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Court : Rajasthan

Decided On : Mar-13-1989

Reported in : 2(1989)WLN(Rev)294

Judge : Milap Chandra, J.

Appeal No. : S.B. Civil Revision Petition No. 539/87

Appellant : Nihal Singh

Respondent : Singh Ram and ors.

Disposition : Petition allowed

Judgement :

Milap Chandra, J.

1. This revision petition has been filed by the plaintiff against the order of the learned District Judge Churu dated August 28, 1987 by which an unstamped and unregistered document, paper No. 36-C 2/3, has been admitted in the evidence on the ground that it can be used for collateral purpose. The facts of the case giving rise to this revision petition may be summarised thus.

2. The plaintiff petitioner filed a suit against the defendant non-petitioners specific performance of an agreement for sale and, in the alternative for the refund of Rs. 23, 000/- with interest. The defendants admitted in their written statement that they

were indebted to the plaintiff and had executed an agreement. Their defence is that they had repaid (he substantial part of the loan by mortgaging their 25 Bighas of land with Phula Ram Beniwal DW 3 for Rs. 10, 000/- & by selling their house to Tekchand for Rs. 7000/-. On 1-3-1985 Phularam DW 3 was produced by the defendants. During his statement, his original Bahi containing the entiry regarding the said transaction of mortgage of agriculture land was tendered and its photo-state copy, Paper No. C.36/2-3 was filed. When it was being exhibited, objection was raised by the learned Counsel for the plaintiff that it could not be exhibited for want of registration and requisite stamp. The learned District Judge directed the defendant to move an application, deferred the statement of the witness and put 'PW 3/Ex. A 1' on the said photo stat copy. The same day, the learned Counsel for the defendants moved application, paper No. B-37 praying that the said photo stat copy be exhibited and admitted in evidence. The plaintiff filed his reply, paper No. B 38/1 & 2, seriously opposing it. After hearing the learned Counsel for the parties, the learned District Judge, Churu allowed the application by his order dated 28-8 1987, holding that the document can be admitted in evidence for the collateral purpose, i.e. to show that the loan was taken by the defendants from Phoola Ram DW 3 to pay to the plaintiff.

3. The learned Counsel for the plaintiff petitioner has contended that the learned District Judge Churu has committed illegality in the exercise of his jurisdiction to hold that an unstamped document can be read in evidence for a collateral purposes. He further contended that the Khata containing the said entries whose photo stat copy is paper No. 31 C/2-3, its mortgage-deed and is not admissible in evidence for want of registration also. He further contended that in view of the provisions of Section 35, Stamp Act the said document cannot admitted in evidence for any purpose and it can be admitted in evidence on payment of requisite stamp duty and penalty.

4. In reply, it has been contended by the learned Counsel for the defendant non petitioners, that the admissibility of the said document cannot new be challen after it has been exhibited. He further contended that the document has not been executed in between the parties an therefore, there arises no question of the payment of any stamp duty & penalty and it can be used for collateral purpose as

provided under Section 49, Registration Act.

5. In reply to the aforesaid contentions of the learned Counsel for the defendant-non-petitioners, the learned Counsel for the plaintiff petitioner contended that mere marking of the document by putting PW 3 Ex.-A1 does not mean that the document has been admitted in evidence within the meaning of Section 36, Stamp Act. He further contended that if it would have been so, the learned trial court would not have directed the defendants to move an application for seeking order regarding its admissibility and the defendants would not have move the said application 'paper No. B-37.' He also urged that the said remark PW 3 Ex A. 1 was put on the document for its identification only and not after judicial determination regarding its admissibility in evidence. He relied upon *Bherulal v. Bhanwarsingh* ILR 1970 (20) Rajasthan 1120.

6. There is no force in the contention of learned Counsel for the defendant-non-petitioners the document, paper No. 36 C/23' stood admitted in evidence after the note 'P.W. 3/Ex A-1' was put on it. It is clear from a perusal of the General Index of the file of the suit that entries from A-1 to C-9 were made when the file was opened and remaining entries from B-10 (27-2-79) to D-43 (4-9-87) were subsequently made at one time. It means that these entries were made after September 4, 1987. Thus the papers of the file were not indexed when the statement of Phoola Ram D.W. 3 was recorded on 1-3-85. If the said photo-state copy would have been indexed and its paper number would have been put on it immediately after it was filed on 1-3-87 as required under Rule 132, General Rules (Civil), 1952 (new Rule 139 General Rules (Civil) 1986) the said note 'PW 3 Ex A. 1' would not have been put on it by the learned district Judge. It was put for its identification only. The statement of Phoola Ram (D W. 3) recorded on 1-3-85 shows that a note was given below it to the effect that the learned counsel for the plaintiff objected when the photostat copy of the Rahi was being exhibited and the defendants were directed to file an application for seeking order about its admissibility. Admittedly, the defendants moved application, paper No. B-37, for admitting the said document in evidence. These facts leave no doubt that there was no judicial determination on the part of the trial court for admitting the said photostat copy in evidence. The provisions of Section 36 of the Stamp Act are not attracted in this case.

7. The disputed document, paper No. 36C/2-3 is the photo stat copy of the original entry contained in the Bahi Khata of Poola Ram D.W. 3. According to it, the defendants mortgaged their land with him for Rs. 10,000/-for making payment to the plaintiff. Admittedly the original entry is neither stamped nor registered. It is not the case of the defendant non-petitioners that it is exempted from the payment of stamp duty or registration. It is not necessary to determine the exact nature of this document. Suffice it to say here that it does require some stamp duty. Section 35, Stamp Act provides that no instrument chargeable with duty shall be admissible in evidence for any purpose. It does not say that such a instrument can be admitted in evidence for a collateral purpose. The learned Counsel for the defendant non-petitioner's has not been able to cite any ruling in support of his contention that a document chargeable with stamp duty and not stamped can be used for a collateral purposes. The learned trial court has relied upon AIR 1959 Madras 764. In AIR 1959 Madras part ends at page 560. The learned trial court has held that the portion of unstamped document requiring no stamp duty can be read in evidence and has relied upon , It may be mentioned here that question regarding the admissibility of a document for want of registration was involved in it and it was held that un-registered document can be used for collateral purpose as provided under Section 49, Registration Act. The words 'for any purpose' appearing in Section 35 Stamp Act were construed by the Allahabad High Court in Mst. Bibo v. Rai Sahib Gokaran AIR 1937 Allahbad 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 an a cellateral on. It is thus clear that the learned trial court has acted illegally in the exercise of its jurisdiction in holding that no stamp duty is payable on the said entry of the Bahi of Phoola Ram D.W. 3 in allowing the defendants application paper No. B-37, and admitting the photo state copy paper No. 36C/2-3. If the order dated 28.8.1987 is not set aside, the plaintiff would suffer an irreparable injury.

8. Consequently, the revision petition is allowed with costs and order dated August 28, 1987 of the District Judge, Churu is set aside. The original entry of the Bahi of Phoola Ram D.W. 3 whose photo stat copy is paper No. 36-C/2-3, may be admitted in evidence, if requisite stamp duty and penalty as determined by the learned trial court are paid.

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