

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.6154 & 6161 of 2016

COMMON ORDER:

Heard.

2. The civil revision petitions are filed under Article 227 of the Constitution of India assailing the orders dated 23.11.2016, passed in I.A.Nos.952 & 953 of 2016 in O.S.No.219 of 2010 on the file of the Principal Junior Civil Judge, wherein the applications filed by the petitioners for recall of PW2 for the purpose of marking of an unregistered document were rejected.

3. The facts in issue are as under:

Admittedly the original suit came to be filed seeking demarcation of boundaries and for the relief of permanent injunction. When the suit was coming for further evidence on plaintiff's side, the above said Interlocutory Applications came to be filed for recall of PW2 and the same were rejected on the ground that the document sought to be marked was an unregistered document and the same cannot be used as an evidence. Hence, the present revisions came to be filed.

4. It is the case of the petitioners that at the time of filing of suit, they filed Xerox copy of un-registered partition deed dated 17.09.1986 as the original was misplaced and later when they traced out the same, they submitted the document stating it to be very essential to prove the case of the plaintiffs and there was partition among both the parties. It is stated that 'B' Schedule property referred in the partition deed fell

to the share of father of second plaintiff and hence the document is essential to prove the contention of the plaintiffs.

5. Learned counsel for the respondents contends that the said document is hit by the provision of Section 35 of Stamp Act and under Section 2 and 17 of Registration Act, therefore the document cannot be even received for collateral purpose in a suit for demarcation of boundaries because no boundaries has been specified under the un-registered partition deed.

6. There is no dispute with regard to the proportion of law that unregistered documents cannot be used even for collateral purpose unless it satisfies certain requirements of Registration Act.

In *P.Veerraju and another v. Lakkaraju Indira Bai and others*¹ a learned Single Judge of this Court held as under:

“The proviso to Section 49 of the Act carves out two exceptions for admissibility of the un-registered documents. Under the said proviso, an un-registered document, which is compulsory registerable, is still admissible in evidence under two circumstances, viz.(1) if such document is filed in a suit for specific performance; and (2) the same is sought to be filed as evidence of any collateral transaction not required to be effected by registered instrument.”

In *Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others*² the Apex Court while dealing with the effect of using an un-registered document for collateral purpose observed as under:

¹ (2015) 1 ALD 472

² (2016) 1 ALD 40 (SC)

“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 Vs. Chinnappa Reddy Gari Vankat Reddy³ 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 B-21 and B- 22 for collateral purpose subject to proof and relevance.”

5. Even in the instant case, the proviso under Section 49 of the Registration Act cannot be made applicable as the suit filed is for demarcation of boundaries and for the relief of permanent injunction. Further, as per the judgment Yellapu Uma Maheswari's case (supra), 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. In the instant case, the main suit filed is for demarcation of boundaries for the purpose of partition and hence the unregistered document cannot be relied upon for collateral purpose.

6. Having regard to the above, I see no reason to interfere with the order passed by the trial Court in the I.As. and the Civil Revision

³ AIR 1969 A.P. (242)

Petitions are accordingly dismissed leaving it open to the petitioners to avail the remedies available, if any, under law. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.02.2017

vhb

