

THE HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.3561 of 2011

ORDER:

Aggrieved by the order dated 21.07.2011 in O.S.No.317 of 2005 on the file of the learned Principal Junior Civil Judge, Puttur allowing the memo filed by respondent No.1-plaintiff objecting to mark the unregistered Partition Deed dated 16.09.1983 and unregistered Relinquishment Deed dated 06.01.2001 filed by defendant No.4, the petitioner-defendant No.4 filed the present Civil Revision Petition.

2. Though the respondents 1 to 4 received notice, none appeared either in person or through counsel. The Civil Revision Petition was admitted on 21.10.2011.

3. Now the point that arises for determination is “whether the unregistered Partition Deed dated 16.09.1983 and unregistered Relinquishment Deed dated 06.01.2001 can be received in evidence for collateral purpose?”

4. POINT:

The contention of learned counsel for the petitioner is that the unregistered Partition Deed and unregistered Relinquishment Deed can be received for collateral purpose. None of the respondents appeared in person and their counsel.

5. The record sows that the petitioner filed unregistered Partition Deed and unregistered Relinquishment Deed along with written

statement, which are shown as items 1 and 4 of the list of documents filed on behalf of the petitioner-defendant No.4. It is also not in dispute that after closing the plaintiff's evidence the petitioner-defendant No.4 tendered to mark the above said documents through witness.

6. Respondent No.1/plaintiff filed the objection memo objecting for marking of the said documents, contending that those documents are compulsory registerable since they are unregistered and inadmissible in evidence. It is further contended that the petitioner-defendant No.4 failed to take appropriate steps to pay the stamp duty and penalty before tendering those documents for marking them as evidence in the suit and therefore, they cannot be received even for collateral purpose.

7. The trial Court by order dated 21.07.2011 allowed the Objection Memo with finding as under:

“The present suit is filed for division of suit schedule property if unregistered partition deed and unregistered Relinquishment deed received the said documents are creates new rights of the defendants over the suit schedule property and the facts of the present case and above decision facts are not one and the same. Therefore the said un-registered documents cannot be marked on behalf of the defendants even for collateral purpose and those documents are compulsory required registration as per Section 17 of Indian Registration Act. Accordingly this point is answered.”

From the above finding of the trial Court, it is clear that the trial Court found that the unregistered Partition Deed and unregistered Relinquishment Deed cannot be marked on behalf of the petitioner-defendant No.4 even for collateral purpose and those documents are

compulsory required registration as per Section 17 of the Registration Act.

8. The case relied on by the petitioner in **Yellapu Uma Maheswari v. Buddha Jagadheeswararao**¹ wherein the Apex Court having elaborately discussed the provisions under Section 17(1)(b) and Section 49 of the Registration Act held that the 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 dependent upon the recitals contained in the document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. The relinquishment of right in respect of immovable property through a document which is compulsorily registerable and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. The documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act are compulsorily registerable and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties.

9. With reference to the collateral purpose the Apex Court taking into consideration the decision of the larger Bench of the Andhra Pradesh High Court in **Chinnappa Reddy Gari Muthyala Reddy v. Chinnappa Reddy Gari Vankat Reddy** [AIR 1969 AP 242] held that

¹ 2016 (1) ALD 40 (SC)

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.

10. By applying the same to the facts of the present case, the documents i.e., the unregistered Partition Deed and unregistered Relinquishment Deed in respect of the immovable property are compulsorily registerable documents, but they are not registered. Therefore, becomes inadmissible documents as envisaged under Section 49 of the Registration Act.

11. The unregistered Partition Deed and unregistered Relinquishment Deed are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and they are compulsorily registerable documents and they are inadmissible in evidence for the purpose of proving the factum of partition between the parties and also relinquishment of interest, right, title of immovable property under the unregistered Relinquishment Deed dated 06.01.2001. Therefore, I am of the considered view that the unregistered Partition Deed dated 16.09.1983 and unregistered Relinquishment Deed dated 06.01.2001, which are unstamped, are not

admissible in evidence for the purpose of proving primary purpose of partition under the unregistered Partition Deed dated 16.09.1983 and also relinquishment of interest, right, title, in respect of the immovable property under the Relinquishment Deed dated 06.01.2001. However, relying on the above decision and applying the same to the facts herein, I am also of the opinion that under the unregistered unstamped Partition Deed there is severancy of title, division of joint properties by metes and bounds and nature of possession of various shares. Under the unregistered unstamped Relinquishment Deed dated 06.01.2001 the interest, right, title was transferred to the other party. It is a suit for partition filed by respondent No.1-plaintiff. Hence, the documents which are unregistered and unstamped can be relied on by the petitioner-defendant No.4 for collateral purpose as 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.

12. Similarly, the unstamped and unregistered Relinquishment Deed can be received in evidence showing the transfer of rights and nature of possession under the unstamped unregistered Relinquishment Deed. Even though the unstamped unregistered Partition Deed and unstamped unregistered Relinquishment Deed can be received in evidence for collateral purpose on impounding those documents.

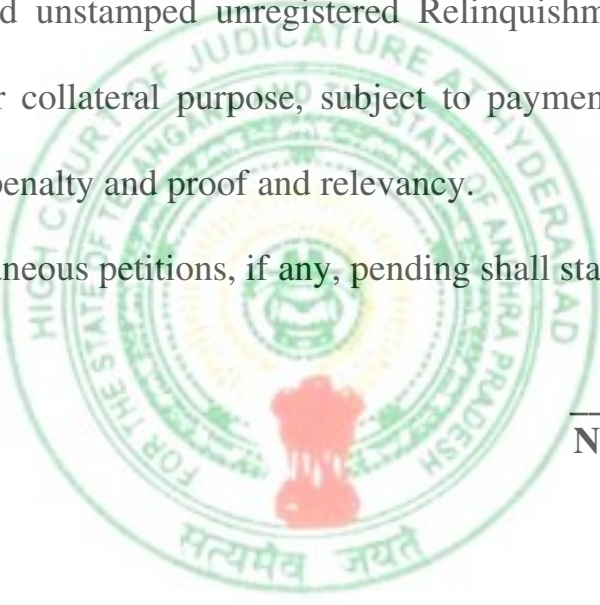
13. In the above circumstances, it is ordered that if the revision petitioner-defendant No.4 wants to mark those documents for collateral purpose, it is open to him to pay the stamp duty together with penalty

and get the documents impounded and the trial Court is directed to receive and mark those documents on behalf of the revision petitioner-defendant No.4 for collateral purpose, subject to proof and relevancy. Accordingly, the point is answered.

14. Accordingly, this Civil Revision Petition is allowed, while setting aside the order dated 21.07.2011 in O.S.No.317 of 2005 on the file of the learned Principal Junior Civil Judge, Puttur, by directing the trial Court to receive the unstamped unregistered Partition Deed dated 16.09.1983 and unstamped unregistered Relinquishment Deed dated 06.01.2001 for collateral purpose, subject to payment of stamp duty together with penalty and proof and relevancy.

Miscellaneous petitions, if any, pending shall stands closed.

23.11.2018
MVA



N.BALAYOGI, J