

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No. 373 of 2016

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ORDER:

This revision petition under Article 227 of the Constitution of India by the unsuccessful defendants 1, 2, 4, 5, 7, 8 and 9 is directed against the intermediary orders (docket orders) dated 01.10.2015 of the learned II Additional District Judge, Visakhapatnam passed in the suit OS no. 23 of 2004.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants 1, 2, 4, 5, 7, 8 and 9 ('the defendants', for brevity) and the learned counsel for the plaintiff/1st respondent ('the plaintiff', for brevity). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff brought the suit against the defendants for partition of the plaint schedule property and other allied reliefs. The defendants/revision petitioners are resisting the suit. The 6th defendant is the wife of one Rama Murthy. The plaintiff and the defendants 1 to 5 are their children. During the course of trial, when the evidence on the side of the defendants was in progress, the DW8, who is the Son of the sister of the said Rama Murthy had produced a document with the caption

_____ (Telugu Manuscript). [In transliteration - 'Kutumba Aastula Khararu Angeekara Pampakamula Patram'] and tendered it in his evidence for being marked as an exhibit. While so tendering it, it appears that he had deposed that the parties to the suit had executed the said document in his presence and the presence of elders and that one Prasada Rao did not sign the said document. At that stage, the plaintiff had objected for marking the said document by *inter alia* contending that the said document is a 'Deed of Partition' and not a 'Partition List' and that the said document is neither duly stamped nor registered as required under law and that therefore, it cannot be admitted in evidence. On the contrary, it is urged on behalf of the defendants/petitioners herein that it is a partition list and that it is not required to be stamped or registered. The trial Court after hearing the learned counsel for both the sides had held that it is a deed of partition and that it is also an incomplete document and that it cannot be marked as it is inadmissible in evidence. Hence, the defendants, who are aggrieved of the said orders, had filed this revision.

4. The learned counsel for the revision petitioners/defendants would contend as follows:

The suit is filed for partition. A reading and construction of the document with the caption 'Khararu Angeekara Pampakamula Patram' categorically establishes that there was earlier a partition of the family properties as suggested by the elders and that each member is in possession of his/her respective share viz., A, B, C, D, E, F, and G schedule

properties; and, the document only acknowledges past oral partition. The document in question is only an acknowledgment of the past oral transaction; under the said document it was agreed that in future, the members have to get the documents in respect of respective shares registered at their respective expenses as per the earlier oral partition. Hence, the document is only an agreement for the purpose of registration of the respective shares of the members. No right, title and interest in respect of immovable property were created *in presenti* under the document in question and the said document is not compulsorily registerable. Hence, the trial Court ought to have admitted it in evidence. However, the trial Court misconstrued and misread the document in question and erred in holding that it is a deed of partition and that it is inadmissible in evidence. The trial Court erroneously upheld the objection raised by the plaintiff.

5. Per contra, the learned counsel for the plaintiff while supporting the orders of the Court below had first invited the attention of the Court to the contents of the whole document and then particularly to certain specific recitals therein and had next contended that a perusal of the document in question and a wholesome consideration of the contents of the same make it manifest that it is a partition deed and that it is inadmissible in evidence as it is not stamped and not registered, though it is required to be stamped and is compulsorily registerable.

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

submissions. I have gone through the record. I have carefully perused the copy of the document filed.

7. Having regard to the substance of the transaction contained in the deed in question its nature and character have to be first ascertained; and, it is to be further determined as to whether it is required to be stamped or not; and, whether it is compulsorily registerable or not. It may be stated that there is no dispute with the proposition that the nature/character and the description/nomenclature and also the stamp duty payable, if any, on the document have to be determined with reference to the recitals therein and the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument. Further, for classification of instruments, that is, to determine whether an instrument comes within a particular description in an Article to the Schedule to the Indian Stamp Act, the instrument should be read and construed as a whole. The nomenclature or the caption given to the document is not determinative and the nature or character or the substance of the transaction contained in the document is only the decisive factor.

8. A plain perusal of the said document makes it manifest that the said document deals with a transaction in regard to immovable property of the family. There are recitals in the said document which disclose that the family properties were partitioned on the advice of the elders and in their presence and that the sharers are since then enjoying the shares already allotted. It was also recited therein that the properties in the

name of the Father, which were also accordingly partitioned, shall be partitioned by means of registered deed/s and that for such registration/s of deed/s as recited in the document the expenses shall be borne by the respective sharers and that the person/s or sharer/s who is/are liable to register the deed/s shall not raise any objections. It is also stated in the deed in question that agreeing for the same the deed in question is being executed. It is further recited in the deed in question that the partition is definite and permanent; and, that the deed is being entered into agreeing not to raise any disputes and that any of the parties to the said deed shall not question the partition stating that the partition is not proper or that the shares allotted are unequal. There is also a recital that the parties shall enter into a partition list later by mentioning therein the shares of the sharers, in detail. In view of the substance of the transaction that is embodied in the document, it is plain that the family properties were partitioned amongst the sharers on the advice of the elders and in their presence and that the individual sharers are enjoying their respective shares that were already allotted and that it is record of that past partition. However, there are also recitals regarding some shares of the sharers to the effect that further documents are to be executed and registered at the expenses of such sharers and that the persons liable to register such deeds shall not object for registering the further deeds. It is further affirmed therein that the partition is definite and permanent and is unquestionable on the grounds that the partition is not proper or is unequal.

Therefore, finality was given to the partition under this deed. To put it in other words, the partition of properties and the shares that were allotted to the sharers had attained finality only under this deed. Hence, it is possible to hold that the document in question is a 'deed of partition' by itself. Alternately, even going by the contentions of the petitioners, the document in question only acknowledges past oral partition and is only an acknowledgment of the past oral transaction of partition. Thus, undoubtedly the document is a deed of past partition or a partition list or a memorandum regarding past partition.

9. Coming to the aspect of applicable provisions of law, it is not in dispute that the State Legislature had amended the Indian Stamp Act, 1899 by AP Act No. 17 of 1986 with effect from 16.08.1986 whereby under Section 2 (15) of the Act, the 'Instrument of Partition' means and includes a memorandum regarding past partition. Even assuming for a moment that the deed in question in the instant case is a mere record of anterior acts creating exclusive title in favour of one sharer, a member of joint family, by extinguishing title of others in the same, the said document which is not stamped cannot be held to be admissible in view of the amendment to Section 2 (15) of the India Stamp Act which came into effect with effect from 16.08.1986. As per the amended provision of the Section, a memorandum as regards the past partition is also an Instrument of partition and requires to be properly stamped. Therefore, the contention that the deed in question is only a record of past partition and therefore, it is not required to be

either stamped or registered cannot be countenanced. Article 40 of the Indian Stamp Act deals with the stamp duty payable on such instrument of partition. An Instrument of partition of immovable property of the value of one hundred rupees and upwards is compulsorily registerable. Further, Section [49](#) of the Indian Registration Act, 1908 prohibits receiving in evidence documents required by law to be registered and which are not registered.

10. In the well considered view of this Court, the document which purported or operated or created, declared, assigned, limited or extinguished whether in present or in future, rights, title or interest of the value of over 100 rupees and upwards to or in immovable properties within the meaning of the provisions of the Stamp Act and Section 17 of the Registration Act is required to be properly stamped and registered; and, unless the said twin requirements are complied with, the said document cannot be looked into for the main purpose. In the decision in the case of **Avinash Kumar Chauhan vs. Vijay Krishna Mishra [2009 (1) L S 35 (SC)]** the Supreme Court referred to the following ratio in the decision in the case of **T. Bhaskar Rao vs. T. Gabriel and other [AIR 1981 AP 175]**:: “It is now well settled that there is no prohibition under section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence

even for collateral purpose unless it is duly stamped or duty and penalty are paid under section 35 of the Stamp Act.”

11. Having regard to the legal position and the facts of the present case, this Court does not find any error or infirmity in the order impugned as this Court is satisfied that the document in question is not stamped and not registered as required under law and is hence, inadmissible in evidence.

12. In the result, the Civil Revision Petition, which is without merit, is dismissed.

No costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M.SEETHARAMA MURTI, J

28th June, 2016
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