

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2359 of 2015

ORDER:

Assailing the order dated 01.05.2015 passed in O.S.No.185 of 2012 on the file of the Principal District Judge, Karimnagar, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

The facts in issue are as under:

The petitioners, who are the plaintiffs in O.S.No.185 of 2012 filed the above suit through their G.P.A. holder for declaration of title and perpetual injunction in respect of the land admeasuring Ac.0.29 ½ gts., in Sy.No.661 and Ac.0.11 gts. In Sy.No.662 situated at Kothapalli (Haveli) Village, Karimnagar Mandal and District. The averments in the plaint would show that the plaintiffs are brothers and they are sons of one late Anugula Kanakaiah. They claimed to be the absolute joint owners and possessors of the suit schedule land. The mother of the plaintiffs died and the plaintiffs got the suit schedule land in a oral partition which was said to have taken place on 26.11.2000. The plaintiffs claimed to be in continuous possession and enjoyment of the suit schedule land without any interruption from any quarters. As per the oral partition, the plaint schedule property fell to the share of the plaintiffs and Ac.0.03 gts., of land in which a house was constructed, was given to their parents. It is stated in the plaint that taking advantage of the absence of father of the plaintiff, the defendants started trying to occupy the suit schedule land with the help of anti-social elements. On 10.09.2012, the defendants along with anti-social elements came to the suit schedule land and tried to occupy the same by dispossessing the plaintiffs. It is said that with great difficulty the plaintiffs resisted the illegal acts of the defendants. Apprehending danger to their possession over the suit schedule land in the hands of the defendants, the above suit came to be filed.

First defendant filed his written statement claiming that the suit schedule property is in exclusive property of late Kanakaiah i.e. father of the plaintiffs, who sold away the same to the first defendant through a registered sale deed dated 12.06.2002 and later the first defendant sold away the same to defendant

Nos.2 and 3, who are in possession of the suit schedule property.

During the course of trial the plaintiffs filed chief affidavit of plaintiff No.1 and an Advocate-Commissioner was appointed for recording the cross examination of PW.1. At that stage, the plaintiffs wanted the suit document referred to as “Pampakala Theermana Patram” dated 24.12.2000 be marked as exhibit, the same was objected by the defendants, as such the warrant of commission was returned by the Advocate-Commissioner.

After hearing both sides as to the admissibility of the said document, the trial Court held that the suit document cannot be received in evidence as the same in the shape of partition deed; is not on a properly stamped and is not registered as per the provisions of the Registration Act. Challenging the said order the present revision is filed.

Learned counsel for the petitioners would submit that the document which is sought to be marked as an exhibit is only an arrangement of properties made between the family members and in the presence of elders who signed the document as witnesses. He submits that if the recitals of the document are taken into consideration, it would clearly indicate that it is only a family arrangement and not a partition deed. According to him, the partition of the properties took place on 26.11.2000 and thereafter the distribution of the properties was on 24.12.2000 in the presence of elders. In support of his argument, the counsel relied upon the following judgments.

1. ***Kale and others v. Deputy Director of Consolidation and others.***
2. ***Bandikatla Padmavathi v. Bandikatla Veera Brahma Chari and others***
3. ***Roshan Singh and others v. Zile Singh and others***

Per contra, the counsel for the respondents opposed the same contending that a reading of the document would clearly reveal that it was a partition deed executed in the presence of the elders on 24.12.2000. Relying upon the certain interpolations and alterations in the dates in the said document, he submits that the theory of past partition is introduced only to circumvent the provisions of law. In any event, he submits that even if it is to be treated as a memorandum

of past partition, in view of the amendment to Section 2 (15) to the Indian Stamp Act, 1899, the document needs to be registered. In support of his plea, he placed reliance on the following judgments.

1. ***Lakkoji Mohan Rao v. Lakkoji Viswanadham and others***
2. ***Pariti Suryakanthamma and another v. Saripalli Srinivasa Rao and another***

In reply, the counsel for the petitioners would submit that the Judgment of this Court reported in Lakkoji Mohan Rao case (4 supra) which has been relied upon would not apply to the case on hand as in the said case the issue of admissibility of the document came up for consideration in E.P. proceedings and not during the pendency of the trial. In support of his argument with regard to applicability of Section 2 (15) of the Indian Stamp Act, 1899, he relied upon the following judgments of this Court.

1. ***Kalyanapu Venkatalaxmi and others v. Kalyanapu Ramudu***
2. ***Pallanki Narasimha Murthy v. Maddukuri Veeraju***

In Roshan Singh case (3 supra), the Apex Court was dealing with a situation where there was a partition by metes and bounds of the agricultural lands and the shares allotted to the two branches were separately mutated in the revenue records. There was a disruption of joint status. All that remained was the partition of the ancestral residential house. The document does not affect a partition but merely records the nature of arrangement arrived at as regards the division of the remaining property. It was held that a mere agreement to divide does not require registration, but if the writing itself effects a division, it must be registered.

In **Kale v. Deputy Director case (1 supra)** the Apex Court deduced the following principles.

- 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 mere 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 [s. 17\(2\)](#) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 'It 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.

In **B.Padmavathi case (2 supra)** this Court held that the document in question clearly showed that the title already came to be decided in favour of the plaintiff and the husband of defendant No.1 and that the past arrangement was merely reduced into writing to avoid disputes in future. Hence, it was held that payment of stamp duty is not necessary.

In ***Polam Manimantha Reddy v. Polam Lakshmikantha Reddy and another*** a learned single Judge of this Court held that when the document which is in the form of list of properties is only ancillary to the main act of partition affected previously, it cannot be considered as a partition deed by itself. If the preparation of lists is a part and parcel of the process of partition, it can be considered as part of the partition and is liable to duty. In a situation where the partition lists merely recites or recognizes the properties that have been allotted in a partition affected on an anterior date, they should be considered as evidence of the partition affected on a prior date. It is pertinent to

note that the preparation of lists was done subsequent to the actual decision or partition affected by the mediators. In the said case the partition list which is sought to be admitted as document contains only the list of properties and does not refer to the details or process of mediation. Therefore, it has been held that the partition lists cannot be construed as an instrument of partition and as such the same is not liable to stamp duty.

Before dealing with the applicability of the authorities cited to the case on hand, it would be apt to refer to the relevant portions of the document which is sought to be marked in the suit.

A reading of the original deed, which is in telugu would show that the document was executed on a Sunday ie. on 24.12.2000. The family members came together and decided the issue in the presence of elders. The contents of the second page of the document assume lot of importance and decide the issue involved in the case. It is as under:

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The above sentence is to the effect that the properties are to be treated as joint family properties and they have agreed and settled in front of the following elders, who acted as witnesses. It further reads as under:

It means that “earlier land to an extent of Ac.1.05 gts., in Sy.No.664 was sold for the marriage expenses and other gifts to the two sisters by name Manga and Padma”.

A reading of the above sentences show that the properties which are left over till today ie. on 26.12.2000 (interpolated), Sunday being shared by the brothers and parents to live separately with their families. The following sentences in document is as under:

It means that “to avoid any dispute in future the properties are being distributed in the presence of elders, who signed as witnesses”.

Basing on the above contents, the counsel for the petitioners would contend that there was a oral partition on Sunday i.e. on 24.11.2000 which was reduced into writing on Sunday ie. On 26.12.2000. But one thing which is very clear from the original deed is the interpolation of date and month in the second page of the document, wherein the date 24 is altered to 26 and month from 12 to 11. The above alteration is made as the first sentence of the deed and the word immediately after the altered date refers to Sunday. Since 24.12.2000 happens to Sunday, an alteration was made to a day which falls on a Sunday. Be that as it may, a reading of the document and also the lines extracted above would clearly show that after selling some properties to meet the marriage expenses of their two sisters, the properties which remained as on that date i.e. date of execution of the deed, were partitioned. It further says that to avoid future disputes, the properties are partitioned before the elders who signed as witnesses. From the facts stated in the document, it cannot be said that there was a partition about a month ago and the same was reduced in writing a month later. If really that was the purport of the deed, the wordings would have been altogether different. It appears that realising the anomaly, and defect, the date and month have been altered. Hence, the argument of the learned counsel for the petitioners that this document is only a family arrangement and not a partition deed cannot be accepted. Therefore, the judgments relied upon by the counsel for the petitioners would not apply to the case on hand.

For the aforesaid reasons, it has to be held that the document in question does not fall within the parameters laid down by the Apex Court to say that it was only a family arrangement and not a partition deed.

The learned counsel for the respondents further submitted that even if the document is to be treated as memorandum of past partition still it requires registration, so as to make it admissible in evidence, in view of the amendment to Section 2 (15) of the Indian Stamp Act, 1899.

Though the learned counsel for the petitioners relied upon judgments of this

Court in ***Kalyanapu Venkatalaxmi and others v. Kalyanapu Ramudu case (6 supra) and Pallanki Narasimha Murthy v. Maddukuri Veeraju case (7 supra)***, but both these judgments do not anywhere refer to the amended provision of Section 2 (15) of the Indian Stamp Act, 1899.

On the otherhand, this Court in ***Pariti Suryakanthamma and another v. Saripalli Srinivasa Rao and another case (2 supra)*** while referring to the amended provision of Section 2 (15) of the Indian Stamp Act, 1899, which defines 'instrument of partition' observed that the document in question though is not a partition but a memorandum of past partition, still requires to be drafted on a stamp paper, as per the market value of the share. It may be useful to refer to the relevant para which is as under:

"Section 2 (15) of the Indian Stamp Act defines 'instrument of partition' 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).

It can, therefore, be seen that a memorandum regarding past partition is also brought within the definition of 'instrument of partition' by A.P. (Amendment) Act 17 of 1986 w.e.f. 16.08.1986. By virtue of the said amendment, a memorandum regarding past partition also amounts to instrument of partition requiring some duty as a bottomry bond for the amount or the market value of the separated share or shares."

Similarly, another learned Judge of this Court in ***Lakkoji Mohan Rao case (4 supra)*** after referring to the various provisions of the Stamp Act and Registration Act observed as under:

"It is settled law that registration of document which is to be required under Section 17 (1) (b) of the Registration Act makes the document inadmissible in evidence. Under Section 49 (c) of the Registration Act, no document required by Section 17 to be registered shall be received as evidence of any transaction affecting the said property unless it has been registered. Of course the proviso says that an unregistered document affecting immovable property and required to be registered, may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purpose of section 53-A of the Transfer of Property Act or as evidence of any collateral transaction not required to be affected by registration

of instrument.

The A.P. Amendment Act 17 of 1986 came into force with effect from 16.08.1986 and definition of 'instrument of partition' under Section 2 (15) of the Indian Stamp Act has been amended. As referred in the above paragraphs even a memo recording past partition is also brought within the definition of 'instrument of partition' by virtue of the said amendment. Thus, the argument that a document is merely a record of family arrangement, settlement or acknowledge of prior partition and admissible for collateral purpose is no more available after the above amended provisions of Indian Stamp Act came into force. Section 35 of the Indian Stamp Act is very clear and creates a clear bar and therefore unstamped document is inadmissible in evidence for any purpose. Admittedly the alleged document i.e. partition deed is chargeable with duty. In view of the settled legal position i.e. the bar engrafted under Section 35 of the Indian Stamp Act is an absolute bar and therefore the document cannot be used for any purpose unlike the bar contained in Section 49 of the Registration Act."

In view of the two judgments referred to above, which have dealt with the amended provision of Section 2 (15) of the Indian Stamp Act, 1899 coupled with Section 35 of the Indian Stamp Act, 1899 and Section 17 of the Registration Act, it has to be held that even if it is a memorandum of past partition still the same requires registration to make it admissible in evidence.

Viewed from any angle this Court is of the view that the arguments advanced by the learned counsel for the petitioner does not stand to legal scrutiny. However, at this stage, the learned counsel for the petitioners, relying upon the judgment of this Court in **G.Sukender Reddy v. M.Pullaiah** and in **Meda Anjamma and another v. Vikram China Veeraiah and others** submits that whenever an objection is raised as to the admissibility of any material or item of oral evidence , the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case, subject to such objections to be decided at the last stage in the final judgment. It is noted that the said argument cannot be accepted now in view of the amendment to the meaning of the word "instrument" in Section 2 (15) of the Indian Stamp Act, wherein registration of even a past partition is made compulsory so as to make it admissible in evidence.

For the aforesaid discussion, I see no reasons to interfere with the impugned order under challenge and the Civil Revision Petition is liable to be

dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.08.2015

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