

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.1569 OF 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.15.04.2015 in OS.No.118 of 2013 of the Senior Civil Judge, Jangaon at Warangal.

2. The petitioner herein is the plaintiff in the above suit filed against the respondents for declaration of his title to the plaint schedule property and for a perpetual injunction restraining the respondents with his possession and enjoyment thereof.

3. According to the plaint, the father of the respondents 1 and 2 and petitioner are brothers and the family jointly cultivated Ac.30-00 gts of land in survey No.238 of Kootigal Village, Maddur Mandal. On the advise of elders, Ac.20-00 gts was taken by the father of the respondents and Ac.10-00 gts was given to the petitioner.

4. Alleging that on 30.09.1996, in the presence of elders, it was agreed that Ac.10-00 gts should be taken by him and Ac.20-00 gts should be taken by his brother and the same was reduced into writing, he sought to mark a document dt.30.09.1996, alleging that it is only a document incorporating the factum of a past partition.

5. This was opposed by the other side contending that the said document requires registration, that it is also not a stamped document and therefore, it is inadmissible in evidence.

6. By order dt.15.10.2014, the trial Court held that since the document in question is an instrument of partition, it requires registration and since it is unregistered, it cannot be admitted in evidence as an instrument of partition. It observed that it can be looked into for a collateral purpose as to whether there is any severance in status and also as to the nature of possession under the proviso to Section 49 of the Registration Act, 1908 provided the petitioner pays adequate stamp duty and penalty under the provisions of Indian Stamp Act, 1899.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioner contended that the conclusion drawn by the Court below that the document dt.30.09.1996 is an instrument of partition is not correct and that it does not require registration or needs to be stamped.

9. A reading of the document dt.30.09.1996, no doubt, indicates that prior there to, there was a partition between the brothers and after the said partition, the petitioner left the village for 15 years. Thereafter the petitioner returned and raised an issue before the village elders and that the village elders directed the petitioner to take Ac.10-00 gts and the respondents' father to take Ac.20-00 gts. It is thus not a mere

record of past partition, because although the past partition is mentioned therein, on account of some events intervening between the said past partition and deed dt.30.09.1996, the village elders had intervened and restored to both parties the extents which they have originally allotted to each other.

10. Therefore, the document dt.30.09.1996 cannot be said to be a mere record of past partition. The Court below was correct in stating that it is an instrument of partition requiring registration and adequate stamp duty; and that although it cannot be admitted in evidence as an instrument of partition, it can be looked into for a collateral purpose, provided the petitioner pays sufficient stamp duty and penalty thereon.

10. I therefore do not find any merits in this Civil Revision Petition and is accordingly dismissed. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

19th August, 2015.
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