they were executed, but for an altogether different purpose to prove the signature of the plaintiff appearing in the will as an attestor and, therefore, the provisions of Section 35 are not attracted.

3. The learned subordinate Judge held that the two documents in question cannot be admitted in evidence for any purpose even if it be for the purpose of relying upon the signature found in those two documents and directed payment of stamp duty and penalty as levied by him on or before 18th March, 1970 if they should be received in evidence.

4. Mr. Mahipathi Rao appearing for the petitioner relying upon a decision of the Rangoon High Court in J. N. Ezekiel v. Mordecai, AIR 1937 Rang 408 very strongly contended that the documents are not sought to be used as evidence and that only the signatures appearing in the documents are being relied upon for a collateral matter and therefore the signatures could be received in evidence for purposes of comparison of those signatures with the disputed signature of the plaintiff in the will.

5. Mr. M. S. R. Subrahmanyam, appearing as amicus curiae submitted that an unstamped document cannot be received in evidence for any purpose whatsoever, not even for the purpose of comparing the signature in the document with the signature in dispute in another document.

6. The question therefore is whether Section 35 bars the admission in evidence of even signatures found in unstamped instruments. We may now notice the relevant provision. Section 35, in so far as it is material for our purpose:

'No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that-------- (a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted, in evidence on payment of the duty with which the same is chargeable, or, in the case of the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.'

7. The underlying object of this section is to ensure that an instrument chargeable with duty is in fact stamped and the only way of enforcing this provisions thus saving loss of revenue to the State is to make such an instrument not duly stamped as inadmissible in evidence, so that the document may be render useless for the purpose for which it was excreted or for any other purpose. Proviso (a) to Section 35 enables documents of the kind with which we are now concerned to be received in evidence on payment of deficit duty and penalty. It covers all cases of instruments which required to be stamped, but not stamped at all or under stamped, subject to payment of stamp duty and penalty as provided therein.

8. The Rangoon case, AIR 1937 Rang 408 is no longer good law after the decision of the Privy Council in Ram Rattan v. Parma Nand, AIR 1946 PC 51, Long before the decision of the Privy Council, the Madras High Court in Thaji Beebi v. Tirumalaiappa, 91907) 17 Mad LJ 308 considered the scope of Section 35 and held that an instrument which should have been stamped according to law but is unstamped, is not admissible in evidence for any purpose whatsoever. The words 'for any purpose' were construed by the Allahabad High Court in Mt. Biboo v. Rai Saheb Gakaran Singh AIR 1937 All 101 as undoubtedly implying 'for each and every purpose whatsoever, without any exception' and it matters little whether the purpose is the main purpose or is a collateral one. The decision of the Privy

Council in AIR 1946 PC 51 sets at rest the conflicting vires expressed by the High Courts. As pointed out by Sir John Beaumont, the words 'for any purpose' should be given their natural meaning and effect and would include a collateral purpose.

9. While considering the scope of Section 35 of the Indian Stamp Act we cannot bring in the effect of non-registration of a document under Section 49 of the Indian Registration Act. Section 17 of the Indian Registration Act deals with documents, the registration f which is compulsory and Section 49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 or by any provision of the Transfer of Property Act., The effect 9f non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purposes. It would amount to receiving such a document in evidence for a purpose which Section 35 prohibits. There is nothing in the case of B. Rangaiah v. B. Rangaswamy, 91970) 2 Andh WR 181 which supports the contention of the petitioner. That was a case as pointed out by Kuppuswami, J., where there were two instruments though contained in one document one a settlement in favour of the 4th defendant therein and the other a will. It was therefore held that part of the instrument which constitutes a will did not require any stamp and will be admissible in evidence for proving the bequest contained therein. It was for that reason that the learned Judge said that Sec. 35 of the Stamp Act has no application to a case where one of the separate instruments relating to one such matters would not at all be chargeable under the Act as in the case before him.

10. Mr. Mahipathi Rao however sought to contend that since what is sought to be proved are only the signatures appearing in the two documents and as Section 35

deals only with the instruments chargeable with duty and has nothing to do with the signatures of the scribe or an attestor appearing in the documents, there is no reason why the signatures alone, independent of the document should not be received in evidence. The fallacy of the argument however, ingenious it may be, lies in this : It is not a case where signatures are found in a document not chargeable with duty so as to contend that Section 35 is not applicable. The two documents, which are sought to be used for the purpose of comparison of signatures, are documents which are not only chargeable with duty and require to registered, but also require by law to be attested in proof of execution. No part of a document be it is single sentence, a word or a signature. which is chargeable with duty, can be received in evidence and to do so is to do violence to Section 35. I can understand as in the case before Kuppuswami, J., Where two instruments a will and a settlement, are embodied in one and the same document for the purpose of separating that portion or part of the document which is not chargeable with duty from the other portion. There are no such two instruments here drawn up in one document t say that one of them is not chargeable with duty. There is only one instrument here whether it is sale deed or adoption deed and a break up of that document into several parts for the purpose of using any part or bit of it in evidence even if that part relates to signatures, for a collateral purpose, however foreign and independent the purpose may be, for which it is sought to be used is not ;remissible. Thus whatever is contained in a document chargeable with duty cannot be received in evidence under Section 35 for any purpose whatsoever, unless such an instrument is duty stamped or there is compliance with the requirements of the provisos to Section 35.

11. I therefore find no merits in the revision petition and is accordingly dismissed but in the circumstances without costs.

12. I must express my thanks to Mr. M. S. Subrahmanyam, amicus curiae, for the assistance rendered to the Court.

13. A month's time is granted to the petitioner from the date of receipt of this order by the lower Court for payment of stamp duty and penalty.

14. Revision dismissed.