THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4664 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 04.08.2017 passed by the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, in O.S.No.551 of 2006. The second defendant in the said suit filed a Memo on 11.07.2017 stating that Ex.B14-Ikrarnama and Ex.B24-Memorandum of Partition should be marked in evidence through D.W.5 as these documents were relevant and admissible. By the order under revision, the trial Court directed the second defendant to pay stamp fee and penalty on various documents and adjourned the matter for marking them thereafter. Aggrieved thereby, the second defendant is before this Court.

By order dated 08.09.2017, this Court took note of the fact that though the trial Court opined that stamp duty was payable on the documents in question, no steps were taken by it under Section 33 of the Indian Stamp Act, 1899 (for brevity, 'the Act of 1899') in relation thereto and granted interim stay of further proceedings in the suit.

O.S.No.551 of 2006 was filed by the first respondent-plaintiff for partition of the suit schedule properties into six equal shares and allotment of one such share to her; for recovery of Rs.1,50,000/- from the defendants towards her share of the income derived from the suit schedule properties during the years 2003-04, 2004-05 and 2005-06; and for costs. The plaintiff and defendants 1 to 4 in the suit are sisters, while the fifth defendant is their brother.

Sri M.V.Durga Prasad, learned counsel for the petitioner-second defendant, would state that the subject documents were sought to be marked in proof of certain past transactions. He would submit that under Ex.B14-Ikararnama executed by the deceased grandfather of the parties, the suit schedule 'E' and 'F' properties were given to the second defendant, while Ex.B24-Memorandum of Partition was sought to be marked in proof of the land holdings of the second defendant's husband.

Objections were filed by the first defendant. According to her, the Ikrarnama required registration as it disclosed relinquishment of rights in land and that apart, it was insufficiently stamped. As regards the Memorandum of Partition, she pointed out that land was shared by and between the parties thereto thereunder. Therefore, it was not a deed of past partition and required registration and proper stamp duty. The first defendant also objected to marking of certain receipts on the ground that they were actually agreements of sale. She contended that these documents also required registration and proper stamp duty.

The trial Court disagreed with the claim of the second defendant that no stamp duty was payable upon Ex.B14-Ikrarnama as it only recorded a past transaction. Observing that a document must be properly stamped to be marked even for a collateral purpose, the trial Court opined that Ex.B14-Ikrarnama could not be marked automatically without payment of deficit stamp duty. Similar was the finding in relation to Ex.B24-Memorandum of Partition.

Though the Memo filed by the second defendant only related to these two documents, the trial Court took note of the objection raised by the first defendant and opined that the documents dated 10.03.1988, 02.02.1988, 05.02.1988, 09.08.1990, 25.11.1991 and 23.03.1996 were characterized as agreements of sale, whereunder land was sold and consideration was received, and would therefore be compulsorily registrable. As they were executed only on white paper, the trial Court opined that they should be subjected to payment of stamp duty in order to be considered in evidence. Holding so, the trial Court directed the second defendant to pay stamp fee and penalty on the Ikrarnama dated 04.11.1981, agreements of sale dated 10.03.1988, 02.02.1988, 05.02.1988, 09.08.1990, 25.11.1991 and 23.03.1996 and the Memorandum of Partition dated 13.04.1993.

It is well settled that the nomenclature of a document would not be the decisive factor to determine the nature of the transaction recorded therein. Admissibility of a document would depend upon the recitals therein and if there is relinquishment of rights in immovable property, it is compulsorily registrable and if the same is not registered, it would be inadmissible in evidence under Section 49 of the Registration Act, 1908 (for brevity, 'the Act of 1908') in proof of such relinquishment.

In a partition suit, an unregistered document can be relied upon for the collateral purpose of proving severance of title and the nature of possession of sharers but not for the primary purpose, i.e., division of joint properties by metes and bounds. Further, an unstamped document would not be admissible in evidence even for collateral purposes until the same is impounded. (*see* **YELLAPU UMA MAHESWARI V/s. BUDDHA JAGADHEESWARARAO**[1]).

In **ROSHAN SINGH V/s. ZILE SINGH**[2], the Supreme Court observed that while an instrument of partition, which operates or is intended to operate as a declared volition, constituting or severing ownership, and causes a change of legal relations to the property

[1] (2015) 16 SCC 787
[2] AIR 1988 SC 881

divided amongst the parties to it, requires registration but a writing which merely recites that there has been in time past a partition, is not a declaration of will, but a mere statement of fact and would not require registration. *Per* the Supreme Court, the essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. Mere use of the past tense would not necessarily indicate that it is a recital of a past transaction. Section 17(1)(b) of the Act of 1908 posits that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property and therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity to register such a document.

In **CHILAKURI GANGULAPPA V/s. REVENUE DIVISIONAL OFFICER, MADANAPALLE**[3], the Supreme Court was dealing with Section 47-A (1) of the Act of 1899, which states that when the Collector impounds an instrument under Section 33 of the Act of 1899 or receives any instrument sent to him under Section 38(2) thereof, he shall adopt the procedure laid down therein. The Supreme Court observed that it is clear from Section 38(1) of the Act of 1899 that the Court has power to admit a document in evidence if the party producing the same pays the stamp duty and penalty and if so, the Court needs to forward only a copy of the document to the Collector together with the amount collected from the party for taking adjudicatory steps. However, if the party refuses to pay the amount aforesaid, the Court has no other option except to impound the document and forward the same to the Collector. On receipt of the

[3] AIR 2001 SC 1321

document through either of the said avenues, the Collector has to adjudicate on the question of the stamp duty and if he is of the opinion that such instrument is chargeable with duty and is not duly stamped, he shall require payment of the proper duty or the amount required to make up the same together with penalty not exceeding ten times the amount of proper duty or the deficient portion thereof.

In the light of the aforestated legal framework, the issue presently is whether the documents in question were compulsorily registrable and whether proper stamp duty was paid thereon.

Perusal of Ex.B14-Ikrarnama demonstrates that Sudini Varada Reddy, the grandfather of the parties, recorded therein that he gave the land in Survey Nos. 344 and 348 to the second defendant for looking after him. Sri M.V.Durga Prasad, learned counsel, would rely upon use of the word 'ichinaanu' (gave), which is in past tense, to assert that this document merely recorded a past transaction. However, Sri Arvind Kumar Agarwal and Sri Dida Vijay Kumar, learned counsel for the contesting respondents, would point out that no details are mentioned of any such past transaction and if it had been so, the executor would have set out the details of when the lands were actually given. They would contend that this document records relinquishment of the rights of the executor in the lands and would therefore require registration compulsorily.

There are no details forthcoming from Ex.B14-Ikrarnama of any past relinquishment by the executor of his rights in the lands and he merely stated to the effect that he is giving these lands to the second defendant. He further recorded that no other person would have any right in these lands and that he was executing the document with his full consent and liking. These later recitals would not have found mention if the document was only a record of a past transaction. The declaration that no other person would have any right in these lands and that the document was being executed by him with full consent and liking indicate the contemporaneity of the relinquishment effected thereunder. This document would therefore fall squarely within the ambit of Section 17(1)(b) of the Act of 1908 and would be compulsorily registrable. Even if it is sought to be relied upon for any collateral purpose under the *proviso* to Section 49 of the Act of 1908, it would necessarily have to be subjected to payment of proper stamp duty and penalty.

Perusal of Ex.B24-Memorandum of Partition dated 13.04.1993 reflects that, while recording partition by metes and bounds between K.Venkat Reddy and K.Yadagiri Reddy, the executors thereof, a clear recital was made therein that from that day the two of them would individually cultivate the lands that fell to their share thereunder. Had this been only a memorandum of a past partition, the recital with reference to 'that day' would not have found mention in the document. It is therefore clear that this was not a memorandum of a past partition but was a document whereunder partition was effected. Therefore, this document was also compulsorily registrable under Section 17(1)(b) of the Act of 1908 and could only be relied upon for collateral purposes under the *proviso* to Section 49 thereof, after payment of proper stamp duty and penalty.

As regards the other documents referred to by the trial Court in the order under revision, the learned counsel are all in agreement that mention of the document dated 10.03.1988 is erroneous as no such document is available. As regards the other documents dated 02.02.1988, 05.02.1988, 09.08.1990, 25.11.1991 and 23.03.1996, perusal thereof reflects that these were only in the nature of receipts, except for the document dated 23.03.1996. However, this document also, even if it is taken to be an agreement of sale, was not compulsorily registrable, as the amendment to the Act of 1908, requiring compulsory registration of agreements of sale in the erstwhile State of Andhra Pradesh, was made only in the year 1999. However, be they receipts or agreements of sale, these documents also have to be subjected to payment of stamp duty and penalty. To this extent, there can be no doubting the order of the trial Court.

However, once it opined that all these documents had to be subjected to such process, the trial Court either had to take recourse to Section 33 or Section 38 of the Act of 1899. If possible, the trial Court could have determined the stamp duty payable upon the documents in question and collected such stamp duty along with the penalty payable thereon and remitted it to the Collector. In the alternative, the trial Court could have impounded the documents under Section 33 and forwarded the same to the Collector for assessment of the duty and penalty payable thereon. Without taking recourse to either of these modes for recovery of stamp duty and penalty, the trial Court surprisingly directed the second defendant to pay the stamp duty on these documents. It is not for the party to unilaterally determine the quantum of the stamp duty and the penalty payable by it and the scheme of the Act of 1899 had to be followed. As the trial Court did not quantify the stamp duty and the penalty payable on these documents, the said documents shall be impounded under Section 33 of the Act of 1899 and forwarded to the Collector for assessment of the stamp duty and penalty payable thereon. After this process is completed, the trial Court may admit these documents in evidence, be it for primary or collateral purposes, as the case may be, subject to proof and relevance.

The civil revision petition is disposed of accordingly.

Interim order dated 08.09.2017 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed. No costs.

SANJAY KUMAR, J

19th JANUARY, 2018

PGS