THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2473 of 2018

ORDER:

In this revision, under Article 227 of the Constitution of India filed by the plaintiffs, the challenge is to the order, dated 12.03.2018, of the learned Senior Civil Judge, Chirala of Prakasam District, whereby the trial Court permitted the document, dated 22.08.1985, styled as 'partition jabita' [partition list] to be exhibited through DW1 having held that the said unregistered document, which is engrossed on a stamp paper of the value of rupees five, is a partition list and is admissible in evidence without further payment of any stamp duty & penalty.

2. I have heard the submissions of Sri Venkateswarlu Chakkilam, learned counsel appearing for the revision petitioners-plaintiffs and of Sri N.A. Ramachandra Murthy, learned counsel appearing for the 2nd respondent. Though 1st respondent is served with notice, he did not enter appearance. I have perused the material record.

3. To begin with, it is to be noted that the plaintiffs brought the suit for partition of various properties morefully described in the schedule annexed to the plaint. The 2nd defendant filed a written statement resisting the suit. In the defence, reliance was placed upon an unregistered document, dated 22.08.1985, with caption 'partition jabita' [partition list]. During the course of trial, the said document was tendered through DW1 for being marked as an exhibit. The plaintiffs raised an objection that it is not a partition list and that it is a deed/instrument of partition and that it is chargeable with duty and is compulsorily registerable. However, it was contended on behalf of DW1 that it

is a list of partition and that it is a record of past transaction of partition and that the act of partition which is anterior is reduced into writing subsequently in the form of a list and that the very document is also styled/captioned as 'partition jabita' and it being a memorandum regarding past partition is neither chargeable with duty nor is compulsorily registerable. By the order impugned, the trial Court, having opined that the subject document is a partition list, held that no further stamp duty and penalty are payable and that the document does not require registration, and accorded permission for the said document being marked as an exhibit through DW1 and adjourned the suit for further examination of DW1.

4. In this backdrop, learned counsel for the plaintiffs contends that the document in question is an instrument of partition and that the properties are divided under the very document and it embodies the terms of bargain as well as change of legal relationship of the parties with reference to the properties, which are subject matter of partition and that, therefore, it is chargeable with duty and is compulsorily registerable and that the trial Court without properly going through the recitals in the document and without properly construing the purport of the terms of the document and without understanding the distinction between the instrument of partition and memorandum of past partition erroneously held that the document is a partition list and is not required to be charged with duty and is not compulsorily registerable and that, therefore, the impugned order is liable to be set aside.

4.1 Having drawn the attention of this Court to the recitals in the deed, it is contended that the document purports or operates to create, declare, assign, limit or extinguish in praesenti right, title and interest in the immovable property of the value of rupees one hundred and upwards and, therefore, requires registration and is chargeable with stamp duty and that without payment of stamp duty the document cannot be even admitted for collateral purpose and that in this suit for partition, the document is inadmissible even for collateral purpose as the same is not registered and non registration of a compulsorily registerable document is an incurable defect.

4.2 In support of his submissions, he placed reliance on the decisions in **Medam Chandramouli and others v. Revenue Divisional Officer, Kurnool**[1] rendered by a Constitution Bench of the Supreme Court and **Board of Revenue, Chepauk, Madras, v. Poosarla China Appalanarsimhulu**[2] rendered by this Court.

5. Per contra, learned counsel for the 2nd defendant while supporting the order of the trial Court contended that the trial Court rightly construed the terms of the document and came to a correct conclusion that it is a partition list, i.e., a memorandum of past partition and that, therefore, it is not chargeable with duty and is not required to be registered and that the impugned order of the trial Court is sustainable not only on facts but also in view of the decisions viz., (1) **Mallidi Satyanarayana Reddy v. Mallidi Venkata Reddy and another**[3]; and (2) **Roshan Singh and others v. Zile Singh and others**[4].

6. Before proceeding further, it is apt to note that when a document is a memorandum of past partition and when such a document is a record of the past partition and allotment of shares by metes and bounds which preceded it and when such document is a mere record of anterior acts creating exclusive

[1] AIR 1964 AP 107
[2] AIR 1957 AP 237
[3] 2017(6) ALT 232
[4] AIR 1988 SC 881

title in favour of some members of joint family by extinguishing title of others in the same, the said document cannot be objected to as inadmissible on the ground that it is either chargeable with duty or is compulsorily registerable. The above legal proposition is not disputed. However, it is also apposite to note that insofar as the States of Telangana and Andhra Pradesh, even a memorandum regarding past partition comes within the meaning of instrument of partition and is chargeable with duty as a bond as per item no.40 of Schedule 1-A of the Indian Stamp Act in view of the amendment of Section 2(15) of the Indian Stamp Act, which came into force with effect from 16.08.1986. However, in the case on hand, the document is executed on 22.08.1985 i.e., prior to the coming into force of the amendment. Therefore, if this Court comes to the conclusion that it is an instrument of partition, it follows that the document requires to be charged with duty and is compulsorily registerable. Conversely, if this Court holds that it is a memorandum regarding past partition, the order of the trial Court deserves to be sustained.

7. Therefore, the vital question is - 'whether the document is an instrument of partition as being contended by the plaintiffs? [Or] 'Whether it is merely a partition list/memorandum regarding past partition?'

8. There is no dispute with the proposition that the nature/character and the description/nomenclature/classification and also the stamp duty payable, if any, on the document have to be determined with reference to the recitals therein and the substance of the transaction embodied in the instrument and not with reference to the title, caption or name given to the instrument. Further, for classification of instruments, that is, to determine whether an instrument comes within a particular description in an Article to the Schedule

to the Indian Stamp Act, the instrument should be read and construed as a whole. The name or the caption given to the document is not determinative and the nature or character or the substance of the transaction contained in the document is only the determinative factor. Hence, having regard to the substance of the transaction contained in the deed in question its nature and character have to be first ascertained; and, it is to be further determined as to whether it is required to be stamped or not; and, whether it is compulsorily registerable or not.

8.1 A plain perusal of all the recitals in the subject document makes it manifest that it is an instrument of partition as, on wholesome consideration of all the recitals, it is clear and comprehensible that under the very instrument the sharers divided the property mentioned therein severally. The said vital recitals which indicate clearly that the transaction embodied in the document is a partition and not a record of past partition are as under: -

[written in Telugu]

8.2 The purport of the above recitals may be stated as follows: 'We with an intention to construct houses now partitioned the site according to amenities in the presence of mediators. 'A' schedule came to the share of 1. Srinivasulu amongst us. 'B' schedule came to the share of 2. Veeraiah amongst us. 'C' schedule came to the share of 3. Appala Naidu amongst us. We have taken possession of our respective sites. Each one of us shall enjoy our respective sites with rights to gift, sell etcetera. This partition is executed with full consent. We shall not raise any disputes for exchange or change of shares. Accordingly, we shall pay taxes to the municipality separately and apply for approval of plans and construct houses.'

8.3 I have gone through the entire subject document and considered the above and other recitals in the document as a whole. A plain reading through the said document makes it patent that the said document deals with a transaction in regard to joint immovable property of the sharers; further, the recitals in the said document reflect that the joint property (site) was now partitioned into three shares in the presence of elders as they (the sharers) intended to construct houses and that one share each is allotted to each of the three sharers and that the sharers shall enjoy their respective shares with absolute rights including right to gift and sell etcetera. The further recitals in the instrument also reflect that agreeing for the same with full consent, the deed in question is being executed and that the sharers shall not raise any disputes either for exchange or for change of shares. In view of the substance of the transaction that is embodied in the document it is plain that the joint property (site) was partitioned amongst the sharers under the very same document and not earlier. To put it in other words, the partition of property by bounds and the allotment of shares to the sharers were done only under this deed/instrument. Hence, it is possible to safely hold that the document in question is a 'deed or instrument of partition' by itself and is not an instrument in the nature of memorandum regarding past partition, which acknowledged past oral partition. On the above analysis, this Court holds that the contentions that the deed in question is only a record of past partition and that it is neither required to be stamped nor registered cannot be countenanced.

9. Further, Article 40 of the Indian Stamp Act deals with the stamp duty payable on such instrument of partition. An Instrument of partition of immovable property of the value of one hundred rupees and upwards is compulsorily registerable under Section 17 of the Indian Registration Act. Further, Section 49 of the Indian Registration Act, 1908 prohibits receiving in evidence documents required by law to be registered and which are not registered.

10. In the considered view of this Court, the document which purports or operates or creates, declares, assigns, limits or extinguishes whether in present or in future, rights, title or interest of the value of over 100 rupees and upwards to or in immovable properties within the meaning of the provisions of the stamp law and Section 17 of the Registration Act is required to be properly stamped and registered; and, unless the said twin requirements are complied with, the said document cannot be looked into for the main purpose.

11. Dealing with the next aspect as to whether the said document can be permitted to be exhibited for collateral purpose, it is to be noted that in the decision in the case of **Avinash Kumar Chauhan vs. Vijay Krishna Mishra [2009 (1) L S 35 (SC)],** the Supreme Court referred to the following ratio in

the decision in the case of **T. Bhaskar Rao vs. T. Gabriel and other [AIR 1981 AP 175]:: "It is now well settled that there is no prohibition under section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under section 35 of the Stamp Act."**

12. In view of the said legal position, this Court holds that the document cannot be admitted even for collateral purpose or for merely proving severance in status unless the required stamp duty and penalty collectable on the instrument are paid and collected.

13. Finally, it is to be noted that the trial Court recorded findings and arrived at conclusions unmindful of the factual matrix and the recitals & the transaction embodied in the document in question.

14. For all the afore-stated reasons, this Court finds that the impugned order brooks interference.

15. Before parting be it noted that the finding that the document is an instrument of partition and not a memorandum regarding past partition is arrived at purely on the transaction embodied in the document and on consideration of the indisputable legal position laid down in the decisions of the Supreme Court. Hence, it follows that the decisions relied upon by the learned counsel for the defendants do not advance the case of the defendants any further.

16. As a sequel to the findings supra, the Civil Revision Petition is allowed and the impugned order is set aside holding that the subject document is an instrument of partition and is chargeable with duty and is compulsorily registerable and that it is inadmissible in evidence even for collateral purpose unless the necessary stamp duty and penalty collectable on the instrument are paid and collected. It is made clear that this order shall not preclude the defendants either from paying the stamp duty & penalty or from making a request to the Court below to send the document to the stamp duty collector for collection of the stamp duty and penalty on the document, if they so desire and are so advised. If any such request comes to be made by the defendants, the trial Court shall consider the same as per the procedure established by law. It is further made clear that in the event the stamp duty requirement [by due payment of stamp duty and penalty] is complied with by the defendants, and a request is then made for marking the document for collateral purpose, the trial Court shall consider the said request on its merit and as per law after affording an opportunity of hearing to both the parties.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

30.07.2018
Vjl