

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ C.R.P. Nos.5663; 5596 and 5642 of 2012

% **07.09.2017**

C.R.P.No.5663 OF 2012

Mallidi Satyanarayana Reddy

... Petitioner

AND

Mallidi Satyanarayana Reddy & another

... Respondents...

! Counsel for the petitioner

: Sri N. Siva Reddy

^ Counsel for the respondent No.1

: Sri S. Siva Bhavani Reddy

C.R.P.No.5596 of 2012

Mallidi Prabhavathi

... Petitioner...

AND

\$ Mallidi Satyanarayana Reddy & another

... Respondents...

! Counsel for the petitioner

: Sri N. Siva Reddy

^ Counsel for the respondent No.1

: Sri S. Siva Bhavani Reddy

C.R.P.No.5642 of 2012

Mallidi Satyanarayana Reddy

... Petitioner...

AND

\$ Mallidi Venakta Reddy & another

... Respondents...

! Counsel for the petitioner

: Sri N. Siva Reddy

^ Counsel for the respondent No.1

: Sri S. Siva Bhavani Reddy

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION Nos.5663; 5596 and 5642 of 2012

COMMON ORDER:

All the three Civil Revision Petitions are being disposed of by this Common Order as they are arising out of the common transaction though in different execution applications.

2) In all these Civil Revision Petitions the decree holder/plaintiff is the petitioner. The parties as arrayed in C.R.P.No.5663 of 2012 are referred to hereinafter as such for the sake of convenience.

3) It is the case of the petitioner that the Court below has erroneously come to the conclusion and marked the document dated 15.03.1985, which in fact is a partition deed, treating the same as a partition list. Learned counsel for the petitioner submits that the Court below failed to appreciate the language of the document and failed to take into consideration of Section 17 of the Registration Act and Section 35 of the Stamps Act, which require the document of a partition to be adequately stamped and is a compulsorily registerable document.

4) Learned counsel appearing for the respondent refutes the contention of the learned counsel for the petitioner and submits that the document is nothing but a partition list. Learned counsel for the respondent also would submit that so far as the objection with respect to the document having not been adequately stamped was not raised by the petitioner before the Court below and in those circumstances the same shall not be allowed to be urged at this point of time.

5) Having considered the respective submissions the question which falls for consideration is "Whether the order of the Court

below dated 28.09.2012 giving a finding that the document dated 15.03.1985 is a partition list is sustainable?

6) Now it is well settled that a partition list / memorandum of settlement recording the past oral transaction does not require registration. A document whether is a partition deed or a partition list will have to be gathered from the language of the document. The document is in vernacular language and the document reads as under :

వాటాల జాబితా

ది. 15.03.1985 వ సం. | రం | తేదీ ని

తూర్పు గోదావరి జిల్లా అనపర్తి మండలం మహేంద్రవాడ గ్రామ కాపురస్తులు
హిందువులు వ్యవసాయం మల్లిడి సోమి రెడ్డి గారి కుమారుడు సుబ్బా రెడ్డి ఈ సుబ్బా రెడ్డి గారి కుమార్లు
2. వెంకట రెడ్డి 3. సత్యన్నారాయణ రెడ్డి గార్లు ఏకస్థులై వ్రాశించుకున్న వాటాల జాబితా.
మనకు మన పూర్వీకులు తాలూకు ఆస్తులను విభజించు కుని ఎవరి వాటాకు వచ్చిన
ఆస్తులను అభివృద్ధి పరచుకునే ఉద్దేశ్యముతో కొడుకుల్లను అనుసరించి మూడు అసమాన వాటాలుగా
విభజించుకొని అందు "A" మార్కు వాటా అస్థిని మనలో 1వ ఆసామి సుబ్బా రెడ్డి గారున్నా "B" మార్కు
వాటా అస్థిని మనలో 2వ ఆసామి వెంకట రెడ్డి గారున్నా "C" మార్కు వాటా అస్థిని మనలో 3వ ఆసామి
సత్యన్నారాయణ రెడ్డి గారున్నా తీసుకుని ఎవరి వాటాకు వచ్చిన ఆస్తులను వారు యిర్రోజునే
స్వాధీనము చెసుకొవడమైనది. గనుక యింతటి నుండి ఎవరి వాటాకు వచ్చిన ఆస్తికి వారు సంపూర్ణ
హక్కు దారులై దాన విక్రయ సమస్థ అధికారములు కలిగి సుఖాన స్వేచ్ఛగా అనుభవించవలెను.

7) The above extracted portion has two limbs. The first limb of the extracted partition declares that on that day i.e. 15.03.1985 the properties were divided into three unequal portions and they were demarcated specifically with metes and boundaries as 'A B C' and possession has been taken over by the respective parties. The

second part further declares that henceforth the respective parties shall enjoy their respective share properties with all rights. The document itself has been consciously styled as a partition list both on the top as well as on the concluding part of the document. The above extracted portion does not leave any manner of doubt that by the time of execution of the document the division by metes and bounds have already been effected and respective parties have been given possession. Merely because partitioning the properties by metes and bounds and taking over respective possession and recording the same in a partition list on the same day, it cannot be presumed that partition list as a partition deed. The nature of transaction has to be gathered and understood from the language expressed in the document and intention of the parties, for example, agreement could have been reached before lunch and implemented but document of the completed transaction could have been executed after lunch.

8) In other words, the partition having already been taken the document has been executed only as a memorandum of record terming it as a 'partition list'. A document to be partition deed the requirement is that the transaction of division and entrustment of the respective portions has to be through the document. In the case on hand, there is a clear declaration of properties, having been already divided and respective parties taking possession of the same. In the circumstances though not expressed in clear terms that it is a 'partition list' and not a 'partition deed' by the Court below the same cannot be found fault.

9) However, the Court below had failed to consider whether the document is adequately stamped or not. It is not in dispute that

the document is executed on a plain paper and as such the said document could not have been straight away admitted into evidence in view of the prohibition contained in Section 35 of the Stamp Act. However, the document either not being stamped or not being adequately stamped is a curable defect and as a matter of fact there is a duty cast on the Court below, when such document is brought before the Court to order impounding of the same. However, the objection raised by the learned counsel for the respondent does not stand to scrutiny and need not be detain this Court in directing the Court below to take necessary steps for impounding the document, as it is a statutory requirement, which the court itself ought to have undertaken.

10) Accordingly, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

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

CHALLA KODANDA RAM, J

Dated: 07.09.2017

Note: LR copy to be marked.

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