

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2176 OF 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner challenging the docket order dated 21.01.2015, passed in Original Suit No.227 of 2008 by the Principal Junior Civil Judge, Nizamabad, (for short, 'the trial Court'), wherein the trial Court did not admit the document, styled as memorandum of partition deed dated 17.03.1986, sought to be received in evidence, on his behalf, on the ground that it was inadmissible in evidence, by virtue of Amendment Act 17 of 1986 which came into force with effect from 16.08.1986.

The main contention of learned counsel for the petitioner herein is that the alleged document sought to be marked is only an un-registered memorandum of partition deed and it is not required to be registered. Amendment Act 17 of 1986 came into force with effect from 16.08.1986, therefore, the amended Act has no application to receive the document under challenge and as such the order of the trial Court is erroneous and prayed to *set-aside* the order under challenge.

In spite of service of notice on the respondents, neither of the respondents appeared nor there is any representation on their behalf.

Learned counsel for the petitioner mainly contended that the suit in O.S. No.227 of 2008 was filed for injunction simplicitor and to prove possession therein the alleged document sought to be marked is only for collateral purpose, bar under Section 49 of the Registration Act, 1908 (for short, 'the Act of 1908') has no application to the present facts of the case and prayed to *set-aside* the order under challenge.

Considering the contentions of learned counsel for the petitioner and the docket order under challenge, the sole point that arises for consideration is:

Whether the document dated 17.03.1986, styled as partition deed, is admissible in evidence? If so, whether the same may be received in evidence, in a suit for injunction simplicitor, for collateral purpose?

POINT: Undisputedly, the suit was filed for injunction simplicitor and the alleged document sought to be received therein is memorandum of partition deed but as seen from the nomenclature of the document, it is a partition deed. Even the contents of the document goes to show that the two brothers therein were continuing jointly and decided to divide the property in consultation with elders and partitioned the property into two equal shares; northern part was allotted to one Narasing Rao and the southern part was allotted to one Venkatesam. Thus, the document is not a memorandum of partition recording previous partition; it is only an un-registered and un-stamped partition

deed. Therefore, the contention that the document sought to be marked as a memorandum of partition recording previous partition is not acceptable, in view of the contents of the document.

Instrument of Partition is defined under Section 2(15) of the Indian Stamp Act, 1899 (for short, 'the Act of 1899'), which reads as follows:

“‘Instrument of partition’ means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any civil Court and an award by an arbitrator directing a partition and a memorandum regarding past partition.”

In view of the above definition under Section 2(15) of the Act of 1899, the alleged document is an instrument of partition by which both the parties to the document divided the property.

The contention of learned counsel for the petitioner is that when the purpose of admitting the document is only for collateral purpose, an un-registered document can be received in evidence and, in support of his contention, placed reliance on a decision of this Court in ***Khaja Habeebuddin Vs. Md. Ibrahim and others***^[1], wherein this Court, earlier, while deciding admissibility of an un-registered partition deed, held as follows:

“8. Reverting to the facts of this case, it is evident that the document in question did provide for extent of shares of various individuals. This fact can be brought in evidence only through a registered document. Therefore, the documents in question are inadmissible to establish the factum of partition of the property by metes and bounds. So far as the collateral purposes referred to above are concerned, the documents can be taken into account for the purpose of severance of status. As regards the nature of possession, it needs to be observed that the document itself did not indicate the nature of possession of the properties by various sharers. The result of this discussion is that:

- (i) The document in question is partition deed.
- (ii) It is not registered and
- (iii) It does not deal with the nature of possession.

9. In the light of the law laid down by this Court in the judgments referred to above, the document in question cannot be received in evidence to establish the factum of partition. It, however, can be received in evidence for the collateral purpose of severance of status and nothing more.”

In the present case, the suit was filed for injunction simplicitor where the Court is required to record a finding as to lawful possession as on the date of filing the suit and infringement or invasion of legal right of the plaintiff-petitioner by the defendants-respondents. Therefore, the document which is not admitted by the trial Court is only to prove the possession of the property by the petitioner herein and not for any other purpose like proof of partition.

Section 49 of the Act, 1908 creates an interdict to receive an un-registered document required to be registered in evidence; according to it, no document required

by Section 17 of Act of 1908 or by any provisions of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein, or confer any power to adopt; or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered but proviso to Section 49 is an exemption to receive document for collateral purpose. What is collateral purpose is not defined anywhere but the Madras High Court in ***K. Panchapagesa Ayyar and another Vs. K. Kalyanasundaram Ayyar and Others***^[2] and Bombay High Court in ***Ramalakshmi Vs. Bank of Baroda***^[3] held that the word 'collateral purpose' is difficult to define. The real purpose can only be gathered from the facts and circumstances of each case and may also vary from case to case. The Apex Court in ***SMS Tea Estates Private Limited Vs. Chand Mari Tea Company Private Limited***^[4], held as follows:

"The Section 49 makes it clear that a document which is compulsorily registerable, if it is not registered will not affect the immovable property comprised therein in any manner. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with the transaction. In case of arbitration agreement which is valid and separable, the arbitrator can rely upon unregistered document for two purposes: (i) as evidence of contract in a claim for specific performance; (ii) as evidence of any collateral transaction which does not require registration."

In view of the law declared by the Apex Court, an un-registered document can be received in evidence for collateral purpose *i.e.*, for proving the purpose other than the purpose for which the document was executed. In the alleged document sought to be marked, no boundaries of the southern and northern portions, which were allotted to Venkatesham and Narsinga Rao were mentioned. In such case, it cannot be said to be a partition by metes and bounds, however, the proof of possession is collateral which is within the proviso to Section 49 of the Act, 1908.

The alleged document was executed on 17.03.1986 but the amendment to Section 17 of the Act came into force with effect from 16.08.1986, such amendment will have no application to the document executed prior to the amendment. In any view of the matter, when the document is styled as partition deed, divided the property into 2 shares, it is required to be stamped as per the provisions of the Act of 1899. Though the document is executed prior to amendment of Section 17 of the Act of 1908, the alleged document, on payment of stamp duty and penalty under Article 40 Schedule I-A of the Act of 1899 as amended by A.P. Act, ought to have been admitted only for collateral purpose. The trial Court did not consider the date of document and date of amendment of Section 17 of the Act of 1908, applied the amended provision erroneously, hence, rejection of document on the said ground is not legal. Therefore, the trial Court is directed to receive the document in evidence on behalf of the petitioner-plaintiff only for the limited purpose of proving his possession, as on the date of filing the suit, to decide

his lawful possession, in view of the limited scope in a suit for injunction simplicitor, by collecting stamp duty and penalty as stated hereinabove, if not already collected.

With the above direction, the Civil Revision Petition is accordingly disposed of.

In consequence, miscellaneous petitions, if any, pending in this Revision shall stand closed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 21-09-2015.
Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

23092015

CIVIL REVISION PETITION No.2176 OF 2015

Date. 21-09-2015

DSH

-
- [\[1\]](#) 2004 (3) ALT 51
 - [\[2\]](#) AIR 1957 Madras 472 (DB)
 - [\[3\]](#) AIR 1953 Bombay 50
 - [\[4\]](#) 2011 (14) SCC 66