Palevala Suryanarayana Vs Mosa Kamaraju

Court: Andhra Pradesh High Court

Date of Decision: June 15, 1998

Acts Referred: Stamp Act, 1899 â€" Section 36

Citation: (1998) 5 ALT 1

Hon'ble Judges: R. Bayapu Reddy, J

Bench: Single Bench

Advocate: S.A. Razak, for the Appellant; G. Vasantha Rajudu, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Bayapu Reddy, J.
This revision is filed by the plaintiff in S.C.No. 154 of 1992 on the file of the Court of the II Addl. District Munsif,

Kakinada questioning the decree and judgment dated 20-12-1993 by which the suit was dismissed.

2. The revision petitioner who is the plaintiff had filed the said suit seeking recovery of the suit amount of Rs. 3,900/- from the defendant

contending that the defendant, who is the present respondent, executed the suit pronote on 12-6-1991 and borrowed an amount of Rs. 3,000/-

from him agreeing to repay the same and that he subsequently failed to discharge the said debt. The defendant contested the suit contending that he

never executed the pro-note in favour of the plaintiff and the pronote is a forged one, that there is also a material alteration in the pronote and that,

therefore, the suit is not maintainable on the basis of such a pronote.

3. On the basis of the evidence adduced before it, the lower court came to a clear conclusion that the suit pronote is true, valid and was in fact

executed by the defendant in favour of the plaintiff having borrowed the pronote amount and that there is no material alteration in the pronote.

Having come to such conclusions on the points in dispute, the lower Court however dismissed the suit on the ground that the pronote, Ex.A-1, is

for Rs. 3,000/- and is, therefore, liable to be stamped with a revenue stamp of Re. 0-25 ps. that the said pronote is however stamped with a

revenue stamp of Re. 0-20 ps and as such it is not properly stamped and the suit based on such insufficiently stamped pronote is not maintainable.

Questioning the decree and judgment, the present revision is filed by the plaintiff.

4. Heard both the learned Counsel.

5. It is clear from a perusal of the material on record including the averment in the written statement and the evidence of the plaintiff examined as

P.W.I and the evidence of the defendant as D.W. 1 that the defendant never raised any objection regarding the insufficiency of the value of the

stamp affixed to Ex.A-1 pronote. A perusal of the evidence of P.W. 1 also clearly shows that the defendant did not raise any objection for the

marking of the suit pronote as Ex.A-1 and the document was duly admitted by the Court by affixing the stamp and putting the initials of the

Presiding Officer. Even during the chief-examination of the defendant as D.W. 1, he did not raise any objection regarding the admissibility of Ex.A-

1. It is, therefore, clear that the pronote was marked as an exhibit and received as evidence in the suit without any objection regarding the

sufficiency of the value of the stamp. When once such a document is admitted and received as evidence without any objection, any objection

regarding the sufficiency of the value of the stamp cannot be raised at a later stage. This view is clearly expressed in the decision of the Supreme

Court in Javer Chand and Others Vs. Pukhraj Surana, wherein it is specifically held that once a document has been marked as an exhibit in the

case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation

and that when once the document has been admitted as evidence as aforesaid, it is not open either to the trial Court or to the Court of appeal or

revisional Court to go behind that order. In the case concerning that decision, the disputed documents were hundis which were also not duly

stamped and such documents were admitted and received as evidence without any objection and such objection appears to have been raised only

at a later stage. Those hundis are of the nature where the document cannot be admitted even on payment of stamp duty and penalty at a later

stage. But inasmuch as the said documents were admitted and received as evidence without any objection and they were used during the chief and

cross-examination of the witnesses, their Lordships held that an objection regarding the sufficiency of the stamp duty cannot be raised at a later

stage. The same view was expressed by the Supreme Court in a subsequent decision in H.S. Ltd., v. Dilip Construction, AIR 1969 SC 1238 also.

In the Full Bench decision of our High Court in Lothamasu Sambasiva Rao Vs. Thadwarthi Balakotiah, it was observed by his Lordship Justice A.

Sambasiva Rao in paragraph 175 of the judgment, after referring to the observations made by a Full Bench of this Court in the same decision, that as the promissory note had already become part of the record as one of the exhibits, the objection regarding its admissibility cannot be raised at a

later stage and the suit based on such a pro-note is maintainable. The same view was expressed by this Court in a recent decision in Rajeti

Kanchayya Vs. Gundu Bhaskaramma and Another, also.

6. In view of these circumstances and in view of the facts of this particular case wherein Ex. A.l pronote was admitted and received as evidence

without any objection during the course of the trial of the suit and also used as a piece of evidence, the suit filed on the basis of such a pronote

cannot be dismissed on the ground that the pronote is insufficiently stamped. Therefore, the judgment of the lower Court cannot be sustained and is

liable to be set aside. Inasmuch as the lower Court has arrived at the clear finding that the suit pronote is true, valid and supported by

consideration, the suit is to be decreed and the revision is to be allowed.

7. The revision is, therefore, allowed but without costs and the judgment and decree of the lower Court is set aside and the suit is decreed with

costs as prayed for.