

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3837 of 2010

ORDER:

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This Revision is filed challenging the order dt.13-08-2010 in Memo in CFR.No.2492 dt.11-08-2010 in I.A.No.101 of 2010 in O.S.No.28 of 2010 of the XIII Additional District Judge, Narasaropet, Guntur District.

2. The petitioner herein is the plaintiff in the above suit. The suit was filed by the petitioner against the respondent (defendant No.3) and two others for declaration of title to the plaint schedule property and for a consequential injunction restraining defendants 2 and 3 from proceeding against the same in any manner whatsoever.

3. During the course of trial, the petitioner sought to mark the document styled as a partition list dt.15-07-1984 as Ex.A-1.

4. This was objected to by the counsel for the respondent on the ground that it is inadmissible in evidence.

5. By order dt.13-08-2010, the court below upheld the said objection and held that the document in question is a compulsorily registrable one as per Section 17 of the Registration Act, 1908 and, therefore, it is inadmissible in evidence.

6. Challenging the same, this Revision is filed.

7. Counsel for the petitioner contended that the contents of the said document indicate that there was already a prior partition between the parties to the said document and that since the said document only evidences an earlier partition, it does not require registration and it is also not liable for payment of stamp duty since it is executed prior to A.P.Act 17/1986 [amending the Indian Stamp Act, 1899 including Memorandum regarding past partition within the definition of 'instrument of partition' contained in Section 2 (15) of the Indian Stamp Act, 1899]. He also pointed out that the recital in the document also indicates that the possession of the property was taken by the parties long before its execution and, therefore it cannot be said that the said document is one, which operates or is intended to operate as a declared volition constituting or severing ownership or one which causes a change of legal relationship to the property divided amongst the parties to it.

8. Learned Government Pleader for Arbitration supports the order passed by the court below and contends that the court below was right in holding that the document sought to be marked by the petitioner is inadmissible in evidence.

9. I have seen the contents of the document sought to be marked on behalf of the petitioner, which is styled as

“KUTUMBA BHAGA PAMPINI” document dt.15-07-1984. It specifically recites that the parties had already divided the properties mentioned therein previously and they are in enjoyment of the respective properties long prior to its execution and it records a previously completed partition.

In ***ROSHAN SINGH AND OTHERS Vs. ZILE SINGH AND***

OTHERS^[1] the Supreme Court held as follows:-

"9. It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration Under Section 17(1) (b) of the Act, a writing which merely recites that there has in time past been a partition is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well-settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) a partition may be effected orally; but if is subsequently reduced in to a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it If it be not registered Section 49 of the Act will prevent its being admitted in evidence. Secondly evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: see Mulla's Registration Act, 8th Edn., pp 54-57".

10. Thus, the Supreme Court has held in the above case that

where the document merely recites that there has in time past been a partition, it does not require registration and that mere list of properties allotted at a partition is not an instrument of partition and does not require registration. It clarified that such a document is not one requiring registration because by its own force, it does not operate or purport to operate or create or declare some right in immovable property. This decision has been followed by this Court in ***GHULAM JEELANI AND OTHERS Vs. Mr.GHULAM SOFI AND OTHERS***^[2]. Therefore, by applying this test, I am of the opinion that the document in question is not a compulsorily registrable document.

11. As regards stamp duty, the document in question was executed on 15-07-1984. As on that day, the definition of the term 'instrument of partition' contained in Section 2 (15) of the Indian Stamp Act, 1899, did not contain the words "and a memorandum regarding past partition". These words have been added by A.P.Act 17/86 with effect from 16.8.1986.

12. Since the subject document is only a memo regarding past partition and since it was executed prior to amendment of Section 2(15) of the Act, it cannot be treated as an instrument of partition required to be stamped in accordance with Schedule 1A of the Indian Stamp Act, 1899.

13. The finding of the court below that the subject document shows that the first defendant and his sons have entered into

partition and separate possession of their immovable properties with all the details of their allotment of shares, that even though its contents indicate that there was an earlier partition, since the date of such earlier partition is not mentioned, it becomes a partition deed, is clearly erroneous and unsustainable. The law nowhere requires that the date of earlier partition should be mentioned in the memo recording the earlier partition.

14. Therefore, the impugned order is set aside. The court below is directed to mark the document dt.15.7.1984 as Ex.A-1 in the suit.

15. The Civil Revision Petition is accordingly allowed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date:11-06-2015

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[\[1\]](#) AIR 1988 SC 881

[\[2\]](#) 1996 (3) ALT 643