

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.3217 of 2016

ORDER :

This revision is preferred against order dated 01.04.2016 in O.S.No.276 of 2010 on the file of Senior Civil Judge, Proddatur, Kadapa District.

2. Revision petitioner herein is plaintiff and he filed suit for declaration of his right and title over the suit schedule property and consequential permanent injunction contending that he got the suit schedule property from his father under a oral family partition and that he has been enjoying the same. Defendants i.e., respondents herein resisted the claim of plaintiff on the ground that their father executed a document on 19.09.1997, through which he created a life interest to their mother in respect of suit schedule property and on the death of their parents, both plaintiff and defendants have been enjoying the suit schedule property jointly by virtue of document dated 19.09.1997. When the said document was tendered in the evidence, plaintiff raised an objection with regard to admissibility and the Court below on a consideration of contentions and rival contentions of both parties, recorded a finding that the document contains two parts, one part is in respect of division of properties, which requires compulsory registration and the other part would attract the ingredients of a Will and on that ground by relying on

decisions cited before it, over ruled the objection of plaintiff and document was permitted to be admitted to that limited extent. Questioning the same, plaintiff preferred present appeal.

3. Heard both sides.

4. Advocate for revision petitioner submitted that the Court below committed error in receiving document dated 19.09.1997, which requires registration under Section 17 of Registration Act. He further submitted that the Court below failed to consider the effect of Section 49 of Registration Act, which prohibits receiving such document and the order of the Court below is not legal.

5. On the other hand, advocate for respondents submitted that Court below by relying on judgment of this Court in **V.Anasuya v. Pedda Ma**^[1], rightly negated the objection of plaintiff and admitted the document and that there are no grounds to interfere with the order of the Court below. He further submitted that there is no jurisdictional error in the order passed by the Court below and the revision is liable to be dismissed.

6. Now the point that would arise for my consideration in this revision is:

Whether the order dated 01.04.2016 in O.S.No.276 of 2010 on the file of Senior Civil Judge, Proddatur, is legal, proper and correct?

POINT :

7. There is no dispute with regard to relationship

between the parties and both plaintiff and defendants are own brothers. There is also no dispute with regard to properties that are devolved on the father of the parties. Both parties claimed rights over the properties through their father only. Now, the disputed document is admittedly executed by their father and on a reading of this document, it is clear that it contains two parts and the suit property is in respect of share that fell to the father. According to this document, the property shall devolve on his wife with life interest and thereafter all three sons have to share it equally. Considering that the Court below treated that part of document as a Will and admitted. I do not find any wrong in the approach of the Court below in admitting the document, particularly when the document contains different recitals and different clauses. Now, the only right to the parties is to adduce evidence with reference to those contents and ultimately it is for the Court to decide the correctness of the contents of the document based on such evidence, but the document cannot be thrown out at the threshold. As rightly pointed out by advocate for respondents, trial Court relying on decision of this Court allowed the document to come on record, therefore Court below has not committed any error in admitting the disputed document dated 19.09.1997.

8. For these reasons, I am of the view that the revision is devoid of merits and liable to be dismissed and it is made clear that the Court below shall decide the

correctness of the document not being influenced by any of the observations made in this order.

9. Accordingly, this revision is dismissed.

10. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

8th July 2016.

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[\[1\]](#) 2005(5) ALD 206