

Kanti and Another Vs. Additional Civil Judge and Others

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Court : Rajasthan

Decided On : Dec-05-2011

Judge : Mahesh Bhagwati

Appeal No. : S.B. Civil Writ Petition No. 12908 of 2011 & S.B. Civil Misc. Stay Application No. 11817 of 2011

Appellant : Kanti and Another

Respondent : Additional Civil Judge and Others

Judgement :

1. By way of the instant writ petition, the petitioners have beseeched to quash and set-aside the order dated 30th July, 2011, whereby the learned Additional Civil Judge (Sr. Division), Kota dismissed the application of the defendants-petitioners dated 14th October, 2010, wherein he had implored the Court to delete the exhibits 3 and 13 marked on two documents.

2. Having heard the learned counsel for the parties and carefully perused the relevant material on record, it is noticed that a suit for declaration, possession and permanent injunction came to be filed by the plaintiff-respondent Abdul Majid against the defendant-petitioner Kanti and others. During the evidence of the plaintiff, many documents were filed and out of these documents, Ex. 3 and 13 were the agreement to sale, which were not duly registered under the provisions of Registration Act. Since the documents were not registered, hence they could not

be admitted to evidence under the provisions of law. Learned trial court allowed the plaintiff to mark the exhibits on these two documents and despite there being a clear provision and having drawn the attention of the court, the learned trial court dismissed his application dated 14th October, 2010. The impugned order is bad in law, hence the same deserve to be set-aside.

3. Learned counsel for the petitioners also argued that if the documents are not tendered in the suit for specific performance of contract, then the proviso to Section 49 of Registration Act does not hold good and the document is required to be registered under Section 17 of Registration Act. Learned counsel for the petitioners has placed reliance on the judgment delivered by Hon'ble Apex Court in the case of Avinash Kumar Chauhan Versus Vijay Krishna Mishra reported in 2009 DNJ (SC) 364; judgment of this Court in the case of Parmanand Setia Versus Somlal and Others reported in 2003 (1) DNJ (Raj) 107; and Jagdish Prasad Versus Hanuman Das and Others reported in 2008 (3) DNJ (Raj.) 1245.

4. Learned counsel for the respondents in contra contended that both the documents Ex. 3 and 13 had been exhibited by the court way back in the year 2007 when the statement of PW-1 Abdul Majid was recorded. The petitioners-defendants filed the application three years after exhibiting these documents hence, the learned trial court rightly dismissed the application of the defendants-petitioners. This Court has also observed in one case of Laxmi Narayan Singhal Versus ADJ No. 9, Jaipur City reported in 2011 (3) WLC (Raj.) page 428 that once the documents were exhibited by the Court and if their genuineness was challenged, that could be taken into consideration at the time of final decision of the case. He has cited the judgments of this Court delivered in the cases of Laxmi Narayan (supra) and Prem Kumar Dagar Versus Kailash Chandra Dagar reported in 2011 (3) DNJ (Raj.) 1022 in support thereof.

5. Having reflected over the submissions made at the bar and carefully perused the relevant material on record including the impugned order, it is revealed from the statement of PW-1 Abdul Majid that 13 documents were exhibited on 27th August, 2007 when his statement was recorded. Thereafter on 14th October, 2010, the petitioners-defendants filed an application imploring the Court to delete

exhibits marked on the said documents as they were not duly registered. Learned trial court dismissed the application.

6. It is relevant to record that this Court in the case of Laxmi Narayan (supra) observed thus:

“Adverting to the facts of the instant case, it is found that the document Ex. 1 in question was tendered in evidence way back on 17th August, 2004. The evidence of the plaintiff and his witnesses was recorded and the evidence of the plaintiff was finally closed. At the stage, when defendant was subjected to cross-examination, the respondent no.2 filed an application under Section 151 of CPC imploring the Court to hold that the document i.e. agreement to sell (Ex.1) was not admissible in evidence as it was unregistered and insufficiently stamped. Learned trial Court reviewed its own order on 10th December, 2007, whereas it was already held earlier that the admissibility or inadmissibility of the document shall be determined at the final stage when the suit was to be decided. The learned trial court reviewed this order and further held that the document was unregistered and insufficiently stamped and could not be taken in evidence and it was thus, inadmissible. The approach of the learned trial Court seems to be totally contrary to law as also the loud pronouncement of the Hon'ble Apex court rendered in the case of Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (supra).”

7. This Court delivered the judgment in the case of Laxmi Narayan (supra) placing reliance on the judgment of *Javer Chand and others Versus Pukhraj Surana* reported in AIR 1961 SC 1655, wherein the Hon'ble Apex court held that once a document had been marked as an exhibit in the case and the trial had proceeded all along on the footing that the document was an exhibit in the case and had been used by the parties in examination and in cross-examination of the witnesses, Section 36 of the Stamp Act did not come into operation. Once a document had been admitted in evidence, as aforesaid, it was not open either to the trial court itself or to a court of appeal or revision to go beyond that order. Such an order was not one of those judicial orders, which were liable to be reviewed or revised by the same court or by a court of superior jurisdiction.

8. This Court, while relying upon the judgments of Hon'ble Apex Court gave a similar observation in the case of Prem Kumar Dagar Versus Kailash Chandra Dagar (supra), which runs as under:

“...this Court is clearly of opinion that the trial Court has the jurisdiction to rule on admissibility of the document but then, the question of admissibility ought to have been raised at the time when the document was produced in evidence. It remains trite that the objection regarding admissibility cannot be raised by a party after the document has been exhibited without any objection at the time of exhibition. The decision in Naladhar Mahapatra's case (supra) as referred by the learned counsel for the petitioner itself refers to the decision of the Hon'ble Supreme Court in the case of P.C. Purushothama Reddiar, AIR 1972 SC 608 that it is not open for a party to object to the admissibility of the document which has been marked exhibit without any objection by such party.”

9. Thus, from the above observations made by this Court and the Hon'ble Apex Court from time to time in this regard, it is tangibly suggested that if the document, which was exhibited by the trial court during evidence of any witness, the exhibit marked on the document cannot be ordered to be deleted as the same court was not empowered to review or revise its own order or judgment.

10. Learned counsel for the petitioners has cited three aforesaid judgments, but they do not hold good in the facts and circumstances of the case. These judgments are related to the registration of those documents, which, apparently create a right in favour of the parties. In these cases, the documents were neither tendered in evidence nor exhibited, in contra, they were to be tendered in evidence and to be exhibited and at that time, the objection was raised that the documents could not be exhibited as they were not registered and duly stamped.

11. In the case on hand, the facts are altogether distinct. In the instant case, the documents were already exhibited way back in the year 2007 when the statement of Abdul Majid PW-1 was recorded by the court and the objection was raised after three years on 14th October, 2010 when the petitioners-defendants filed an application beseeching the court to delete the exhibits marked on the said documents. In view of the above circumstances, the impugned order cannot be

said to be perverse or unjust, hence the writ petition being devoid of substance deserves to be dismissed, which stands dismissed accordingly.

12. However, keeping in view the submissions made by the learned counsel for the petitioners, it is made clear that the admissibility or inadmissibility of the documents Ex. 3 and 13 shall be determined by the learned trial court while deciding the suit finally.

13. Consequent upon the dismissal of writ petition, the stay application, filed therewith, does not survive and that also stands dismissed.

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