

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

C.R.P.No.3120 OF 2014

ORDER:

This Civil Revision Petition is filed under article 227 of the Constitution of India challenging the order dt.08.08.2014 in I.A.No.592 of 2014 in O.S.No.23 of 2012 of the IX Additional District Judge, Wanaparthy.

2. The petitioners herein are the defendants 1, 7 and 8 in the suit. The 1st respondent/plaintiff had filed the above suit against the petitioners and other respondents for partition of the plaint schedule property and for allotment of 1/4th share therein. Her contention is that the plaint schedule properties are ancestral and joint family properties of the 2nd petitioner, one Balaswamy Reddy, Ramachandra Reddy and Gopal Reddy, who are brothers.

3. Written statement was filed by the petitioners contending that a document dt.21.03.1994 had been executed by the 2nd petitioner giving rights in certain items of the plaint schedule property to Ramachandra Reddy by conferring on the said Ramachandra Reddy the obligation to perform the marriage of the 1st respondent. Alternatively, it was contended that the said document is invalid since it was not registered and insufficiently stamped; but the said Ramachandra Reddy to the open knowledge of the 2nd petitioner and the 1st respondent was asserting his absolute title over the properties sold by 2nd petitioner and plaintiff under the said document by adverse possession.

4. Issues were framed and trial commenced. At that stage, the 1st petitioner herein, who is the son of Balaswamy Reddy, who

died pending the suit, filed I.A.No.592 of 2014 to receive the document dt.21.03.1994 and to mark it in evidence on his side.

This application was opposed by the 1st respondent.

5. By order dt.08.08.2014, the Court below rejected the said application. It held that the document dt.21.03.1994 sought to be got impounded by the petitioners was inadmissible in evidence on the ground that it is unregistered and it cannot be received in evidence even for collateral purpose.

6. Challenging the same, this revision is filed.

7. Heard Sri K.Goverdhan Reddy, Counsel for the petitioner and Sri B.Narasimha Sarma, Counsel for the 1st respondent.

8. Counsel for the petitioner contended that the document in question is a family arrangement and does not require registration. Alternatively, he also contended that even if it requires registration, it is still admissible for collateral purpose of proving the nature of relation of the petitioner in respect of the properties covered by the said document. He contended that the Court below is not correct in stating that the said document cannot be received in evidence, even for collateral purpose.

9. Counsel for the respondents on the other hand sought to contend that the order passed by the Court below is correct and that the document in question requires registration and was rightly held to be inadmissible in evidence.

10. Copy of the document dt.21.03.1994 has been placed before me. The said document recited that the deceased-3rd defendant Ramachandra Reddy and 2nd petitioner are brothers; that they had

partitioned their properties; that the wife of the 2nd petitioner had died leaving his daughter, 1st respondent, who were being maintained by Ramachandra Reddy; that on the advise of the elders, the 2nd petitioner decided to give his properties to the said Ramachandra Reddy, subject to condition that the latter performs the marriage of the 1st respondent. There is a specific recital in the said document that from the date of execution of the said document i.e., 21.03.1994, neither the 2nd petitioner nor the 1st respondent would have any rights in the property.

11. Counsel for the petitioner sought to contend that the document in question is a family arrangement which had already been made. He places reliance on the judgment of the Supreme Court in **Kale & others v. Deputy Direction of Consolidation & others**^[1]. In the said judgment, the Supreme Court noted **Halsbury's Laws of England, Vol. 17, Third Edition, at pp.215-216**, with regard to the essentials of the family settlement and the principles governing the existence of the same, which reads as follows:

“ A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term “family arrangement” is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not

objections to the binding effect of family arrangements.”

It further held that :

“10. In other words to put the binding effect and essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions:

- 1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
- 2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
- 3) The family arrangement may be even oral in which case no registration is necessary;
- 4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a more memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;
- 5) The member who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;
- 6) Even if bona fide disputes, present or possible, which may not involve legal claims, are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

12. In my considered opinion, the document in question was not a document executed when any disputes arose between the 2nd petitioner and the said Ramachandra Reddy to secure peace and security in the family by avoiding litigation. It was a transaction, where the 2nd petitioner had given up his rights in the property in

favour of Ramachandra Reddy and in consideration thereof, his brother Ramachandra Reddy took over the responsibility of getting the 1st respondent, who is the daughter of the 2nd petitioner, married. Therefore, I am of the opinion that it is not a family arrangement. Since there is a clear relinquishment of rights under the document in favour of the deceased-Ramachandra Reddy by 2nd petitioner, the document requires registration. Therefore, it cannot be received in evidence for establishing the relinquishment by the 2nd petitioner in favour of the said Ramachandra Reddy, because that would be the primary transaction covered by the document.

13. Section 49 of the Registration Act reads as follows:

“ **Section 49:** Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: 54 [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 55, 56 [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]”

14. In **Bondar Singh & others v. Nihal Singh & others**^[2], the Hon'ble Supreme Court held that a document which requires registration would not be admissible in evidence, if it is unregistered, but it can still be looked into for collateral purposes

and the collateral purpose would be the nature of possession of the plaintiffs over the plaint schedule property in that case.

15. So as per above provision, even if a document is required to be registered, but is unregistered, it is still admissible in evidence for collateral purpose, and it can still be received in evidence for such collateral purpose. The nature of possession of the 3rd defendant would be such collateral purpose.

16. For the aforesaid reasons, the order dt.08.08.2014 of the Court below in so far as the said Court held that the document in question cannot be marked as exhibit even for collateral purpose is set aside and the Court below is directed to receive the document and permit the petitioner to mark it on his side only for collateral purpose of proving the nature of possession of the deceased-3rd defendant Ramachandra Reddy and his legal representatives.

17. Accordingly, this Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

30th June, 2015.

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[\[1\]](#) 1976(3) SCC 119

[\[2\]](#) 2003(4) SCC 161