

ಹೆಚ್ಚುವರಿ ಸಿವಿಲ್ ನ್ಯಾಯಾಧೀಶರ ನ್ಯಾಯಾಲಯ II, ಕಾರವಾರ

ಅ.ದಾ.ನಂ: 158-2018

ಪಿಡೆಬ್ಲೂಕ್ 1

ಸಾಕ್ಷಿಯ ಹೆಸರು ವಜ್ರನ್ ಬೋರ್ಗೇಸ್

ಸಾಕ್ಷಿಯನ್ನು ಕರೆಸಿ ಪ್ರಮಾಣ ವಚನ ಮಾಡಿಸಲಾಯಿತು.

ದಿನಾಂಕ: 23-02-2021 ರಂದು ಸಾಕ್ಷಿಗೆ ಸ್ವ ಪ್ರತಿಜ್ಞೆಯನ್ನು ಭೋಧಿಸಲಾಯಿತು.

ಮುಂದುವರಿದ ಮುಖ್ಯ ವಿಚಾರಣೆ: ಶ್ರೀಮತಿ ಜೆಡ್ ಎ ಬಿ ವಕೀಲರಿಂದ:

ಪಿ ಆಂಡ ಎಸ್ ಸಿ ಸಂಖ್ಯೆ 7-2017 ರ ಆದೇಶದ ಪ್ರತಿಯನ್ನು ನಿಪಿ-1 ಎಂದು, ಸರ್ವೆ ನಂ 48 ಅ 1 ಹಿಸ್ಸಾ 22 ಇದರ ಪಹಣಿ ಪ್ರತಿಕೆಯನ್ನು ನಿಪಿ-2 ಎಂದು, ಸರ್ವೆ ನಂ 1346/2007 ರ ಪಹಣಿ ಪ್ರತಿಕೆಯನ್ನು ನಿಪಿ-3 ಎಂದು, ದಿ: 05-05-2015 ರ ನೋಂದಾಯಿತ ಶಾಸನ ಪತ್ರವನ್ನು ನಿಪಿ-4 ಎಂದು ಗುರುತಿಸುವಲ್ಲಿ ಎದುರುದಾರರ ಪರವಾಗಿ ವಕೀಲರಾದ ಶ್ರೀ ಕೆ ಬಿ ಎನ್ ರವರು ತಕರಾರನ್ನು ಎತ್ತಿರುತ್ತಾರೆ.  
[Objections raised by Sri.K.B.N Advocate is

1. Documents has to be proved.
2. In usual course of recorded evidence if other party objects the same it shall be marked as subject to objection.

In reply by Smt ZAB advocate for plaintiff, submits that

1. The document produced by PW1 is a registered document and it is duly stamped.
2. There should be an application or the memo to ask an order, unless there is an application or a memo filed by the other side this court cannot pass such order.

Heard both side .

On perusal of the document produced by the plaintiff it is quite evident that it is registered document on 05-05-2015. On perusal of the same document, the outer cover of the document, the Hon'ble District and Sessions Judge Uttara Kannada has marked this document as Exp2 in P and SC 7/2017. Further the plaintiff has produced certified copy of order in P and SC No. 7/2017. And the same is marked as Exp1 in this case.

On perusal of annexure of said order in the list of documents exhibited for the petitioner's Exp2 is mentioned as original registered Will.

At this movement i would like relay upon a judgment reported in ILR 2002 KAR 3613(K. Anjaneya Setti Vs. K.H. Rangaiah Setty) Hon'ble High Court of Karnataka held that **"in this case, in suit for partition the defendant wanted a documented styled as "Vadombadike Karar" to be produced and the plaintiff' raised objection for marking the same on the ground that it was nt duly samped and registered. The trial Court upheld the objection. The matter reached the Hon'ble High Court. After referring to the judgment of the Supreme Court referred to above, the Hon'ble High Court at Para 27 of its judgment observed as follows.**

**Therefore, having regard to the past experience, the difficulties experienced in following the settled practice and in view of the aforesaid Supreme Court judgment setting out the procedure to be followed, the proper course to be adopted in my view would be this.**

**When an objection is raised for marking of a document, the Court should record the objections and thereafter permit the document to be marked subject to objections. Thereafter, the parties may be allowed to cross-examine the witnesses on the basis of the said document. At the end of the trial while hearing the arguments on the main, arguments regarding admissibility of the document also be heard. If the Court upholds the objections it could exclude the said document and the oral evidence led in respect of the said document from consideration. If the said objection is overruled then the Court would decide the case on merits by taking note of the said document and the oral evidence in respect of the said document on record. In appeal the Appellate Court would again go into the aforesaid questions and pronounce its judgment on merits. If ultimately the document is held to be inadmissible and the oral evidence recorded in respect of the said document has to be excluded, it could be said so much time of the Court in recording the evidence was wasted. When compared to the time taken to hear the arguments regarding objection and the orders passed thereon and in case the matter is taken up in revision the time spent therein, in appeal if that objection is taken and if that objection is overruled and the matter has to be remanded, the time so spent in recording evidence would be negligible and such a procedure could advance the cause of justice. It also cannot be forgotten that the parties to the litigation will be totally innocent about these procedural wrangles and they will never be able to understand why the document is not marked or why the matter is remanded, why without finally deciding the case on merits the case is being tossed from one Court to another.**

**Therefore, though it is settled practice that when any objection is raised regarding marking of a document it has to be heard and decided at that stage itself, a time has come to recast or remould the procedure, as suggested by the Supreme Court which would be a better substitute for the existing one, which would help in acceleration of the trial, except of course regarding objection relating to deficiency of stamp duty.**

**28. In the instant case defendant wanted to mark the document dated 24-6-1982 which is styled as "Vodambadike Kararu" which is on a Rs. 10.00 stamp paper. The objection was the said document is in the nature of a partition deed, which is not duly stamped nor is it registered as it is a compulsorily registerable document.**

**29. Per contra, the defendant contended the said document was marked as Ex. D. 1 in O.S. No. 43 of 1986 on the file of the same Court after overruling similar objections raised in the said suit and subsequently the said suit came to be decreed relying on the said document and now the matter is in appeal and therefore it is not open to the plaintiff to object to the marking of the said document as such objection has been considered in the earlier proceedings between the same parties and marked. On consideration of the rival contentions while refusing to admit the said document, the Court below has held as under.--**

**"Therefore, this document cannot be received as evidence for want of registration.**

**Insofar as the stamp duty is concerned that could be received by imposing duty, penalty, in view of the non-registration this document cannot be marked as evidence before the Court".**

**While considering the argument that it had been already marked in the earlier suit, the Court has held as under.--**

**"The defendant wants to mark this document for any collateral purpose i.e., the possession or any other circumstances called for that can be do so in order to establish the possession the defendant might have relied on this document in another suit. The Court for collateral purpose might have received the same. In the instant case when the parties claim right over the document it cannot be possible to receive it as evidence unless it is properly stamped and registered as required under the statute".**

**Therefore, it is clear the said document is held to be inadmissible as it is compulsorily registerable.**

**However, the Court also takes note of the fact that in the earlier proceedings the said document could have been marked for collateral purposes.**

**30. Though [Section 49](#) of the Registration Act prohibits receiving as evidence the documents requiring registration under [Section 17](#) which are compulsorily registerable the proviso to the said section provides for receiving such documents in the circumstances narrated therein.**

**Therefore, it is clear there is no total prohibition for receiving unregistered documents in evidence and it is settled law that an unregistered partition deed could be received in evidence to prove any collateral transaction. Therefore, even though an unregistered document is marked that in no way affects the interest of the parties. Mere marking of the document does not take away the right of the opposite party to contend that such a document cannot be relied upon as it is not registered. Similarly, when the law declares for collateral purposes an unregistered document could be looked into it makes clear that such a document could be marked. Under these circumstances, the proper course for the Courts would be to mark such documents, subject to objections, permit the parties to adduce evidence, instead of putting questions to the lawyers at the time of argument to state for what purpose they are relying on the said document. Thereafter consider the respective contentions at the time of final hearing and then decide whether the said document could be looked into for collateral purposes and whether non-registration of the said document has made it inadmissible in evidence. Therefore, the approach of the Court below cannot be sustained."**

In view of the above ratio laid down by Hon'ble High court of Karnataka applying the facts of this case to the above ratio it is understandable that the document relied by the plaintiff is registered document and the stamp duty is also sufficiently paid .

The contention of the defendant that an usual practice on marking of any document as subject to objection does not have any sancity because the document produced by the plaintiff is registered document.

At this movement i proceed to pass following order.

Document produced by the plaintiff in name and style of as Will is hereby marked as Exp4.]

ಈ ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ನಾನು ಹಾಜರುಪಡಿಸಿದ ಶಾಸನ ಪತ್ರವನ್ನು ನಿಪಿ-4 ಎಂದು ಗುರುತಿಸಲಾಯಿತು.

(ಪಾಟೀ ಸವಾಲಿಗೆ ಎದುರುದಾರ ವಕೀಲರು ಸಮಯವನ್ನು ಕೋರಿರುತ್ತಾರೆ. )

(ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನನ್ನ ಉಕ್ತ ಲೇಖನದಂತೆ ಗಣಕೀಕೃತ ಮಾಡಿಸಲಾಯಿತು).

ಓ. ಹೇ.ಕೇ. ಸರಿ ಇದೆ.

ಹೆ.ಪ್ರ. ಸಿವಿಲ್ ಜಡ್ಜ್,|| ಕಾರವಾರ