

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

CIVIL REVISION PETITION No.5812 of 2011

ORDER:

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Heard Sri K.Sitaram, learned counsel for petitioners and Sri K.Jyothi Prasad, learned counsel for 2nd respondent. Notice sent to 1st respondent returned with an endorsement "unclaimed". Therefore it is deemed to have served. Proof of service for other respondents filed.

2. This Civil Revision Petition is filed challenging the order dt.28-11-2011 in O.S.No.61 of 2007 of the Additional Senior Civil Judge, Eluru.

3. The petitioners herein are plaintiffs in the suit. They filed the suit to declare that the preliminary decree passed in O.S.No.20 of 1979 on the file of Additional Senior Civil Judge, Eluru was obtained by collusion and fraud and for a consequential permanent injunction.

4. In the said suit, they sought to mark a document styled as a family partition agreement, which was not registered. An objection was raised as to its marking by

defendants on the ground that the said document requires registration in view of Section 17(1)(b) of the Registration Act, 1908 (for short “the Act”) and that it is inadmissible in evidence.

5. By order dt.28-11-2011, the Court below agreed with the said contention and held that the document cannot be received in evidence since it requires registration under Section 17 of the Act.

6. Challenging the same, this Revision is filed.

7. The learned counsel for petitioners contended that the recitals in the document do not indicate that it is a family partition agreement and the recitals extracted in the order of the Court below only indicate that there was an agreement by one of the parties to it, to relinquish the land in R.S.Nos.219/3 and R.S.No.219/5, and therefore the Court below was not correct in taking the view that the document requires registration and is consequently inadmissible in evidence in view of its non-registration. Alternatively, he contended that even if the document is one which requires registration, it can still be admitted in evidence and can be looked into for proving the division of status. He relied upon the judgment in **Pallapothu Naga Prasad and Others Vs. Pallapothu Venkata Krishna**

Rao and others^[1].

8. The learned counsel for 2nd respondent pointed out that the extract of the above document in the impugned order is not complete and that the later part of the contents of the said document clearly indicates that there was a division of the properties under the said document, which warranted registration in view of Section 17(1)(b) of the Act.

9. I have noted the submissions of both sides.

10. After perusing the document in question, I agree with the contention of the learned counsel for 2nd respondent that there was indeed a division of properties in the document, which therefore mandated its registration under Section 17(1)(b) of the Act. However, the said document while being inadmissible to prove the partition as such as per the terms contained therein, it is still admissible in evidence for collateral purpose for proving the division of status and nature and character of possession.

11. In **Pallapothu Naga Prasad** (1 supra), this Court has held following the 5 Judge Bench judgment of this Court in **Pedda Muthyala Reddy Vs. Venkata Reddy**^[2] that unregistered partition is admissible in evidence and can

be looked into for non suiting the claims for partition on the ground of prior partition, as long as the said document is not used as the source of title to any of the properties which erstwhile coparceners hold as a result of that partition. This Court has also held that an unregistered partition deed is admissible in evidence for the collateral purpose of proving division of status and nature and character of possession.

12. In this view of the matter, I am of the opinion that although the document in question cannot be admitted in evidence as a source of title to any of the properties mentioned therein, it can still be received for the collateral purpose of proving division of status and nature and character of possession. Therefore, the order passed by the Court below is modified to the above extent.

13. The Civil Revision Petition is partly allowed. No costs.

14. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 19-08-2015

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[\[1\]](#) 2003(1) ALD 251

[\[2\]](#) 1969(1) APLJ 1 (FB)