

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4869 of 2017

ORDER :

Heard both sides. Perused the impugned order of the lower Courts and the grounds urged in the revision and contents of the document.

2. No doubt, the document is termed as memorandum of partition. It was dated 15.03.1975. No doubt, amendment to the Section 2(15) of the Indian Stamp Act, 1899, incorporating a memorandum of a past partition is also within the meaning of instrument of partition with effect from 16.08.1986 by A.P. amended Act 17 of 1986 and the document is earlier to it, thereby that amendment has no application as rightly pointed out by the counsel for the revision petitioner. However, from perusal of the terms of the document particularly at page 3 and 4, paras 1 to 4, it is crystal clear that the document is contemporaneously speaking about the allotment of the property and not what was already divided and taken. Once such is the case, it is not a mere memorandum of past partition acknowledgment but within the meaning of instrument of partition, as rightly concluded by the lower Court and even the expression of the Apex Court in **Kale and others v. Deputy Director of Consolidation and others**¹, what it speaks is that a family arrangement may be even oral, once it is oral no registration is required and registration is necessary only if the

¹ AIR 1976 SC 807

terms of family arrangement are reduced to writing. There is also a distinction drawn between document containing the terms and recitals made under the document and a mere memorandum prepared after the family arrangement already orally taken place for record purpose. Here, had it been a mere acknowledgment of the past oral partition which is prior to 16.08.1986, the order of the lower Court definitely requires interference to say that the mandatory requirement of registration contemplated by Section 17 read with 49 of the Registration Act, 1908, has no application. However, the fact remains from the terms of the document pages 3 and 4 referred supra, it is not a mere acknowledgment of the past partition. Once such is the case, when it is an instrument of partition rights are created by virtue of which Section 17 and 49 of the Registration Act comes into play. Once such is the case, the only thing to consider is as per the proviso to Section 49 of the Registration Act of any collateral purpose for want of registration even unregistered can be looked into as held by this Court in **Buddha Jagadeeswara Rao v. Sri Ravi Enterprises, represented by its Proprietor, Kedarsetty Gurumurthy**². Once such is the case, there is nothing to interfere with the order of the lower Court.

4. Accordingly and in the result, the civil revision petition is disposed of.

² 2017 (2) ALT 736

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

Dr. B. SIVA SANKARA RAO, J

14th December 2017.

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