THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.539 OF 2014

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 06.08.2013 passed in O.S.No.25 of 2006 by the District Judge, Krishna District at Machilipatnam.

2 For the sake of convenience the parties to this Civil Revision Petition will hereinafter be referred to as they are arrayed in the suit.

3 Heard both sides.

4 The facts leading to filing of the present petition are, briefly, as follows:

5 The plaintiffs Nos.1 to 4 filed O.S.No.25 of 2006 against the defendants seeking a declaration that the first defendant-Firm was dissolved with effect from 22.07.2004 and for distribution of sale proceeds among the partners. First plaintiff and defendant Nos.2 to 9 have started a partnership firm in the name and style of M/s. Brindavan Talkies. The plaintiff Nos.2 and 3 have purchased 1/10th share out of 100th share in the partnership firm on 09.09.2004 from first plaintiff. When the matter was coming up for plaintiffs' side evidence, the plaintiff Nos.2 and 3 have tendered the document dated 09.09.2004 for the purpose of marking. At that point of time, the second defendant who is representing the first defendant Firm took an

objection for marking of the said document. After hearing both sides, the trial Court overruled the objection raised by the defendants. Hence the present Civil Revision Petition.

6 The predominant contention of the learned counsel for the defendants is that the documents in question are sale deeds which require registration under Section 17 (1) (b) of the Registration Act. He further submitted that the documents in question cannot be marked even for the purpose of collateral purpose. He further submitted that the order passed by the trial Court is not sustainable either on facts or in law.

7 *Per contra,* the learned counsel for the plaintiffs submitted that the documents in question cannot be considered as sale deeds as no title was conveyed in favour of plaintiff Nos.2 and 3. He further submitted that as per the recitals of the documents in question, only an interest in the share of the partnership firm was transferred, therefore, Section 17 (1) (b) of the Registration Act has no application. He further submitted that the trial Court rightly considered the scope of the provisions of the Registration Act and the Partnership Act and overruled the objections raised by the defendants. He further submitted that there is no illegality or irregularity in the order passed by the trial Court and hence the present Civil Revision Petition is liable to be dismissed.

8 To substantiate the argument, the learned counsel for the defendants has drawn the attention of this court to the following judgments:

9 ***Sakalabhaktula Lalitha v. Nandana Ranga Rao***[1] wherein this Court made the following observations: "All inadmissible evidences, such as unregistered and unstamped documents are being marked in several Courts in the name of collateral purpose and this practice is not good and it should not be encouraged."

10 ***Lakkoji Mohana Rao vs. Lakkoji Viswanadham***[2] wherein this Court held that even a memo recording past partition is also brought within the definition of 'instrument of partition' and cannot be marked without registration."

11 ***Gandevalla Jayaram Reddy v. Mokkala Padmavathamma***[3] wherein a full bench of this Court held at para No.8 as follows:

> 8. Furthermore, the learned Judges proceeded on a wrong premise in holding that the pasupu kumkuma is not a gift. 'Pasupu Kumkuma' as defined in P. Ramanatha Iyer's Law Lexicon means a gift, a settlement or assignment of land to a daughter. Inevitably therefore, such a gift of immovable property, the consideration whereof would be love and affection could come within the meaning of Section 123 thereof.

12 ***Bankey Behari vs. Surya Narain Alias Munnoo***[4]. As per the principle enunciated in this case, a family settlement also requires registration.

[1] 2012 (3) ALT 1
[2] 2012 (3) ALT 476
[3] 2001 (5) ALT 130 (F.B.)
[4] (2004) 11 SCC 393

13 To substantiate the argument, the learned counsel for the plaintiffs has drawn the attention of this court to the following judgments:

14 ***Addanki Narayanappa v. Bhaskara Krishtappa***[5] wherein a Full Bench of this Court at para Nos.13 14 and 15 held as follows:

> 13. A Full Bench of the Lahore High Court in the case of Ajudhia Pershad v. Shamsunder, ILR (1947) Lah 417: (AIR 1947 Lah 13) held that the interest of a partner in partnership assets comprising of movable and immovable property would be treated as movable property. We are in agreement with the view expressed in the above.
>
> 14. Our answer to the question referred to is that the interest of a partner in partnership assets cannot be regarded as a right of interest in immovable property within the meaning of Section 17(1)(b) of the Registration Act.
>
> (After the Full Bench had expressed its opinion on the reference, the second Appeal came back to Krishna Rao J., who delivered the following)
>
> 15. JUDGMENT: The Full Bench has held that the interest of a partner in partnership assets cannot be regarded as a right or interest in immovable property within the meaning of Section 17(1)(b) of the Registration Act. It follows that in so far as there is a relinquishment of their interest in the suit firm, by the plaintiffs and defendants 10 to 12 who executed Ex. B-18 the document does not require registration. Sri A. Kuppuswami contends that this does not conclude the matter because the consideration for the relinquishment was the transfer by the 1st defendant of certain immovable property. He relies on the sentence in Ex. B-18.
>
> "Herefor, you have given up to us the property forming our Venkatasubbayya's share which you have purchased and delivered possession of the same to us even previously."
>
> and urged that this amounts to a creating of interest in immovable property by the first defendant. In my opinion, such a construction of the sentence cannot be supported. The giving up of the property is clearly mentioned as a past event. The first defendant who gave up the property did not execute Ex. B-18. The sentence cannot, therefore, be construed as anything more than a recital of a past event. There was no creation of any interest in immovable property under the document Ex. B-18, within the meaning of Section 17(1)(b) of the Registration Act, because that could have happened only by a document executed by the first defendant. It follows that Ex. B-18 does not require Registration and was rightly admitted in evidence.

---

[5] AIR 1959 A.P. 380 (Vol.46, C.109)(1)

15 The same principle was upheld by the Hon'ble apex Court in ***Addanki Narayanappa v. Bhaskara Krishnappa***[6]**.**

16 ***S.V.Chandra Pandian v. S.V.Sivalinga Nadar***[7] wherein it was held that the property falling to the share of the partner on the distribution of the residue would naturally then belong to him exclusively but so long as in the eye of law it is money and not immovable property there is no question of registration under Section 17 of the Registration Act.

17 In ***Samyuktha Cotton Trading Company v. Bheemineni Venkata Subbaiah***[8] also this Court followed the principle laid down in Addanki Narayanappa case (5 supra).

18 Let me consider the facts of the case on hand in the light of the above legal principle.

19 It is not in dispute that the first defendant which is a partnership firm has been running a cinema theatre in the name and style of M/s. Brindavan Talkies in Machilipatnam Town. The first plaintiff by name Thatavarthi Sai Kiran, who is one of the partners of the first defendant firm, out of his 0-10 ps share, sold his 0.5 ps share to the second plaintiff and 0.5 ps share to the third plaintiff and executed two separate documents dated 09.09.2004 in favour of plaintiff Nos.2 and 3 by receiving sale consideration of Rs.2,05,000/- each from them.

---

[6] AIR 1966 SC 1300
[7] (1993) 1 SCC 589
[8] 2004 (5) ALT 534

20 The entire case revolves around these two documents. Whether the said document is an out and out sale or only a transfer of interest being conveyed in favour of the plaintiff Nos.2 and 3 in the partnership firm, is the core issue involved in this case. If the document in question is a sale deed, the same is not admissible under law without registration. If the document falls outside the ambit of Section 17 (1) (b) of the Registration Act, the objection raised by the defendant Nos.1 and 2 has to be overruled. In order to appreciate the rival contentions, it is not out of place to refer the provisions of the Partnership Act.

21 It is not in dispute that the first defendant is a registered partnership firm vide Reg.No.4139/88. The property in question belongs to the partnership firm. The first defendant firm is not dissolved as per law. As per the Proviso to Section 29 (1) of the Partnership Act, one of the partners of the partnership firm is entitled to transfer his interest in the partnership firm. A perusal of Section 15 of the Partnership Act clearly demonstrates that so long as partnership is in existence, no partner can claim any exclusive right over the assets of the partnership and that the partnership firm alone is the exclusive owner of its property. No partner is entitled to alienate the property of the partnership firm so long as it exists.

22 Let me consider the scope of the document dated 09.09.2004 in the light of the provisions of the Partnership Act.

The nomenclature of the document is mentioned as "Sale of shares in the partnership". To substantiate the argument, the learned counsel for the defendants mainly placed reliance on the recitals of the document. As per the recitals of the document in question, the plaintiff Nos.2 and 3 have paid Rs.2,05,000/- each to the first plaintiff and purchased 0-05 ps share each out of 100th share in the partnership firm. As per the recitals of the document, the property was delivered to the plaintiff Nos.2 and 3. The schedule property is a cinema theatre in an extent of 4038 sq. yards. It is not possible to deliver 1/10th share out of an undivided property in pursuance of the deed dated 09.09.2004. The property in question belongs to the first defendant firm alone. In such circumstances the first defendant alone can alienate the property in favour of others. As per the provisions of the Partnership Act, one of the partners can transfer his interest in the partnership firm either to the partners inter *se* or to a third party. The Court cannot straightaway come to a conclusion with regard to the nature of a document solely basing on the nomenclature. To put it in a different way, the court cannot be carried away with the nomenclature of the document. The court has to consider the scope of the recitals of a document with reference to the provisions of law. In the instant case, the recitals of the document have to be considered in the light of the provisions of the Partnership Act. The Court has to interpret nomenclature and recitals of document in the light of the provisions of the

Partnership Act in order to arrive just and reasonable conclusion.

23 As rightly pointed by the learned counsel for the defendants a document which requires registration, if not registered, the same cannot be used even for the purpose of collateral purpose. Extinguishment of right or creating a right in a specific immovable property is a condition precedent to attract the provisions of Section 17 (1) (b) of the Registration Act.

24 In the instant case even though the recitals of the document dated 09.09.2004 refer the word sale or purchase of property that cannot be construed as relinquishment of right by Thatavarthi Sai Kiran or creating a right in a specific immovable property in favour of plaintiff Nos.2 and 3. By virtue of the document, Thatavarthi Sai Kiran i.e. first plaintiff who is having 0-10 ps share in the partnership firm transferred his interest in favour of the plaintiff Nos.2 and 3. A reading of the provisions of the Indian Partnership Act in juxtaposition with the recitals of the document clearly indicates that an interest in the partnership firm was transferred in favour of the plaintiff Nos.2 and 3 but nothing else. If one of the partners transfers his interest in favour of other it will not fall within the ambit of Section 17 (1) (b) of the Registration Act in view of the principle laid down in Addanki Narayanappa case (5 supra) and S.V.Chandra Pandian case (7 supra). The relief No.B as sought in the plaint is as follows:

> "Convert the assets of the dissolved 1st defendant firm into liquid cash by selling the same in open auction and to distribute the same among the plaintiffs 2 and 3 and defendants 2 to 9 as per their shares value as mentioned in the plaint pleadings, though an appointed Receiver / Commissioner and to distribute the same between the parties in due process of law."

25 Even if the suit is decreed, the plaintiffs will get only liquid cash which is unascertainable. Even if the suit is decreed as prayed for, there is no possibility of delivering 10/100th share of immovable property in favour of plaintiff Nos.2 and 3. Viewed from factual or legal aspects, the first plaintiff transferred only an interest in the partnership firm in favour of the plaintiff Nos.2 and 3. Therefore, the document falls outside the scope of Section 17 (1) (b) of the Registration Act. In such circumstances, the objection raised by the defendants is not sustainable. The trial Court considered the factual and legal aspects in right perspective and overruled the objection raised by the defendants for marking of the documents dated 09.09.2004 at Sl.Nos.15 and 16 of the list of documents. I am fully agreeing with the findings recorded by the trail Court. There is no illegality or irregularity in the orders passed by the trial Court warranting interference of this Court by exercising jurisdiction under Article 227 of the Constitution of India.

26 In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions if any pending in this Civil Revision Petition shall stand closed.

T.Sunil Chowdary, J

Date: 9th February, 2017.
Kvsn