

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.939 of 2015

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/defendants 1 to 3 aggrieved by the order dated 02.02.2015 in O.S.No.174 of 2006 passed by the Additional Senior Civil Judge, Machilipatnam, Krishna District, rejecting to receive the Partition Agreement dated 17.4.1983 in evidence as it is unregistered and required to be stamped properly.

2. The 1st respondent/plaintiff filed the aforesaid suit with the following reliefs:

a) directing the defendant Nos.1 to 3 to repay and re-embalance the amount of Rs.1,30,830/-, which was the debt amount of Rs.1,25,000/- paid by the plaintiff towards the decretal amount, due to the 4th defendant and with interest thereon, calculated at 24% p.a., as shown in the valuation para, from the date of payment i.e., from 26.6.2006, till the date of filing of the suit;

b) to grant subsequent interest at 12% p.a., on the principal debt amount of Rs.1,25,000/- paid by the plaintiff;

3. During the course of trial, the Partition Agreement dated 17.4.1983 was sought to be projected as a piece of evidence by the petitioners/defendants, for which the 1st respondent/plaintiff raised objection on the ground that the said document is not sufficiently stamped, as such, the same is not admissible in evidence. Basing on such objection, the impugned order dated 2.2.2015 is passed by the Court below, holding that the said document cannot be received in evidence. Hence, the present civil revision petition.

4. It is contended by Sri M. Radhakrishna, learned counsel for the

petitioners/defendants that by virtue of the document dated 17.4.1983, the shares are not apportioned and there is a clear recital to execute a further document on a stamp paper and, as such, it cannot be said that the document is not sufficiently stamped so as to receive the same as an evidence. In support of his contention, the learned counsel placed reliance on a judgment rendered by a Full Bench of Madras High Court in THE BOARD OF REVENUE, MADRAS Vs. M. SWAMINATHA CHETTIAR and also the judgment rendered by a learned single Judge of this Court in MAJETI BASAVAMMA AND OTHERS v. MAJETI VENKATESWARA RAO.

5. Having heard learned counsel for the petitioners/defendants, I have perused the impugned order and carefully gone through the neat typed copy of the document in question in telugu language.

6. It is fairly well settled that a document, which is insufficiently stamped, cannot be allowed to be marked as an evidence even for collateral purpose also. A document, which is sufficiently stamped but not registered, can be marked for collateral purpose in the suit.

7. In this case, it is the case of the petitioners/defendants that the document dated 17.4.1983 is not a partition agreement at all. As the document provides a clause for execution of a separate deed and registration thereof, at a later point of time, it need not be stamped and registered. Such an objection is over-ruled by the Court below and the impugned order is passed stating that the said document cannot be accepted in evidence, unless it is properly stamped and penalty is paid.

8. From a perusal of the document dated 17.4.1983, it is clear that the parties have distributed the assets and liabilities in clear terms and, in the last portion of the document, it is stated that, if necessary, the same is to be drafted on a stamp paper and parties 2 to 6 have to bear the expenditure equally. In view of the same, it is clear that by virtue of the said document itself, the partition has been affected and hence the document is required to be stamped. Without paying the deficit stamp duty and penalty, the said document cannot be allowed

to be marked even for collateral purpose.

9. So far as the judgments relied upon by the learned counsel for petitioners/defendants are concerned, in the case of M. SWAMINATHA CHETTIAR (1 supra), a Full Bench of Madras High Court, having regard to the facts and circumstances in the said case, has held that the Panchayatdars merely suggested a mode of division of the common properties and suitable documents will be executed in due course. In such factual backdrop, it was held that the document in question is neither an instrument of partition nor an agreement to divide the properties as between the co-owners; but it is merely a record of an arrangement with the avowed intention of executing documents in the future so as to secure individual title over the properties in question by the contesting claimants.

10. In the case of MAJETI BASAVAMMA (2 supra), a learned single Judge of this Court has held that where a document provides for execution of a separate document and registration thereof, at a later point of time, it cannot be treated as one conferring any rights or creating any interests in properties for the purpose of registration and admissibility of such document.

11. By virtue of the document in question, whether the partition is effected or not, or whether any rights of the parties were decided or not is a matter to be considered having regard to the contents of the document in each and every case. A perusal of the document in question shows that, in clear terms, the shares of the parties were apportioned and only at the fag end of the document, it is stated that, if necessary, the same document to be drafted on a stamp paper. Such a clause cannot be construed as an agreement to execute another agreement to decide the shares of the parties, so as to plead that it is not a partition document. Having regard to the recitals in the document in question, this Court is of the view that both the judgments relied on by the learned counsel for petitioners/defendants would not render any assistance in support of his case to plead that the document in question is admissible in evidence even without

paying any stamp duty and penalty.

12. In view of the reasons assigned by the Court below, I do not find any merit in this revision, warranting interference under Article 227 of the Constitution of India.

13. For the aforesaid reasons, this civil revision petition is devoid of merits and is accordingly dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

13.03.2015.

Msr

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