HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.3301 OF 2011

Date: 27.12.2017

Between:

Kalivarapu Dharmaraju s/o. late Narasimhulu,
Aged 76 years, Business, r/o. Pathapatnam village,
Srikakulam district.

..... Petitioner/
plaintiff

and

Kalivarapu Rajeswara Rao s/o.late Ganapathi Rao,
Aged 48 years, Business, r/o.Brahmin Street,
Pathapatnam village and mandal, Srikakulam district
and others.

.....Respondents/
defendants

The Court made the following:

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ORDER:

Heard Sri O.Manohar Reddy, learned counsel for petitioner/ plaintiff and Sri V.L.N.Gopala Krishna Murthy, learned counsel for respondents 3, 4, 5 and 10.

2. Plaintiff instituted O.S.No.14 of 2000 pending on the file of Court of Principal District Judge, Srikakulam praying to grant decree of partition in plaint ‘A’ and ‘B’ schedule properties by dividing into six equal shares and allot one such share to the plaintiff after converting the joint possession into separate possession; to allot out of five shares separately; and deliver land @ 4000/- per acre for the balance 26,175.34 due in the previous allotment dated 23.10.1977 to equalize the share.

3. The defendants were set *ex parte;* the evidence of P.Ws.1 and 2 was recorded and preliminary decree as prayed for was granted by order dated 23.01.2002. However, on application moved by defendants, preliminary decree was set aside and suit was restored to be heard afresh. On restoration of suit, the evidence of PWs.1 & 2 was recorded. During the cross-examination of DW.2, he was sought to be confronted by referring to the contents of diary (note book), dated 23.10.1977. The defendants objected to the same by contending that the contents of diary (note book) are in the nature of partition deed and the same was not registered and cannot be looked into or brought in evidence. Overruling the stand of plaintiff that it is not a partition deed and, therefore, it can be admitted in evidence, the Court below observed that joint family property was

divided under the document and, therefore, observed that it is in the nature of partition deed and as it requires registration as per Section 17 of the Registration Act, 1908, the document cannot be admitted in evidence. The Court further observed that even for collateral purpose also, unless the stamp duty is paid as per law, the contents of document cannot be used in evidence. Further contention that this document was already marked as Ex.X1 before the suit was decreed *ex parte* was also rejected.

4. Learned counsel for petitioner/plaintiff would submit that the diary which petitioner/plaintiff wanted to present bears testimony of division of assets of joint family mentioned therein. He would submit that the deliberations recorded in the diary would disclose that the suit schedule properties were not partitioned at that time and remained as joint family properties. To show that suit schedule properties remained as joint family properties, the plaintiff wanted to rely on the contents of the diary, i.e., for collateral purpose and for no other purpose. He would therefore submit that it is not necessary to register and to pay stamp duty on the portion of document, which petitioner/plaintiff wants to rely on.

5. He would further submit that since the document was marked as Ex.X1 while recording the evidence of P.W.1, it need not be marked again and in the same suit no objection can be raised on the admissibility of the document in view of the provision contained in Section 36 of the Indian Stamp Act, 1899.

6. Per contra, learned counsel for respondents/defendants contended that whole document deals with partition and cannot be

separated as sought to be contested. It being a partition deed, the document has to be registered as required under Section 17 of the Indian Registration Act, 1908 (Act, 1908), therefore, same is not admissible in evidence. He would further submit that suit was restored by setting aside *ex parte* decree and evidence is recorded afresh. Merely because concerned document was marked earlier, in the absence of defendants, cannot be a ground to contend that the document is already marked and, therefore, objection cannot be raised. Since it is a partition deed, the trial Court has rightly decided against marking the document and do not call for interference.

7. It is not in dispute that there was partition of the joint family properties. In the document sought to be relied by plaintiff, the division of joint family properties was recorded and the family members and witnesses have signed in evidence of partition. It is not in dispute that this document is not registered. Plaintiff seeks to rely on contents of document in support of the contention that the suit schedule properties are yet to be divided.

8. At the first instance, the point for consideration is whether it is permissible for the plaintiff to rely upon portion of partition deed, which is not registered and required stamp duty is not paid, in support of his contention that suit schedule properties were not partitioned earlier as requiring no stamp duty and for collateral purpose?

9. To appreciate the issue whether the subject document can be severable into two parts and if so portion of the document where there is a mention of suit schedule properties as not affected by

partition can be relied, it is necessary to note briefly the view taken by the courts in precedent decisions.

10. It is consistently held by this Court and the Supreme Court that in any civil suit, other than suit for specific performance, even for collateral purpose, the document, which is compulsorily registerable and attracts duty, cannot be relied upon unless required duty is paid. In other words, though under proviso appended to Section 49 of the Act, 1908 a document can be received in evidence for collateral purpose even if it was not registered, but only if required stamp duty is paid. Having regard to settled principle of law, learned counsel for plaintiff would only contend that the document in issue is in two parts and separable and the portion of the document sought to be relied upon need not be stamped to be admissible in evidence as it is relied only to show that the subject property is not partitioned and remained as joint family property.

11. As per proviso appended to Section 49 of the Registration Act, 1908 an unregistered document affecting immovable property compulsorily registerable can be received in evidence for any collateral transaction. According to Section 35 of the Stamp Act, 1899, instrument not duly stamped is inadmissible in evidence for any purpose, by any person. In other words, there is complete prohibition under Section 35 of the Act, 1899 for admissibility of document in evidence unless stamp duty is paid.

12. In **Avinash Kumar Chauhan v. Vijay Krishna Mishara**[1], respondent, a member of Schedule Tribe, intended to transfer a

[1] (2009) 2 SCC 532

house and land for consideration. The entire sale consideration was paid and possession was also delivered. However, permission of the Collector in terms of Section 165 (6) of M.P.Land Revenue Code, 1959 was rejected. The appellant filed suit for recovery of 2,70,000/-. In support of his claim that the entire sale amount was paid, which he sought to recover, he intended to rely on the agreement dated 4.8.2003. By order dated 09.01.2007, said document was directed to be impounded. The decision of the trial Court was upheld by the High Court. Before Supreme Court, it was contended that the said unregistered deed of sale was sought to be put in evidence not for the purpose of enforcement of the contract, but only for the purpose of recovery of the amount of consideration and that being a collateral one, the provisions of Sections 33 and 35 of the Stamp Act are not attracted. Reliance was placed on proviso appended to Section 49 of the Registration Act.

12.1. Supreme Court held as under:

> "17. The Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions.
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> xxxxx
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> 23. The contention of learned Counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In Bondar Singh (supra) this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined: (SCC p.163, para 5)
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>> "5. The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of

the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized...

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25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes."

12.2. The Supreme Court has approved the view taken by this Court in **Bhaskarabhotla Padmanabhaiah v. B.Lakshminarayana**[2]; **Sanjeeva Reddi v. Johanputra Reddi**[3]; and **T.Bhaskar Rao v. T.Gabriel**[4] and view taken by the trial Court in impounding the document was upheld.

13. In **Sanjeeva Reddi vs. Johanputra Reddi**[5], by relying on the decision of the Privy Council in **Ram Rattan v. Parma Nand**[6], this Court held:

"7. The underlying object of this section is to ensure that an instrument chargeable with duty is in fact stamped and the only way of enforcing this provisions thus saving loss of revenue to the State is to make such an instrument not duly stamped as inadmissible in evidence, so that the document may be render useless for the purpose for which it was excreted or for any other purpose. Proviso (a) to Section 35 enables documents of the kind with which we are now concerned to be received in evidence on payment of deficit duty and penalty. It covers all cases of instruments which required to be

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[2] AIR 1962 AP 132
[3] AIR 1972 AP 373
[4] AIR 1981 AP 175
[5] 1972(1) ALT 232
[6] AIR 1946 PC 51

stamped, but not stamped at all or under stamped, subject to payment of stamp duty and penalty as provided therein.

9. .... **There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purposes, it would amount to receiving such a document in evidence for a purpose, which Section 35 prohibits** ....". [emphasis supplied]

13.1. It is further held:

"No part of a document be it is single sentence, a word or a signature, which is chargeable with duty, can be received in evidence and to do so is to do violence to Section 35". (from paragraph 10) [emphasis supplied]

14. At this stage, it is useful to note the decision of the Privy Council in **Ram Rattan.** Privy Council held:

"A document admitted in proof of some collateral matter is admitted in evidence for that purpose, and the statute enacts that it shall not be admitted in evidence for any purpose. Their Lordships see no reason why the words "for any purpose" in the Indian Act of 1879 should not be given their natural meaning and effect. Such words may well have been inserted by the Legislature in order to get rid of the difficulties surrounding the question of what amounted to a collateral purpose."

[emphasis supplied]

15. In **T.Bhaskar Rao** (supra), it was held:

"7. 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."

(emphasis supplied)

16. In **Bhaskarabhotla Padmanabhaiah** (supra), the Munsif-Magistrate, Secunderabad held the document produced by the plaintiff, when he was deposing as P.W.1, not admissible in evidence on the ground that it was an instrument of partition and was not duly stamped and not registered. This Court held:

> "9. In this case, the learned Subordinate Judge has observed that what the plaintiff was trying to prove was not the division in status but to show that the property was divided under the partition deed. In any case, the fact that the document is inadmissible due to want of being stamped is clear. For, in Ram Rattan v. Parmanand, MANU/PR/0046/1945MANU/PR/0046/1945 : AIR 1946 PC 51 their Lordships of the Privy Council held that the words 'for any purpose' in S. 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms."

17. On a reading of document, it is clear that it is an instrument of partition. Document does not mention of previous partition as having taken place. The document is signed by the parties and attested by the witnesses. It is also appropriate to note that in the plaint, petitioner admits of the division of joint family properties taking place in the year 1977. Thus, it is an instrument of partition and compulsorily registrable.

18. Though title of document refers to it as diary, contents of document would make it clear that it is a partition deed. Partition deed also refers to properties, which are now mentioned in the suit schedule 'A' and 'B'. These properties are given to their mother for her maintenance during her life time, with an understanding that the said properties would be divided into six parts after her

demise. The document also evidences assigning certain properties to their sister. Thus, it is a comprehensive document dealing with all aspects of joint family properties, including suit schedule properties. Said deed of partition is not severable as sought to be contended by the learned counsel for petitioner/plaintiff. As document is not registered/required stamp duty is not paid, the same is not admissible in evidence and same cannot be relied upon even for collateral purpose, unless and until stamp duty is paid.

19. Learned counsel for plaintiff would further contend that said document was already marked as Ex.X1 and, therefore, it need not be marked again and that trial Court erred in rejecting the plea of petitioner/plaintiff for marking the document. As noticed above, earlier the defendants were set *ex parte*, evidence of P.Ws.1 was recorded and concerned document was marked as Ex.X1 and *ex parte* decree was granted. But, later *ex parte* decree was set aside and evidence of P.Ws.1 and 2 was recorded again. Thus, the marking of document prior to *ex parte* decree, which was set aside, cannot be a ground to hold that it need not be marked again. The provision in Section 36 of Indian Stamp Act, 1899, in the facts of this case, is not attracted.

20. I, therefore, see no error in the decision of trial Court in sustaining the objection raised by the defendants.

21. The Civil Revision Petition is dismissed accordingly. No costs. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

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