

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No.693 OF 2018

ORDER:

1. This Civil Revision Petition under Article 227 of the Constitution of India is filed to set aside the docket order dated 5.1.2018 passed in O.S.No.126 of 2010 on the file of learned Principal Junior Civil Judge, Nizamabad.

2. The contentions of the petitioners/plaintiffs are that, the trial Court having held that the document creates a right in favour of a person, but when it is inadmissible for want of registration as per order dated 28.11.2017 in I.A.No.994 of 2017 in OS.No.126 of 2010, it (lower Court) is estopped and barred from entertaining the same document. The trial Court could not impound the document as it was called from the file of Civil Miscellaneous Appeal instituted on the file of the superior Court.

It is further contended that unstamped document is inadmissible in evidence and the lower Court having rejected the contention of the respondents that the document could be looked into for collateral purpose, cannot now consider the same for the purpose of adducing in evidence.

3. Per contra, the respondents/defendants contended that even for collateral purpose, on payment of stamp duty and penalty, the unstamped document can be received as provided in the proviso to Section 49 of the Registration Act.

4. POINT:

Now the point that arises for determination is:

“Whether the unstamped and unregistered partition document can be received for collateral purpose.”

5. The petitioners/plaintiffs filed O.S.No.126 of 2010 for perpetual injunction restraining the respondents/defendants from interfering with their peaceful possession and enjoyment of the suit schedule property and for other reliefs.

6. Earlier the respondents/defendants filed I.A.No.994 of 2017 seeking to receive the certified copy of memorandum of oral partition dated 19.02.1975. It is stated that the original document was marked in CMA.No.10 of 2010 on the file of learned Additional District Judge, Nizamabad. The learned Principal Junior Civil Judge, Nizamabad dismissed the said IA holding that as per Section 35 of the Stamp Act, an unstamped document is inadmissible in evidence; and that it cannot be looked into for any purpose and that an unregistered document however can be looked into for collateral purpose, that too after payment of stamp duty and penalty on such document. It was further held therein that the proposed document is a certified copy and it is not original document. Even assuming for a moment, if the petitioners are ready to pay stamp duty and penalty on the proposed document, as the same is certified copy, the same cannot be impounded by collecting requisite stamp duty and penalty as it is settled that only on the original document, the stamp duty and penalty will be collected, but not on the certified copy.

7. The record further goes to suggest that when the respondents/defendants intended to get the memorandum of oral partition document dated 19.2.1975 is impounded, the petitioners/plaintiffs objected for the same. The trial Court vide docket order dated 5.1.2008 held as under:

“ This Court has carefully perused the pleadings. Pleadings of parties indicates that the dispute is with regard to the suit land of 2 acres 32 guntas in Survey Nos. 2870 and 2871 as both the parties are claiming their rights over the said property. No doubt the survey number of other properties are not mentioned in this document, however, if the defendant produces the relevant records to show that the properties described in the impugned document pertains to which particular survey number, then the document can be impounded and there can not be any objection for impounding the document on the production of market value certificate and other relevant documents showing in which survey number the properties mentioned in the document are located. The objection of counsel for the plaintiff is thus answered.”

8. From the above order, it is clear that survey numbers of property are not mentioned in the subject document. The trial Court held that respondents/defendants, on production of relevant records to show that the properties described in the subject document pertains to particular survey number, can be permitted to impound the document. Holding so, the Trial Court observed that there cannot be any objection for impounding the document on production of market value certificate and other relevant documents for the purpose of showing in which survey number the properties

mentioned in the document are located. Aggrieved by the same, the petitioners/plaintiffs filed the present revision petition.

9. In ***BHAGWAN DAS Vs. GIRJA SHANKAR*** (CIVIL APPEAL No. 3825 OF 1990, decided on 20.09.2000) the Apex Court looked into Ex.P.2 and on its perusal it appears that on 26.7.1958 initially there was an agreement of partition between the plaintiffs and defendants and thereafter, the same was reduced in writing before the panchas on the same date, in fact is a partition deed and under the law, it requires registration. In those circumstances, the Apex Court held that since the document Ex.P.2 was not registered, it was not admissible in evidence.

10. In the subsequent decision in ***YELLAPU UMA MAHESWARI AND ANR Vs. BUDDHA JAGADHEESWARARAO AND ORS*** {2016(1)ALD40(SC)}, the Apex Court considering the larger Bench decision of this Court in ***CHINNAPPA REDDY GARI MUTHYALA REDDY Vs. CHINNAPPA REDDY GARI VENKATA REDDY*** (AIR 1969 AP 242) 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 sharers but not for the primary purpose i.e. division of joint properties by metes and bounds. Therefore an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. In view of the

above decision, it is clear that an unstamped instrument for collateral purpose can be received in evidence after impounding the same.

11. It is also settled law that nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely depend upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question.

12. A thorough reading of the subject memorandum of oral partition, which is in Urdu language and English translation of which is filed, makes it clear that Lingubai, W/o Laxman with good health condition, with senses, without any fear and with consent, stating that as she has no guarantee on her life and after her death, there should not be any dispute regarding her moveable and immoveable properties between her three sons to share, made the alleged deed of partition as settlement between them, (1) that her son Bada Baloji Upper Tedki got share of old house and 1½ acre of land situated at behind fish office, Nizamabad and one plot situated at Sindhi compound and the same be permitted to transfer on his name and possession is given and the party is entitled for ownership; (2) that her another son, Nadipi Baloji is given ½ pucca house towards western side situated at Domargalli, Nizamabad as per map, which shows nine rooms and land of 2 acres situated at Guhdaram taluq, Nizamabad and half plot situated in Sindhi compound, Bhodan road, Nizamabad and also Rs.10,000/-for value of 1 acre land to purchase

in between two brothers and possession of the land is given to him and accordingly 3 acres of land will be in his possession; and (3) that Sri Venkoji is given $\frac{1}{2}$ share in the house RCC towards Eastern side situated at Backside of Domargalli, Nizamabad and $\frac{1}{2}$ share in plot inside Sendhi compound, Bodhan road and land of $1\frac{1}{2}$ acre near Fish office, Nizamabad and possession of which is given to him and also 1 piece of land, 2 acres 10 guntas, situated at Kesaram village of which possession is given to him for marriage of his children. Accordingly she divided her entire property, moveable and immoveable, equally among her three sons. It was further stated therein that Kotmulgi situated at Zumerath bazaar (old), Nizamabad is given to her daughters (1) Bayamma and (2) Laxmibai in equal share by dividing each one mulgi to them, to which, her sons have no rights.

13. The Apex Court in the case of ***KB SAHA AND SONS PRIVATE LIMITED Vs DEVELOPMENT CONSULTANT LIMITED*** {(2008) 8 SCC 564) held that a document requires to be registered , if unregistered, is not admissible in evidence under Section 49 of the Registration Act; such unregistered document can however be used as an evidence for collateral purpose as provided in Section 49 proviso of the Registration Act; a collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating etc., any right, title or interest in immovable property of the value of one hundred rupees

and upwards; and if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that, to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

14. A thorough reading of the subject memorandum of oral partition dated 19.02.1975 and decisions of the Apex Court in regard thereto makes it clear that the subject document which is unstamped and unregistered, is compulsorily registerable, as it fall within the ambit of the protection afforded by Section 17 of the Registration Act and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. The said unregistered partition document can however be used in evidence for collateral purpose as provided under Section 49 of the Registration Act i.e. for severancy of title and nature of possession of various shares, but not for the primary purpose i.e. division of joint properties by metes and bounds. Since the suit is for perpetual injunction, wherein the subject document is sought to be marked in evidence, the trial Court in the impugned docket order clearly held that as the original subject document is filed in appeal, certified document of which can be received in evidence for collateral purpose subject to the respondents/defendants produces the market value certificate and other relevant documents showing in which survey number the properties mentioned in the document are located and after impounding the document, the same can be received in evidence for collateral purpose, i.e. severancy of title and nature of possession, but not for the primary purpose of division of

joint properties by metes and bounds. In the view thereof, I am of the considered opinion that the impugned docket order is perfectly legal, valid and supported by settled principles of law and do not suffer from any legal infirmities warranting interference.

15. The Civil Revision Petition is therefore dismissed with costs confirming the docket order dated 5.1.2018 passed in O.S.No.126 of 2010 on the file of learned Principal Junior Civil Judge, Nizamabad.

16. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence.

DATED 5th March, 2018.
Msnr_x

JUSTICE N. BALAYOGI

