Sheikh Akbar and anr. Vs. Sameer Kumar Paul and anr.

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Court : Madhya Pradesh

Decided On : Sep-02-1996

Reported in : 1997(2)MPLJ27

Judge : S.C. Pandey, J.

Acts : Stamp Act - Sections 35; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : C.R. No. 1255 of 1996

Appellant : Sheikh Akbar and anr.

Respondent : Sameer Kumar Paul and anr.

Advocate for Def. : Girish Shrivastava, Adv.

Advocate for Pet/Ap. : R.S. Tiwari, Adv.

Disposition : Petition allowed

Judgement :
ORDER

S.C. Pandey, J.

1. This revision is directed against the order, dated 15-7-1996, passed by Ist Civil Judge Class-II, Jabalpur, in Civil Suit No. 356-A/94.

2. It is not necessary to give the facts of this case in detail. The non-applicants Nos. 1 and 2 examined their father for proving their title to a document styled as a release-deed. The applicants objected to the admissibility of that document on two grounds. One that this document was not mentioned in the plaint nor was the witness summoned to produce this document and the second on the ground that document was not properly stamped as it is a sale-deed and not a release-deed. Objection was raised Under Section 35 of the Indian Stamp Act. This document is annexed as document No. 1 to the memo of revision. The trial Court made the following observations :

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Thereafter, by the impugned order, the trial Court decided the question of admissibility as follows :

^^15&7&1996 i{kdkj iwoZorA

bl vkns'k }kjk oknh lk{kh y{ehukjk;.k dsijh{k.k ds nkSjku fn- 6&7&1996 dks izfroknh ds vf/kok }kjk mBkbZ xbZvkifk dk fujkdj.k fd;k tk jgk g SA

vkifk laf{kIr esa bl izdkj gS fd oknh lk{kh }kjkizLrqr nLrkost fjyhM&MhM; ugha gS] cfYd fo; i= gksus ls ml ij mfpr LVkEi 'kqYdvnk ugha fd;k x;kA bl dkj.k izn'kZ ugha djk;k tk ldrkA

vkifk ij lquk x;k ,oa fopkj fd;k x;k rFkkfjyht&MhM; dk voyksdu fd;k x;kA pwfd m nLrkost iathr nLrkost bl dkj.kizn'kZ fd;k tk ldrk gS tgk rd m nLrkost fjyht&MhM; vFkok fo; i= gksusdk iz'u gS rks bldk fujkdj.k fQygky fd;k tkuk vko';d ugha g SA D;ksafd bllsizfroknh ds fgrksa dk dksbZ izfrdwy izHkko ugha iM+rk gS vr% fopkjksijkarvkifk fujLr dh tkrh g SA rFkk izdj.k oknh lk{; gsrq fu;r fd;k tkrk gS] oknhvius lk{; vkxkeh fu;r frfFk dks mi j[ksA izdj.k okLrs oknh lk{; gsrq fn-17&7&1996-**

3. The learned counsel for the non-applicants has raised a preliminary objection to the maintainability of this revision. The contention of the learned counsel for the non-applicant is that once a document has been admitted in evidence, no civil revision lies against the order, passed by the trial Court.

4. The counsel for the applicant, on the other hand, contends that the trial Court has not admitted the document considering the objection regarding the stamp duty. But the impugned order, the trial Court has not decided the objection at all and for this reason, the revision is maintainable.

5. It is, therefore necessary to consider the objection of the learned counsel for the non-applicants in this case. It is clear from the first part of the order, quoted above, that the trial Court has decided the first part of objection by saying that the applicants have pleaded about the document in their written statement. Therefore, the first objection was rejected by saying that permission to exhibit that document could be granted. Thereupon second objection was raised by the applicant to the effect that this document is a sale-deed and not a release-deed and it has not been properly stamped. Thereafter, the trial Court stayed the examination-in-chief for some time so that the counsel may cite authorities in support of his arguments. It is thus clear that at this stage the trial Court had not admitted the document. Subsequently, by the impugned order, it was held that the document was a registered document and, therefore, the question of deciding the question whether it is a release-deed or sale-deed did not arise. It could be admitted in evidence. The learned counsel for the non-applicants says that the impugned order of the Court below right or wrong is an order admitting the document even though it has not been marked as an exhibit yet.

6. In the opinion of this Court, the trial Court has not decided the objection raised by the counsel for the applicants. It has wrongly held that merely because a document is registered, the objection regarding payment of stamp duty need not be decided. However, it is not in dispute that document was not admitted in evidence after passing the impugned order by marking it as an exhibit.

7. The Supreme Court in Javer Chand v. Pukhraj Surana, AIR 1961 SC 1655 has held thus :-

'Where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court 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.'

In another case reported in Ram Rattan v. Bajrang Lal, AIR 1978 SC 1393, it was held in para-6 as follows :

'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 to decide the objection in accordance with law. Tendency sometime 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'.

In this particular case, the trial Court itself had decided the objection only after postponing the examination of the witnesses. But the trial Court has not marked it as an exhibit. In the opinion of this Court, therefore, the revision is maintainable because the impugned order itself shows that the trial Court has not applied its mind to the objection. In the case in Munnalal Kailashchandra v. Jagannath Prasad, 1980 MPLJ 592, the facts were different. In that case, the trial Court had applied its mind to the admissibility of the document which was styled as a promissory note. The trial Court held that it is an agreement and accepted additional stamp duty and penalty. The document was admitted by the order impugned. Since there is a finding recorded by the learned Single Judge in that case that the document was admitted, the revision was rightly held to be not maintainable. In the present case, this Court comes to the conclusion that the trial Court had not applied its mind to the objection raised by the applicant and, therefore, it cannot be said to be admitted as it has not been marked as an exhibit after an objection. Similarly, in Vinayak Dattatraya v. Hasanali Haji Nazarali, I960 MPLJ 1346, the facts of the case indicate that the trial Court after considering the entire circumstances and applying its mind to the facts of the case held that the document is admissible (Saksha me grahya hai). Obviously, in this case also the trial Court applied its mind to the facts of the case and then decided that the document is admissible. In the revision before this Court, the facts are altogether different. The trial Court nowhere has applied its mind to the objection raised. On the other hand, it expressly holds that it is not necessary to decide the objection raised by the applicant at the time of the passing of the order because it is a registered deed. In fact, the trial Court has not decided the objection Under Section 35 of the Indian Stamp Act at all.

8. In view of the findings recorded by this Court that the trial Court did not apply its mind to the question of payment of stamp duty and penalty on the objection raised by the applicant Under Section 35 of the Indian Stamp Act, it acted with material irregularity in exercise of its jurisdiction in passing the impugned order. In the opinion of this Court, the trial Court should have considered Clause 3 of the release-deed for determining whether the document styled as release-deed is in reality a sale-deed for the purpose of Indian Stamp Act and is liable to be stamped as such.

9. For the reasons aforesaid, the impugned order, dated 15-7-1996 is set aside and it is directed that the trial Court shall consider the admissibility of the release-deed in question afresh in accordance with the provisions of Indian Stamp Act after hearing the parties and after applying its mind to the document styled as the release-deed, which is sought to be proved by PW-3, Lakshmi Narayan Paul.

10. In the result, the revision succeeds and is allowed subject to the observations made above and the case is remanded back to the trial Court for decision in

accordance with law. There shall be no order as to costs.