

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 1295 OF 2014

ORDER:

This Revision is filed challenging the order dated 23.7.2012 in O.S.No. 95 of 2011 on the file of Senior Civil Judge, Dharmavaram.

2. The petitioners herein are plaintiffs in the said suit. They filed the said suit for declaration of title and permanent injunction against respondents. According to the petitioners, plaint schedule properties are their absolute properties, which they have inherited from their forefathers. The second defendant, however, objected in respect of items 2 to 4 of plaint schedule property alleging that he had 1/7th share therein.

3. During the course of evidence, they sought to mark 'Khararunama' executed on 7.10.1992 by the second defendant in favour of father of the petitioners by name Y. Ramakrishna Reddy. The said document is drafted on Rs. 10/- stamp paper.

4. In this 'Khararunama' dated 7.10.1992 executed by the second defendant allegedly in favour of father of the petitioners, the farmer agreed that the petitioners' father alone had been enjoying the land and he had no objection to transfer the said land in the Revenue Records

in favour of the petitioners' father and for issuance of necessary proceedings.

5. The second defendant, in his written statement, took a plea that the said 'Khararunama' is a fabricated document, that its contents are false and in any event it is hit by Section 17 of the Registration Act, 1908, and is therefore, inadmissible in evidence.

6. By order dated 23.7.2012, the Court below did not permit the 'Khararunama' to be adduced in evidence holding that it is inadmissible in evidence. It considered the recitals in it and came to the conclusion that in respect of items 2 to 4 of the plaint schedule properties, under the said document, the second defendant had relinquished all his rights and unless registered it cannot be received in evidence. It held that since it is executed on Rs. 10/- judicial stamp paper it is insufficiently stamped and cannot therefore be received in evidence even for a collateral purpose, since the market value of the immovable property referred to therein was more than 100/-.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioners contended that the court below erred in refusing to admit this document in evidence; that under the said document the second defendant had stated that his right in the property was being enjoyed by the petitioners' father from inception and

he did not have any enjoyment or right therein; that this recital indicates that there is no creation of right in the property in present or in future and therefore, Section 17(b) of the Registration Act, 1908 is not attracted. He further contended alternatively that the document can be admitted even if it is unregistered for collateral purpose in view of the proviso to Section 49 of the Registration Act, 1908. He also pointed out that in I.A.No. 57 of 2011 filed on behalf of the petitioners against respondents, this document had been marked as Ex. P-2 and a temporary injunction restraining the respondents from alienating the petition schedule property to third parties had been created pending suit.

9. It is the admitted position that in an interlocutory application documents are marked even though they are Photostat copies and objections of non-registration or inadequacy of stamp duty are not considered while disposing them of. There is no discussion specifically about Ex. P-2 or about its admissibility in the order dated 31.10.2012 in I.A.No. 57 of 2011. Therefore, it is not open to the petitioners to contend that merely because the 'Khararunama' dated 7.10.1992 was allowed to be marked as Ex. P-2 in I.A.No. 57 of 2011, the respondents are precluded from objecting to its admissibility in the suit.

10. The 'Khararunama' dated 7.10.1992 was executed on Rs. 10/- stamp paper by the second defendant in

favour of father of the petitioners and it refers to the fact that he had made a claim before the authorities dealing with Record of Rights that he had 1/7th share in 4 cents in S.No. 258/4 (item-2), Ac. 1.30 cents in S.No. 258/5 (item-3) and Ac. 2.62 cents in S.No. 258/7 (item-4) of Mukthapuram Village, which are items 2,3 and 4 in the plaint schedule herein. The said document further stated that his right in these properties was being enjoyed from inception by the father of the petitioners, that he had no right or enjoyment therein and he has no objection if the name of the petitioners' father is shown in the Record of Rights as the owner thereof.

11. Although counsel for the petitioners sought to contend that there is no present or future transfer in the properties in favour of the father of the petitioners by the second defendant, the fact remains that in the proceedings before the authorities dealing with Record of Rights, the second defendant had admittedly claimed 1/7th share in the above properties.

12. The 'Khararunama' categorically recites that his right in the property was being enjoyed by the father of the petitioners no doubt but in the next sentence, the 'Khararunama' also recites that since he had no right in the above lands he had no objection for recording of the same in favour of the petitioners' father in the Record of Rights. It cannot be construed that the document in

question did not create any right in present or in future in favour of the father of the petitioners and this follows from the fact that till the alleged execution of this document, the second defendant admittedly had made a claim for 1/7th share therein.

13. Therefore, in my considered opinion, there is a right or interest created under the said document in favour of the father of the petitioners and since the value of the immovable properties mentioned therein was more than Rs. 100/- admittedly, the Court below was correct in holding that it is inadmissible in evidence on the ground that it is unregistered. It is pertinent to note that no argument was addressed in the court below that this document should be marked for a collateral purpose and the contention recorded by the Court below in paragraph 2 also suggests that the intention to mark this 'Khararunama' was to show about the alleged enjoyment of these items by the petitioners' father. Thus, the document was sought to be marked for its primary purpose to show that the respondents had no right in items 2,3 and 4 of the plaint schedule property. Therefore, the Court below was rightly held that it is inadmissible in evidence.

14. In this view of the matter, I do not find any merit in the Civil Revision Petition and accordingly, the same is dismissed. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous petitions,
pending if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26.10.2015
KA