

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5561 of 2015

ORDER:

Assailing the docket order, dated 04.11.2015, passed in O.S.No.132 of 2009 on the file of the II Additional Junior Civil Judge, Karimnagar, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

Heard both sides.

The respondent/plaintiff filed O.S.No.132 of 2009 seeking declaration of title and perpetual injunction. During the course of trial, I.A.No.223 of 2015 came to be filed for production of an agreement dated 09.01.2009 on the ground that the same could not be filed along with the written statement. By an order dated 21.09.2015, the trial Court allowed the said application on the ground that no prejudice would be caused to the plaintiff as the plaintiff would get an opportunity to cross examine the witness with regard to the said document also.

As stated earlier, the main suit is filed by the plaintiff seeking a declaration that he is owner and possessor of Ac.0.15 gts. situated in Sy.No.230 of Gopalpoor Village and that he is claiming his title over the suit land by virtue of will deed dated 15.12.2004. The defendants denied the execution of the will and it is their case that the will deed is a fabricated one. It is further urged that when the matter was referred to the elders of the village before whom the plaintiff herein executed an agreement dated 09.01.2009 (impugned document), he agreed that the will deed will not be valid and further agreed that the first defendant

and plaintiff will partition the suit land equally. After completion of plaintiff's evidence and when the suit is posted for the evidence of defendants, the petitioners herein intended to mark the impugned document to rebut the claim of the plaintiff. An objection was raised as to the admissibility of the documents on the ground that it was not registered.

The question before the trial Court was whether the impugned document is properly stamped or not. In order to appreciate the same, the Court went into the nature and the contents of the documents. After analyzing the material on record, the trial Court came to the conclusion that the impugned document cannot be admitted in evidence. Aggrieved by the same, the present Civil Revision Petition is filed.

The learned counsel for the petitioner reiterated the arguments that were set out in the petition filed in the lower Court and also in the grounds raised herein. The same was opposed by the counsel for the respondent.

In order to appreciate the argument of the learned counsel for the petitioners, it would be necessary to refer to the document dated 09.01.2009. This document is styled as "agreement". The said document contains multiple recitals. The first part is with regard to the past transaction relating to land in Sy.No.452/2 which was partitioned equally by the plaintiff and defendant. In the said partition it was decided that the first defendant agreed to give one gunta excess of his share to the plaintiff. The second part of the document is with regard to the suit land ie. Land admeasuring Ac.0.15 gts. in Sy.No.230 in which they have decided to distribute the same equally. The third part of the document goes to show that the will dated 13.12.2004 executed

by his father in favour of the plaintiff is not valid. From the above, it is clear that the land in Sy.No.452/2 which relates to a transaction which has already happened, wherein the plaintiff and first defendant have already divided the same equally. Insofar as the third clause is concerned, the plaintiff is said to have agreed that the will deed executed by his father in his favour is not valid.

The dispute now relates to the second portion of the impugned document, wherein both the parties agreed to partition the land admeasuring Ac.0.15 gts., in Sy.No.230 equally.

The question is whether the impugned document is admissible in evidence and whether it required stamp duty and penalty under the Stamp Act.

[Section 17](#) of the Registration Act, 1908 specifies the documents, which require registration. Under Clause (a) Sub-[Section 1](#) thereof, instruments of gift of immovable property require registration. Under Clause (b) other non-testamentary instruments, which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, also require registration. Under this provision, a right has to be created or extinguished whether in present or in future and whether such right is vested or contingent, by the very document itself in order that a document is attracted by it.

Under [Section 49](#) of the Act, no document, required by [Section 17](#) or by any provisions under the [Transfer of Property Act](#), 1882, to be registered, shall affect any immovable property comprised therein, unless it has been registered and the same

shall not be received as evidence of any transaction affecting such property or conferring such power.

In the instant case, the second part of the document purports to create a right in case if the property is divided equally. The usage of the word "Panchukogalam" does not mean that the property has been divided equally on the date of agreement between the parties. On the otherhand, it gives a meaning that in future the said property can be partitioned equally between the plaintiff and the first defendant.

Since the dispute is only with regard to the second portion of the document namely as to the land admeasuring Ac.0.15 gts., in Sy.No.230, usage of the word "Panchukogalam" which means possibility of division in future gains importance. Therefore, as on the date of execution of such document or in future there is no certainty that half of the said property would fall to the share of first defendant. Hence, under those circumstances, the impugned document cannot require registration since the said portion of the document does not perse creates any right either now or in future.

For the aforesaid reasons, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.03.2016
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