

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP.No.545 OF 2016

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ORDER:

This revision petition is filed by the petitioner/plaintiff, aggrieved by the docket order dated 19.01.2016 passed in OS.No.790 of 2006 by the Principal Junior Civil Judge, Nandyal, wherein the Court below overruled the objection raised by the plaintiff for marking of unregistered relinquishment deed dated 29.09.1973.

The case of the petitioner/plaintiff is that he filed suit for permanent injunction against the respondents/defendants herein and when the evidence of plaintiff is over and during the course of evidence of DW1, an unregistered relinquishment deed dated 29.09.1973 was sought to be marked. The same was objected by the petitioner/plaintiff. But, the court below over ruled the said objection by the impugned order on the ground that the unregistered relinquishment deed can be looked into for collateral purpose of knowing the particulars of the property, as the registered relinquishment deed dated 13.11.1985, which was marked as Ex.B4, does not contain the particulars of the property.

Sri N.Sriram Murthy, learned counsel for the petitioner/plaintiff submits that the unregistered relinquishment deed dated 29.09.1973 cannot be marked as it is hit by Section 49 read with Section 17(1)(b) of the Indian Registration Act, 1908. He also submits that to know the extent of possession, the unregistered relinquishment cannot be marked, when the purpose for which the respondents are trying to mark the same is not for collateral purpose of knowing the particulars of the property. In

support of his contention he relied on the Judgment in ***Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others***^[1] and ***K.Ramamoorthi v. C.Surendranatha Reddy***^[2].

On the other hand Sri K.Murali Krishna, learned counsel for the respondents/defendants submits that the trial Court allowed the markings of unregistered document to mark only for collateral purpose of knowing the particulars of the property. As such, the petitioner should not have any objection. He also submits that only to prove the nature of possession the said document can be taken into account which is collateral purpose. He also submits that the respondents/defendants are ready to get the document impounded by paying necessary stamp duty by making necessary application.

Admittedly, the unregistered relinquishment deed dated 29.09.1973 is not properly stamped. Even for collateral purpose the document has to be stamped as per the provisions of the Indian Stamp Act and then only it can be admitted into evidence. The plea taken by the defendants is that they want to mark the same for collateral purpose regarding nature of possession. But the Court below held that the document can be marked for knowing the particulars of the property, since Ex.B4- registered relinquishment deed dated 13.11.1985 does not contain the particulars of the property. In my view the same cannot be marked for collateral purpose of knowing the particulars of the property. But, any how since the learned counsel for the defendants states that they want to press the document for collateral purpose regarding nature of possession, this Court need not go into that aspect. Since the learned counsel for the petitioner states that the impugned document can only be admitted into evidence for

collateral purpose regarding nature of possession after paying necessary stamp duty and since the learned counsel for the respondent/defendants also states that necessary application will be made for impounding of the said document by paying necessary stamp duty, I am of the opinion that the impugned document i.e., the unregistered relinquishment deed dated 29.09.1973 can be admitted into evidence regarding nature of possession after submitting necessary application for impounding of the same and after payment of necessary stamp duty on the same.

The Judgment in ***Yellapu Uma Maheswari and another (stated supra 1)*** clearly states as follows;

“ 17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B21 and B22 make it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exs.B21 and B22 are the documents which squarely fall within the ambit of Section 17(i)(b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.”

In the present case, since the counsel for the respondent

states that only with regard to nature of possession, they want to press the unregistered document for marking, to that extent the document can be permitted to be marked as per law laid down by this Court in ***K.Ramamoorthi's case (cited supra 2)***.

In view of the same, the order of the Court below is modified and the impugned unregistered relinquishment deed dated 29.09.1973 can be admitted into evidence, only after the same is impounded in accordance with law, for the collateral purpose regarding nature of possession.

Accordingly, the CRP is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the CRP shall stand closed.

A.RAJASHEKER REDDY, J

18.03.2016
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[\[1\]](#) 2016(1) ALD 40 (SC)

[\[2\]](#) 2012(6) ALD 163