

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.462 of 2012

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the Decree Holder is directed against the order dated 25.11.2011 of the learned Senior Civil Judge, Tanuku of West Godavari District passed in E.A.no.121 of 2011 in E.P.no.108 of 2001 in O.S.no.87 of 1982.

2. I have heard the submission of the learned counsel for the revision petitioner/Decree Holder (DHr) and the learned counsel for the respondent/Judgment Debtor (JDr). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The DHr having obtained a decree filed the execution petition against the JDr for realization of the decree debt in a sum of Rs.93,000/- and odd with subsequent interest and costs by attachment and sale of two items of the property said to be belonging to the 5th JDr, more fully described in the schedule annexed to the execution petition. The 18th JDr having entered appearance is resisting the execution petition. During the course of enquiry and when the evidence on the side of the said JDr is in progress, he had filed the aforementioned execution application in E.A.no.121 of 2011 to receive a document, viz., partition list dated 28.07.1979 on file after granting the necessary leave to file the said document. The said request was resisted by the Decree holder. On merits, and by the orders impugned, the Court below had allowed the petition of the said JDr. While granting leave to file the said document, the Court below had also considered the issue of admissibility of the document and had over ruled the objections of the DHr and had held that the document does not require registration and is admissible in evidence. Aggrieved of the said orders, the DHr had filed this revision.

4. The case of the DHr and the submissions made on his behalf, in brief, are as follows:

The document, viz., partition list dated 28.07.1979 ('the partition list', for brevity) is a forged and fabricated document. Earlier, it was represented that the original document is in the custody of PACS, Koyyetipadu and that a loan was obtained on the basis of the said document. Since it is now being filed by the petitioner/18th JDr, it is for him to explain as to how he has got custody of the said document. No explanation whatsoever is given by the 18th judgment debtor as to how he had got the custody of the original partition list, which was earlier admittedly in the custody of the said PACS. The alleged partition list is not sufficiently/duly stamped and is not registered and hence, it is inadmissible in evidence. It is a compulsorily registerable document. It is not stamped as required under law. The partition list cannot be received on file unless the twin requirements in regard to stamp duty and registration are satisfied. The petition by the 18th JDr to receive the document is misconceived. Hence, the petition is liable to be dismissed. The EP schedule property is the self-acquired property of the 5th JDr and it was purchased by him along with his brother on 23.06.1972; and, as such, the other JDrs 17 to 20 including the 18th JDr have no right whatsoever, much less a pre-existing right; and they have no share in the EP schedule property and they cannot make any claim over the said property. The Court below was in error in deciding the admissibility of the document while considering the merits of an application filed for receiving the document on file. The court below ought to have decided the question of admissibility of the partition list at a later stage as the admissibility of a document has to be considered at the time when the document is tendered in evidence through a proper witness. The findings of the Court below that the partition list is a record of past transaction of the partition is contrary to the recitals therein. The Court below ought to have held that the partition list is required to be stamped as per the provisions of the Indian Stamp Act and that it is a compulsorily registerable document; therefore, the court below ought to have held that it is inadmissible

in evidence. The order impugned is contrary to law and facts and is unsustainable.

5. On the contrary, the case of the 18th JDr in support of the request for receiving the document on file and the submissions made on his behalf, in brief, are as under: 'The 18th JDr is well acquainted with the facts of the case. The EP is filed for recovery of money. It is coming up for cross-examination of the 18th JDr. The document being filed is an important document. Earlier, a copy of the said document was filed, but it was not admitted. Hence, the present original document is filed with the subject petition to receive the same on file after granting necessary leave and by condoning the delay in filing the same. The document may be received on file and may be admitted in evidence. Otherwise, this JDr suffers serious loss. The order impugned is a well reasoned order and needs no interference.'

6. I have given earnest consideration to the facts and the submissions.

The order impugned insofar as it related to according permission to the 18th JDR to file the document, i.e., the partition list is not seriously disputed. The only contention of the DHr is that the Court below ought not to have decided the twin requirements of stamp duty and registration in respect of the said document while considering an application filed for condonation of delay in filing the document and for granting leave to file the document; the submission of the DHr is that the Court below had erroneously pre-judged the said aspect of admissibility of the document instead of leaving the said aspect to be decided at a stage when the said document comes to be tendered in evidence through a proper witness. As rightly contended by the learned counsel for the DHr, the Court below ought not to have decided the aspect of admissibility of the document while considering the application to receive the document on file. The law is now well settled that the admissibility of the document and the objection in regard to twin requirements of stamp duty and registration have to be decided at a stage when the document is tendered in evidence and not at an earlier stage. The view of

this Court gets reinforced from by the ratio in the following decision.

In Ram Rattan (dead) by L.Rs. v. Bajrang Lal and others^[1], the Supreme Court held as under:

...The court, and of necessity it would be trial Court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case ...”

Further, the learned counsel for the DHr having read the contents of the partition list would urge that the recitals in the list would go to show that under the very said document shares in the properties were ascertained and were also allotted to the sharers and that it was stated in the said list that the sharers shall enjoy henceforth the shares allotted to each sharer with absolute rights and that no claim contrary to the terms in the said deed shall be made in future by any of the parties to the list by stating that the partition is in-equal, and that the said recitals and other recitals make it manifest that it is not a partition list but, it is a partition deed though it is styled as list of partition. He would also submit that from the transaction embodied in the said document, it is clear that the document is itself a partition deed and not a list of partition and that therefore, the contention of the JDr herein that partition list is a record of past transaction of partition cannot be countenanced. He would further submit that the Court below in its order did not advert to any of the terms in the list of partition, particularly, the important terms and that therefore, the order is unsustainable. He would also submit that the law is well settled that the nomenclature of or the caption given to the document is not determinative and that the nature or the substance of the transaction contained in the document is only the determinative factor for deciding the twin requirements of stamp duty and registration. *Per contra*, the learned counsel for the JDr herein would submit that the Court below referred to in paragraph (5) of its order some of the recitals in the partition list and that the Court below has come to a correct conclusion that there is no partition *in presenti* and that the partition had taken place anterior to the document and that in the document there are recitals only regarding past partition and that therefore, the partition list not being a deed of partition is admissible in

evidence. Be that as it may. As rightly pointed out, the Court below ought to have considered all the recitals in the document harmoniously instead of considering only a few terms here and there. The Court below ought to have adverted to the terms in the list of partition, which are pointed out by the DHr and ought to have recorded findings as to whether such recitals, which are pointed out by the DHr, would support the contentions of the DHr or not. The trial Court did not advert to the contentions of the DHr in its order by making reference to the recitals that are pointed by the DHr, according to the submissions made before this Court. Further, as already noted, as per the settled legal position, admissibility of a document has to be decided only when it is tendered in evidence through a proper witness and not before and also not at the time of considering the request to condone the delay in filing the document or at the time of granting leave to file the document.

7. Viewed thus, this Court finds that there is merit in the contentions of the DHr and that therefore, the finding and conclusions in the order impugned in regard to admissibility of the document are liable to be set aside while confirming the said order partly in regard to granting leave for receiving the document on file.

8. In the result, the Civil Revision Petition is allowed in part and the order impugned insofar as it related to granting leave to file the document is confirmed; however, the rest of the order insofar as it related to the findings and conclusions in regard to the admissibility of the document is set aside for the aforementioned reasons and as the said part of the order is premature. It is made clear that this Court did not express any opinion on the admissibility or otherwise of the document and also on the aspect of requirement of stamp duty and registration as the said aspects have to be considered by the Court below at a stage when the document comes to be tendered in evidence. Accordingly, the Court below is directed to consider the aspect of admissibility of the subject partition list as and when the document is tendered in evidence through a proper witness and before it is marked by adverting to all the contents of the said document and by having regard to the

transaction embodied in the document and the provisions of law, if any, applicable.

No order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

01st June, 2016
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[\[1\]](#) (1978) 3 SCC 236