

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2766 of 2017

ORDER:

1) Assailing the order dated 01.05.2017 passed in E.A. 121 of 2017 in E.A.No.493 of 2014 in O.E.P.No.141 of 2009 in O.S.No.240 of 2003 on the file of the Junior Civil Judge, Pakala, wherein an application filed under Order VII Rule 14(3) and Section 151 of the Code of Civil Procedure to grant leave to file the document i.e., unregistered partition deed dated 27.09.1977, was dismissed, the present C.R.P. is filed.

2) The brief facts of the case are as under:-

The petitioners herein are claim petitioners in E.A.No.493 of 2014 in E.P.No.141 of 2009. The first petitioner filed E.A.No.493 of 2014 in E.P.No.141 of 2009 claiming right over the E.P. schedule property against the respondents. During the pendency of the E.A., the first petitioner died and the petitioners 2 and 3 are added as L.Rs., of the first petitioner. The second petitioner filed affidavit on his behalf and on behalf of his wife (third petitioner) stating that recently he claims to have traced out an unregistered partition deed dated 27.09.1977 entered into between his father-in-law by name R.Chengalraya Naidu and his two sons. It is said that the said unregistered partition deed is very essential to prove the case. Since the document is traced recently, an application came to be filed to

grant leave to file the document. A counter came to be filed opposing the same. It is stated that the un-registered partition deed is created for the purpose of this case. It is stated though the said document is inadmissible in evidence, the same is sought to be brought on record only to drag on the matter. It is stated that on one pretext or the other, the petitioners are dragging the claim petition which was filed in the year 2014. After considering the rival submissions made, the trial court rejected the request of the petitioners. Challenging the same, the present C.R.P. is filed.

3) The main ground urged by the learned counsel for the petitioners is that this document being a memorandum of past partition deed requires no registration and as such the trial court erred in rejecting their request. It was further urged that the trial court ought to have seen the contents of the documents, instead of its title and as such the order under challenge warrants interference.

4) Learned counsel for the petitioners relied upon the judgment of the Apex Court in **Subraya M.N. v. Vittala M.N. and others**¹, wherein it is held as under:-

"16. Even though recitals in Ext.D-22 are to the effect of relinquishment of right in Items 1 and 2, Ext.D-22 could be taken as family arrangements/settlements. There is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration

¹ (2016) 8 SCC 705

arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties. In the present case, Ext.D-22 panchayat resolution reduced into writing, though not registered can be used as a piece of evidence explaining the settlement arrived at and the conducting of the parties in receiving the money from the defendant in lieu of relinquishing their interest in Items 1 and 2."

5). It is also urged by the learned counsel for the petitioners that the present petition, which is filed under Order VII Rule 14(3) and Section 151 C.P.C., is to grant leave to file unregistered partition deed as it is very essential to prove his case. It is further urged that the said document requires no registration.

6) The same is opposed by the learned counsel for the respondents stating that the said document is filed at a belated stage and moreover the said document is neither executed on required stamp papers nor registered, thereby it cannot be treated as a valid document.

7) In order to appreciate the rival submissions, it would be useful to refer to the relevant contents of the translation copy of the document, which is as under:-

8) The translation copy of the said document, which has been filed before this Court shows the heading as, partition agreement (MOU). In the claim petition filed, it has been stated that originally the first claim petitioner's father R.Chengala Raya Naidu and his brother Venkatarama Naidu got divided their joint family properties including the claim petition mentioned property under a registered partition deed dated 10.09.1957. In the said registered partition deed "A" schedule property mentioned therein was allotted to the share of father of the first claim petitioner and "B" schedule property was allotted to the share of Raya Venkatadri Naidu. Thereafter it is stated that the two brothers of the first claim petitioner and her father divided their properties under a partition list dated 27.09.1977.

9) From the above, it is clear that the properties, which fell to the share of Chengalraya Naidu were divided among his own family members under a partition list dated 27.09.1977. Definitely division amongst the family members, which took place in the year 1977, cannot be called as a past partition deed. It may be true the father of the first claim petitioner and his brother divided their properties in the year 1957 but insofar as the division of properties, which fell to the share of the father of the claim petitioner, the same took place in the year 1977.

10) It is to be noted that the facts in the judgment referred to above are totally different to the case on hand. In the instant case the suit is filed in the year 2003 and pursuant to the decree passed in it, an Execution Petition was filed in the year 2009. While the proceedings were going on in E.P., the petitioners herein filed claim petition in the year 2014 and further the present petition seeking leave of the court to file the unregistered partition deed, was made in the year 2017. As such nearly 11 years after filing of suit, the claim petition was made; and after 3 years of the said claim petition, the present petition is filed. More over, the said petition is filed for consideration of an unregistered and unstamped document with a title "Bhaga Vimarsa Kararu Cheeti". As seen from the record, the evidence in the said claim petition is also completed and is to be decided. Hence entertaining the petition by accepting the document, which is neither stamped nor registered, is not just and proper. Hence, I find no merits to allow the C.R.P. and the same is liable to be dismissed.

11) Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this C.R.P., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:21.09.2017
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