

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2525 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 31.03.2017 passed by the learned XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge-cum-III Additional Family Judge, Ranga Reddy District at Malkajagiri, in O.S.No.1000 of 2014. By the said order, the trial Court held that the Memorandum of Family Settlement dated 30.09.2003 relied upon by the plaintiff in the suit was inadmissible. Aggrieved thereby, the plaintiff is before this Court.

O.S.No.1000 of 2014 was filed for a declaration that the registered gift deeds bearing Document Nos.9346/2010 and 9347/2010, both dated 13.09.2010, were not binding on the plaintiff being null and void and for a perpetual injunction restraining the defendants from raising any structures or changing the nature of the suit schedule properties. Plot Nos.114 to 118, in total admeasuring 5,978 square yards, in Survey Nos.208, 209, 211 and 212 of Quthbullapur Village comprised the suit schedule properties.

The plaintiff is the 1st defendant's brother and the 2nd defendant is the son of the 1st defendant. The claim of the plaintiff was that the suit schedule properties were joint family properties and that the 1st defendant had no right to execute registered gift deeds in relation thereto in favour of his son, the 2nd defendant. In support of his contention that the suit properties were joint family properties, the plaintiff wanted to rely upon Clause 12 of the unregistered Memorandum of Family Settlement dated 30.09.2003. Though the said document was unregistered, the plaintiff claimed that the same

could be marked as an exhibit for a collateral purpose. Having perused the said document, the trial Court opined that actual partition of the properties by metes and bounds was undertaken through the said document and as it was a partition deed out and out, it was liable to be registered and subjected to payment of stamp duty. The trial Court observed that if a document is inadmissible in evidence for want of registration, none of the terms thereof could be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it for a collateral purpose. Holding so, the trial Court opined that the document in question could not be admitted in evidence for relying on Clause 12 thereof, which could not be taken to be collateral in nature. The trial Court accordingly held the document to be inadmissible in evidence.

Heard Sri S.Satyanarayana Prasad, learned senior counsel appearing for Ms.C.Sindhu Kumari, learned counsel for the petitioner/plaintiff, and Sri Gaddam Srinivas, learned counsel on caveat for the 1st respondent/1st defendant.

The subject Memorandum of Family Settlement found specific mention in the plaint averments. According to the plaintiff, Clause 12 of the Memorandum of Family Settlement dated 30.09.2003 indicated that though other properties were subjected to partition, Plot Nos.114 to 118 in total admeasuring 5,978 square yards in Survey Nos.208, 209, 211 and 212 of Quthbullapur Village, were not partitioned. In their written statement, the defendants asserted that Plot Nos.114 to 118, in relation to which the suit prayer was formulated, were not kept joint and were already partitioned between the parties. A copy of the subject document is placed on record. The executants thereof were the plaintiff, the 1st defendant and their brother, K.M.Pandu.

Thereunder, they partitioned various joint family properties amongst themselves. Clause 12 of this document reads as under:

‘It is hereby agreed by all the parties herein that Plot No.114, 115, 116, 117 and 118 under Schedule–II property has also divided into 3 equal parts as mentioned in the layout plans sketch annexed hereto even though the parties mutually agreed to develop the same jointly with equal funds if they failed to do due to financial problems, they shall mutually agree to give the schedule–II property for common development to the prospective developer/s, if it was also not possible to give development, the parties herein sit together and again divided the schedule–II property in 3 equal shares among them with their mutual consent.’

The question that falls for consideration is whether the trial Court is correct in interpreting this clause to the effect that it could not be admitted in evidence for a ‘collateral purpose’.

Sri S.Satyanarayana Prasad, learned senior counsel, placed reliance on **YELLAPU UMA MAHESWARI V/s. BUDDHA JAGADHEESWARARAO¹**, wherein the Supreme Court observed that the nomenclature given to the document is not the decisive factor and the nature and substance of the transaction thereunder has to be determined for deciding the admissibility thereof. The Supreme Court observed that a partition document is compulsorily registrable and would be inadmissible in evidence for the purpose of proving the factum of partition but it could be used for a collateral purpose. Reference was made to the Full Bench judgment of this Court in **CHINNAPPA REDDY GARI MUTHYALA REDDY V/s. CHINNAPPA REDDY GARI VENKAT REDDY²**, wherein it was held that the process of partition contemplates three phases: (1) severance of status, (2)

¹ 2016 (1) ALD 40 (SC)

² AIR 1969 AP 242

division of joint property by metes and bounds and (3) nature of possession of various shares. The Supreme Court held that in a suit for partition, an unregistered document can be relied upon for collateral purposes, i.e., severance of title, nature of possession of various shares but not for the primary purpose, i.e., division of joint properties by metes and bounds. It was further held that an unstamped document is not admissible in evidence even for collateral purposes until the same is impounded and therefore, if the parties want to mark a document for collateral purposes, it is open for them to pay stamp duty together with penalty by getting the document impounded. The trial Court was accordingly granted liberty to mark the documents for collateral purposes subject to proof and relevance.

Per contra, Sri Gaddam Srinivas, learned counsel, placed reliance on **T.BHASKAR RAO V/s. T.GABRIEL**³, wherein it was held that though there is no prohibition under Section 49 of the Registration Act, 1908 to receive an unregistered document in evidence for collateral purposes, such a document should be duly stamped and/or comply with the requirements of Section 35 of the Indian Stamp Act, 1899, if not stamped, as such a document cannot be received in evidence even for collateral purposes unless it is duly stamped or duty and penalty are paid. Be it noted that this very principle was affirmed in **YELLAPU UMA MAHESWARI**⁴.

Sri Gaddam Srinivas, learned counsel, also relied on **BANKEY BEHARI V/s. SURYA NARAIN ALIAS MUNNOO**⁴, wherein the Supreme Court upheld the finding of the High Court that the subject family settlement deed required registration and as the document was not registered, it was inadmissible in evidence. However,

³ AIR 1981 AP 175

⁴ (2004) 11 SCC 393

reliance was sought to be placed on the said document, not for a collateral purpose, but for the purpose of proving the actual terms of the alleged settlement.

Reliance was also placed upon **BHAGWAN DAS V/s. GIRJA SHANKER⁵**, wherein the Supreme Court was dealing with an agreement of partition which was thereafter reduced into writing amongst the parties on the same date. The document was held to be a partition deed which required registration under law and as it was not so registered, the same was held to be inadmissible in evidence.

The aforesaid judgments are of no avail to the defendants as the unregistered documents therein were sought to be relied upon for a purpose other than a collateral purpose.

The proviso to Section 49 of the Registration Act, 1908 specifically provides that an unregistered document effecting immovable property requiring registration in law may still be received as evidence of any collateral transaction not required to be effected by a registered instrument. In the present case, the plaintiff seeks to rely only upon Clause 12 of the Memorandum of Family Settlement dated 30.09.2003 for the limited purpose of establishing that the suit plots were kept joint and were not subjected to partition with other properties. In terms of the *ratio* laid down by the Supreme Court in **YELLAPU UMA MAHESWARI¹**, the nature of possession of these plots would be a collateral purpose and the document would therefore be admissible in evidence for that purpose alone, despite the absence of registration. The finding of the trial Court that the purpose for which the document was sought to be marked was to

⁵ 2000 LawSuit(SC) 1477

establish the partition is factually incorrect, as the claim of the plaintiff is that these plots were, in fact, not subjected to partition.

The document would however have to be impounded for the purpose of collecting stamp duty and penalty, if any, before it can be admitted in evidence even for this limited collateral purpose.

The civil revision petition is allowed to the extent indicated above. The trial Court shall take steps to impound the document and admit it in evidence for the limited collateral purpose indicated *supra* after payment of stamp duty along with penalty, if any. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

7th JUNE, 2017

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SANJAY KUMAR, J

