

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4059 OF 2016

ORDER:

1) Assailing the order dated 20.06.2016 passed in I.A.No.506 of 2015 in O.S.No.23 of 2010 on the file of the Senior Civil Judge, Punganur, wherein and whereunder an application filed under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure (in short "the C.P.C.") to recall D.W.1 and mark the family arrangement of past partition dated 15.04.1995, was rejected, the present application is filed under Article 227 of the Constitution of India.

2) Heard the learned counsel for the petitioners and learned counsel for the respondent.

3) The facts leading for filing of the present Revision are as under :-

The respondent/plaintiff filed O.S.No.23 of 2010 on the file of the Senior Civil Judge, Punganuru, Chittoor District, seeking permanent injunction against the petitioners/defendants and their men and agents from interfering with the peaceful possession and enjoyment of the suit schedule property. At the time when the case was coming up for arguments, the petitioners/defendants sought permission to mark an un-registered memorandum of family arrangement of past partition deed dated 15.04.1995 in the said suit,

along with an application to recall D.W.1. It is said that the said document was filed in the court along with counter in I.A.No.203 of 2010 in the above suit and as such the said document is very material to substantiate their contention in the said suit. It is said that since the admissibility of the said document was an issue then, no steps were taken to get the document marked. A counter came to be filed by the plaintiff assailing the averments in the affidavit filed in support of the said I.A. It is stated that neither the plaintiff nor his father are parties to the document, which is sought to be marked as an exhibit. The respondent/plaintiff disputed the genuineness of the said document. To counter the same, the respondent/plaintiff also filed a registered partition deed dated 17.04.1995, which contains all the properties which are the subject matter of dispute. Since the registered document came into existence, the earlier unregistered document lost its validity. The averments in the counter also refer to the recitals of the document, which would clearly show that the said document as "Bhaga Parishkara Dasthaveju". In view of the same and having regard to the contents of the documents, it was urged that the document which is to be marked requires registration. Apart from that it is also stated that the request of the petitioners to mark the said document was earlier rejected and thereafter the evidence of D.W.1 was closed. It is urged that in order to fillup the said gaps, an identical application was came to be filed now for reopening of the

case and for marking of the said document. After considering the rival submissions made, the trial court rejected the request of the petitioners. Challenging the same, the present Revision came to be filed.

4) Learned counsel for the petitioners mainly submits that since the family settlement deed does not create any rights between the parties, no registration is required and as such seeks marking of the document by recalling D.W.1. It is further stated that the said document is only sought to be marked for collateral purpose and as such registration of the document is not necessary.

5) On the other hand, the learned counsel for the respondent submits that earlier an application was made for marking of the document through which D.W.1 was rejected and as such the request of the petitioners cannot be accepted. Even otherwise, he submits that since there is a registered partition deed dated 17.04.1995 the same supersedes the un-registered family settlement deed dated 15.04.1995. There is no dispute with regard to proposition of law that if the document is a deed of partition, by which rights of interest are created to respective sharers, there is no option except to get the document registered in accordance with the provisions of the Registration Act. If on another hand, the document represents an arrangement by way of convenience for more efficiency of usage of

properties that fell to the respective sharers, it may not require registration. However, the learned counsel for the petitioners submits that the said document is sought to be marked only for collateral purpose, for which no stamp duty is required. But the application filed before the trial court does not indicate the same. Even otherwise, it is to be noted that earlier the petitioners herein filed I.A.No.83 of 2011 on the file of the Senior Civil Judge, Punganur, seeking to recall D.W.1 for marking the very same "family arrangement of past partition deed" dated 15.04.1995. The said application as dismissed and the same was not challenged. Since the earlier application, which has been filed seeking identical relief came to be dismissed, and as the case is posted for arguments, I am not inclined to consider the request.

6) Accordingly, the Civil Revision Petition is dismissed. No costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

C. PRAVEEN KUMAR, J

Date:08.11.2016
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