

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4053 of 2016

ORDER:

Challenging the docket order dated 19.07.2016 passed in L.A.O.P.No.30 of 2013 by the Senior Civil Judge, Puttur, wherein the Court rejected the request of the petitioner for marking of a document for collateral purpose, the present civil revision petition came to be filed.

Heard both sides and perused the material on record.

The facts in issue are as follows:

The petitioner is the first respondent in LAOP. The Land Acquisition Officer passed an award with regard to the compensation to be awarded to the first respondent. The second respondent also raised a claim with regard to share in the property. Hence, the matter was referred to Civil Court to decide the title of the parties and also as to who is entitled to receive the compensation. While things stood thus, the petitioner sought for marking of a partition deed said to have been effected between respondents 1 and 2. The respondent No.1 herein raised an objection with regard to marking of the said document, on the ground that it is an un-registered document and same needs to be registered compulsorily. The record discloses that on 02.09.2014, when the admissibility of the said document was raised, I.A.No.1444 of 2004 came to be filed and the same allowed by the Court below on 06.02.2015 sending the document to District Registrar for impounding the same. Accordingly, the document

was impounded. After return of the said document to the Court below, the same was sought to be marked as an exhibit. At that point of time, an objection with regard to admissibility of the document was raised. Having considered the rival submissions made, the Court below rejected the request of the petitioner for making of the document, which is challenged in this Civil Revision Petition.

Learned counsel for the petitioner submits that since the document, which is sought to be marked, is to be used only for collateral purpose, the Court below erred in refusing to mark the same.

On the other hand, learned counsel for the first respondent would submit that only that portion of the document which deals with division of property and possession alone can be looked into and not the entire partition deed.

The issue is no more *res integra* in view of the decision of the Apex Court in ***Yellapu Uma Maheswari and another vs. Buddha Jagadheeswararao and others***¹ wherein the Apex Court while dealing with a document which is identical to the present one in question, held as under:

17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A

¹ 2016 (1) ALD 40 (SC)

thorough reading of both Exhibits B21 and B22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exhibits B21 and B22 are the documents which squarely fall within the ambit of Section 17 (i) (b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The Larger Bench of Andhra Pradesh High Court in *Chinnappa Reddy Gari Muthyala Reddy v. Chinnappa Reddy Gari Venkat Reddy*, AIR 1969 AP 242, has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial Court is at liberty to mark Exhibits B21 and B22 for collateral purpose subject to proof of relevance.

From a reading of the above judgment, it is clear that in a suit for partition un-registered document can be relied upon for

collateral purpose i.e. for severancy of title and nature of possession of various shares but not for primary purpose i.e. division of joint properties by metes and bounds. It is further held that unstamped instruments are not admissible in evidence even for collateral purpose, unless the same are impounded. Since the subject matter of the document is already impounded and as the request of the petitioner herein for using the said document is only for collateral purpose, to the extent of severancy of title and also nature of possession of various shares, the order under challenge needs to be interfered with.

Accordingly, the Civil Revision Petition is allowed by the setting aside the impugned order and directing the trial Court to mark the document for collateral purpose and to use the same only for the purpose of severancy of title and nature of possession of various shares.

Miscellaneous petitions pending, if any, shall also stand closed. No order as to costs.

C. PRAVEEN KUMAR, J

10.02.2016
sur