

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4609 of 2010

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 18.08.2010 passed in O.S.No.50 of 2000 by the I Additional District Judge, West Godavari District at Eluru.

2. By the impugned order, the Court below held that a compromise decree dated 13.07.1999 passed by this Court in A.S.No.3262 of 1992 is inadmissible evidence for want of registration.

3. Learned counsel for the petitioner contended that this order is erroneous because under the compromise decree, the parties have agreed for transfer of 50% share of Smt. Nuli Seetha Mahalakshmi, the 1st respondent in the appeal in a firm, viz., M/s. Padmavathi Rice & Flour Mill, Tadepalli Gudem, to the appellant in the appeal for which the appellant was to pay a sum of Rs.2.5 lakhs to her. He contended that the share of the partner in a firm is moveable property and not immoveable property and therefore the provisions of Registration Act, 1908 have no application. He relied upon a judgment of the Supreme Court in **Commissioner of Income-tax, West Bengal, Calcutta v. Juggilal Kamalapat**^[1] and **Addanki Narayanappa v. Bhaskara Krishtappa**^[2].

4. Learned counsel for the respondent, on the other hand, refuted these contentions relying on the judgment of the Supreme Court in **Major S.S. Khanna v. Brig. F. J. Dillon**^[3]. He contended that exercise of jurisdiction under Article 227 of the Constitution of India is akin to the jurisdiction under Section 115 C.P.C and the Supreme Court in the said case held that exercise of jurisdiction under Section 115 C.P.C is discretionary and the High Court is not bound to interfere merely because the conditions set out in clauses (a) (b) & (c) in

Section 115 C.P.C. are satisfied.

5. The Court below in the impugned order, proceeded on the footing that the subject matter of the compromise decree is immovable property and relying on Section 17 of the Registration Act, 1908, came to the conclusion that the compromise decree is inadmissible evidence for want of registration. It did not specifically advert to the point as to whether the share of a partner in a firm is immovable property or not?

6. This issue is no longer res integra. In **Addanki Narayanappa v. Bhaskara Krishtappa** (2 supra) the Supreme Court held that the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. It also observed that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by Section 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners. It further held that an unregistered deed of release by a partner of his share in the partnership business is admissible in evidence, even where the partnership owns immovable property.

7. In **Commissioner of Income-tax, West Bengal, Calcutta v. Juggilal Kamalapat** (1 supra) this principle was reiterated and it was held that a deed, evidencing the transfer of an interest of a partner in partnership assets, does not require registration even though the partnership assets are comprised of movable as well as immovable property.

8. This legal position has not been disputed by the learned counsel for the respondent.

9. Reliance placed by the counsel for the respondent on the judgment of the Supreme Court in **Major S.S. Khanna v. Brig. F. J. Dillon** (3 supra) with regard to scope of Section 115 C.P.C in my opinion, is misplaced because the said decision deals with the scope of Section 115 C.P.C whereas the case on hand is one under Article 227 of the Constitution of India. The scope of interference under Article 227 has been dealt with by the Supreme Court in **Surya Dev Rai vs. Ram Chandar Rai**^[4] and **Shail (Smt) v. Manoj Kumar and Ors.**,^[5] and in view of the said decisions I am of the opinion that this Court is entitled to interfere with the impugned order passed by the Court below holding that the compromise decree dated 13.07.1999 passed by this Court in Appeal No.3262 of 1992 is inadmissible for want of registration.

10. Accordingly, the impugned order dated 18.08.2010 passed in O.S.No.50 of 2000 taking the above view is set aside; Civil Revision Petition is allowed and it is declared that the compromise decree dated 13.07.1999 passed by this Court in A.S.No.3262 of 1992 is admissible evidence and does not require registration. No order as to costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

M.S. RAMACHANDRA RAO,J.

24th June, 2015
Js.

^[1] AIR 1967 SC 401

^[2] AIR 1966 SC 1300

^[3] AIR 1964 SC 497

^[4] (2003) 6 SCC 675

^[5] (2004) 4 SCC 785