

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3367 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the plaintiffs 2 & 3 assailing the docket order, dated 04.04.2018, of the learned Senior Civil Judge, Addanki, passed in OS.No.143 of 2008.

2. I have heard the submissions of Sri I. Koti Reddy, learned counsel appearing for the revision petitioners – plaintiffs ['the plaintiffs', for brevity], and of Sri K. Mohan Rami Reddy, learned counsel appearing for the respondent – defendant ['the defendant', for brevity]. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: - "The 1st plaintiff (since died) is the mother and the plaintiffs 2 & 3 are the sisters of the defendant. They brought the afore-said suit for partition, *inter alia*, claiming that the plaint schedule properties are joint family properties and that they are to be divided into two equal shares and that the defendant is entitled to one such share and that the plaintiffs are entitled to a 1/4th share each in the remaining half. The defendant is resisting the suit. In that suit, the defendant filed a document, dated 26.05.2003, captioned as 'partition deed' for being marked on his side. An objection was raised by the plaintiffs stating that the said document, which is compulsorily registerable and chargeable with duty, is not sufficiently stamped and that it is, therefore, inadmissible in evidence. The defendant contended that it can be received for collateral purpose. The trial Court, having noted that the document is

engrossed on stamp papers of a total value of rupees one hundred and that it can be admitted for collateral purpose, accorded permission to the defendant to mark the document. Aggrieved thereof, the plaintiffs 2 & 3 filed this revision petition.’

4. Learned counsel for the plaintiffs contended that the order of the trial Court is erroneous and that the document being an unregistered partition deed, not sufficiently stamped, is inadmissible in evidence of any purpose.

5. Learned counsel for the defendant contended that as rightly held by the trial court, it can be admitted for collateral purpose, that is, to prove possession over the properties and for that purpose, which is a collateral purpose, the document can be admitted in evidence.

6. I have given earnest consideration to the facts and submissions. Admittedly, the document is engrossed on stamp papers of a total value of rupees one hundred and it is captioned as ‘deed of partition’. The law is well settled that a document, which is compulsorily registerable, though not registered, can be admitted for collateral purpose, i.e., for consideration as evidence of any collateral transaction not required to be affected by registered instrument, i.e., for the purpose other than the main purpose as contemplated under law. But, as rightly contended by the learned counsel appearing for the plaintiffs 2 & 3, even when an original unregistered document, the registration of which is compulsory, is tendered for consideration as evidence for any collateral purpose, the Court shall not accord permission for marking of such a document, unless the said document is either already charged with sufficient

duty or until the duty/deficit duty, as the case may be, & penalty are paid & collected.

7. In the case on hand, the trial court failed to examine the nature and character of the transaction embodied in the document and failed to record a finding as to whether the document in question, which is already engrossed on stamp papers of a value of rupees one hundred is charged with sufficient stamp duty or not before according permission for marking the document on the side of the defendant for collateral purpose. The trial Court which is obliged to do so, failed to discharge its said duty as envisaged under law. In that view of the matter, this Court finds that the order impugned is unsustainable and is, therefore, liable to be set aside.

8. In the result, the Civil Revision Petition is allowed; and, the impugned order is set aside. As a sequel, the trial Court is directed to first examine the nature and character of the document in question with reference to the transaction embodied in the document and then decide as to whether it is charged with sufficient stamp duty or not and then deal with the further question as to whether it can be admitted for collateral purpose i.e., for consideration as evidence of any collateral transaction not required to be affected by registered instrument, i.e., for the purpose other than the main purpose as contemplated under law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

05.09.2018
Vjl