HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.3978 of 2016

ORDER:

This Civil Revision Petition is filed by the 1st respondent/1st defendant challenging the order dated 04.04.2016 in I.A.No.340 of 2014 in O.S.No.133 of 2014 wherein the learned Judge overruled the objection raised by the defendants and permitted the petitioners/plaintiffs to get mark the document in question for collateral purpose of showing that suit schedule property was not partitioned.

2a) Brief facts of the case are that plaintiffs filed the suit for partition. It is the case of the plaintiffs that father of the 1st plaintiff by name Edamadaka Pakkeeraiah and his three brothers viz. E.Pedda Venkata Subbaiah, E.Chinna Venkata Subbaiah and E.Ramaiah were doing joint business under the name and style "Edamadaka Pedda Venkta Subbaiah, Pakkeeraiah & Company. On 05.09.1942, the Company purchased an extent of Ac.0.56 cts. in Sy.No.546 item No.1 of petition schedule property and later it occupied item No.2 of schedule property. While so, on 19.01.1960 the father of 1st plaintiff and his three brothers partitioned their oil and rice mill property situated on the southern side of petition schedule property while keeping the suit schedule property joint. In the said partition, the father of 1st plaintiff got 8½ annas share and the rest of 7½ annas share vested in other branches. On 07.09.1982, the father of 1st plaintiff died intestate leaving behind his wife and 8 sons including the 1st plaintiff as his legal heirs. On 12.02.1995, the 1st plaintiff and his brothers and mother partitioned the factory property leaving 8½ annas share which they inherited from their father. Later so many transactions were taken place in respect of 7½ annas share of the plaint schedule property and finally plaintiffs got 1/17th share in item No.1 and 1/19th share in item No.2 of petition schedule property. While the matter stood thus, the defendants are making constructions in the petition schedule property, which is undivided.

Hence, the suit for partition and other reliefs.

b) Plaintiffs filed I.A.No.340 of 2014 for temporary injunction. During the course of enquiry, the plaintiffs intended to rely upon the unregistered partition deed dt.12.02.1995 for limited purpose to prove that suit schedule properties were not partitioned so far. The defendants strongly objected for marking the document on the ground that document in question is a partition deed and it requires registration under Section 17 of Registration Act. The trial Court upon hearing, observed that though the partition deed dated 12.02.1995 filed by the petitioners/plaintiffs cannot be admitted as a whole to prove partition, but it can be looked into for collateral purpose of showing that there was no division and accordingly overruled the objection raised by the defendants and permitted the plaintiffs to get mark the document in question only for the limited purpose of proving that suit schedule property was not partitioned.

Hence the CRP.

3) Heard arguments of Sri V.R.Reddy Kovvuri, learned counsel for petitioner/1st defendant and Sri V.Nitesh, learned counsel for respondents

1 and 2. Notice sent to R3 not yet returned. Notice sent to R4 and R6 returned unserved. Notice sent to R5 returned as unclaimed, hence deemed to be served.

4) Impugning the order under revision, learned counsel for petitioner would argue that the trial Court having observed that the document in question was an unregistered document and the plaintiffs rely on the said document to prove that the plaint schedule properties were not partitioned under the said document and hence under Section 49 of Registration Act they can be permitted to adduce the document in evidence for collateral purpose, committed a mistake in not directing the plaintiffs to pay stamp duty and penalty. He would vehemently argue that even though the unregistered document can be admitted in evidence for collateral purpose under Section 49 of Registration Act, such a facility is not available to a party to avoid stamp duty and penalty since there is no provision in Indian Stamp Act akin to Section 49 of Registration Act. On the other hand, Section 35 of Indian Stamp Act carves out an express embargo to the effect that an unstamped or unduly stamped document cannot be admitted in evidence even for collateral purpose. On this proposition he placed reliance on the judgments of this Court in ***Rachakonda Ramakoteswara Rao and others. vs. Manohar Fuel Centre & another***[1] and ***Lakkoji Mohana Rao vs. Lakkoji Viswanadham and others***[2]. He thus prayed to allow the revision.

[1] 2003 (2) ALD 638
[2] 2012 (3) ALD 327

5) Per contra, learned counsel for respondents 1 and 2/plaintiffs argued that the transaction that was sought to be established through controversial document was merely a factum of plaint schedule property was not subject matter of partition and nothing more and therefore, though the original document might required stamp duty and registration, the aforesaid fact does not require the same and therefore, the trial Court rightly rejected the contention of the defendants and permitted the plaintiffs to adduce the document in evidence.

6) The point for determination.

"Whether there are merits in the CRP to allow"?

7) As can be seen from the document dated 12.02.1995 which is an unregistered partition, what the plaintiffs sought to rely thereof is a recital to the effect that the family members of the plaintiffs wanted to retain Ac.0.39 cts. of land where their father was buried, as joint since it was not feasible for partition at that time. The parties divided the other properties with which we are not concerned. Thus, going by the recitals, the said extent of Ac.0.39 cts., was not the subject matter of partition under the document dated 12.02.1995. This fact was sought to be established by the plaintiffs. The trial Court having observed that what the plaintiffs sought to establish was a statement of mere fact which does not require registration and though the original document was to be registered, nevertheless said document can be relied upon for collateral purpose in terms of Section 49 of Registration Act. I find no irregularity or illegality in the said observation.

8) In fact, the plaintiffs sought to establish a negative fact to the effect that the aforesaid Ac.0.39 cts of land was not the subject matter of partition. They have not relied upon the document to establish the partition of other properties or for that matter showing possession of some other properties which were partitioned under the deed. In such an event, the transaction to establish a negative fact does not require registration or stamp duty. Hence, the trial Court rightly considered the request of the plaintiffs. The cited decisions will have no application. They would have been applied if the plaintiffs sought to collaterally establish their possession in respect of any of the properties which were partitioned under the unregistered partition deed. However, that is not the case here. Hence, I find no merits in the revision.

9) Accordingly, the CRP is dismissed. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 20.06.2017
Murthy