

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

Civil Revision Petition No.2476 of 2009

ORDER:-

This Civil Revision Petition is filed against the order dated 19.03.2009 in O.S.No.205 of 2004 on the file of the Principal Junior Civil Judge, Siddipet.

The petitioners herein are the plaintiffs. The plaintiffs filed the suit for declaration of title and recovery of possession of the schedule property. During the course of trial, PW.1 was examined on 25.02.2009 and he intended to mark a document stating that the document is memorandum of partition, for which, the defendants objected for marking the said document stating that the document is a partition deed and it requires stamp duty.

The case of the plaintiffs is that the proposed document is a memorandum of partition and it shows the past transaction of partition and partition has not effected under this document and hence it does not require stamp duty. The defendants contended that as per averments of the plaint, the partition was effected through partition deed dated 03.09.1952 and the recitals of the document shows that it is a partition deed.

The Court below after having heard both sides, observed that as per the proposed document, the partition was not effected previously, but there is oral understanding in between them and hence the document is a partition deed and therefore directed to pay the stamp duty. Aggrieved thereby, the plaintiffs filed the present revision petition.

The point in controversy is as to whether the document proposed to be marked as an exhibit is a memorandum of partition or a partition deed.

Needless to say, as rightly observed by the learned Junior Civil Judge, if it is a memorandum of partition recording past partition, it does not require any stamp duty and penalty, and if it is a deed of partition, it is required. The learned trial Judge having carefully perused the document, which is of the year 1952, has observed in the order that a careful scrutiny of the recitals of the document show that the properties are partitioned on 12.05.1952, 19.05.1952 and 13.08.1952 and as per this document, the parties are directed to divide the properties as on different dates It is manifest from the above that the properties are partitioned on the dates mentioned above, whereas the document is executed on stamp paper on 03.09.1952 i.e., long after the parties have partitioned the properties. For instance, the property in question is in Sy.No.251. A reference thereto is made in the following words:-

“The details of partition of lands executed on 12.05.1952 equivalent to Nandana Nama Samvatsara Vaishakha Bahula 3, between Koorella Venkata Reddy and Lakshma Reddy, sons of Seetharam Reddy, dividing their lands in the presence of Sri Marumalamla Sri Ramulu, Sri Mednipuram Narsa Reddy, Sri Lakunavaram Ram Reddy and Sri Dommata Bal Reddy.

Gujjuvani Bavi to Venkat Reddy Dry and Wet details			Ankannabavi to Lakshma Reddy Wet and Dry details		
Sy.No.	Extent	Land Revenue	Sy.No.	Extent	Land Revenue
.....					
....					
....			251	7-8	4-8-0
....					

Thereafter, all the lands in different survey numbers of different villages with all the details is mentioned. It is manifest from the above

that the suit schedule lands were partitioned on 12.05.1952 and the document now sought to be exhibited was executed on 03.09.1952 on a stamp paper bearing Sl.No.325602. The learned Judge having noted the above aspects erred in holding that it is a document by and under which the partition was effected and calling upon the plaintiff to pay the requisite stamp duty for impounding the document. Therefore, the order is liable to be set aside holding that the document that is sought to be marked is a memorandum of partition effected between the ancestors of the parties in May and August, 1952 whereas the document came to be executed on 03.09.1952.

In the result, the revision is allowed and the Order, dated 19.03.2009 is set aside. The learned Junior Civil Judge is directed to dispose of the suit within a period of six months from the date of receipt of the order.



M.S.K.Jaiswal, J

Date: 13th June, 2017

Dsr/ smr