THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.865 of 2015

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 31.12.2014 passed by the Additional District Judge, Kovvur, in O.S.No.48 of 2012, where-under the trial Court refused to receive the document i.e., unregistered partition deed dated 23.06.2007, on the ground that the document is compulsorily registerable and it is inadmissible in evidence.

2. The first respondent herein filed suit for partition of the schedule property into 10 equal shares as per equities, good and bad qualities. During trial, the petitioner tendered unregistered partition deed dated 23.06.2017 for marking the same. Thereupon, the counsel for the first respondent raised objection about the admissibility as the document is a partition deed affecting partition by metes and bounds, which is required to be registered under Section 17 of the Registration Act, 1908. The trial Court refused to mark the document as exhibit as it is an unregistered document. Aggrieved by the said order, the present revision is filed mainly contending that the property was already partitioned and the same was reduced into writing on 23.06.2007 and it is styled as partition list and therefore, the document can be received for collateral purpose and for proving the possession in pursuance of the partition among the parties and prayed to set aside the order passed by the Court below.

3. The document dated 23.06.2007, which is sought to be marked, is an 'instrument of partition' as defined under Section 2(15) of the Indian Stamp Act, 1899 (for short 'the Act'), which reads as under:

> "Instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any civil Court and an award by an arbitrator directing a partition (and a memorandum recording past partition;)

The words 'memorandum recording past partition' are added to the definition of instrument of partition by A.P. Amendment Act 17 of 1986 w.e.f 16.08.1986. Thus, a instrument of partition includes a memorandum recording past partition, fall within the definition of 'instrument of partition'.

4. The word 'partition' means, a document by which the property, owned and held by co-owners, is divided among them by their own volition or if they arrive at an agreement to divide the property in severalty, is an instrument of partition which requires stamp duty under Article 40 of Schedule 1A of the Act and that the same cannot be marked without registration also. **(Karrothu Appalanaidu V. K. Narayana, 2002 (6) ALD 27)**. By virtue of amendment of Act 17 of 1986, a memo recording past partition is also brought within the definition. Therefore, a document is merely a record of family arrangement, settlement or acknowledgment of prior partition and admissible for collateral purpose is no more available after the amendment. **Lakkoji Mohana Rao v. Lakkoji Viswanadham and others (2012 (3) ALT 476).**

5. The document sought to be marked though styled as partition list dated 23.06.2007, in fact, is a partition deed by metes and bounds allotting due share to each of the co-owners or members of the joint family. The shares of each individual member of the family with boundaries were allotted under the document, thereby, the document though styled as a partition list it is, in fact, a partition deed, which was executed on Rs.100/- non-judicial stamp. But according to Article 40 of Schedule 1-A of the Act, partition-instrument as defined by Section 2(15) of the Act. The same duty as a Bottomry Bond (No.14) for the amount or the market value of the separated share or shares of the property shall be paid towards stamp duty i.e., three rupees for every one hundred rupees or part thereof; the same duty as under Clause (a) for the first Rs.1,000/- and for every Rs.500/- or part thereof in excess of Rs.1,000/-, fifteen rupees.

6. The present document dated 23.06.2007 evidencing partition by metes and bounds allotting due shares to the members of the family was written on Rs.100/- non-judicial stamp paper. Therefore, it is inadmissible in view of the law declared by this Court in the above two judgments, referred supra.

7. The main objection raised by the counsel for the respondents before the trial Court was that the said partition deed is a compulsorily registerable document under Section 17 of the Indian Registration Act and when it is not registered, it is inadmissible in evidence.

8. According to Section 17 Clause (1)(d) of the Registration Act, the document is compulsorily registerable document. Even according to Section 17(2)(viii), any instrument of partition made by a Revenue Officer is also liable to be registered. Therefore, whether it is a partition list or partition deed, it is liable to be registered, as it is a compulsory registerable document and when it is not registered in terms of Section 17 of the Registration Act, the same is inadmissible in evidence.

9. The contention of the counsel for petitioner is that the document can be received for collateral purpose as per the proviso to Section 49 of the Registration Act. Proviso to Section 49 of the Registration Act made it clear that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument. What is collateral purpose is not defined. But the Madras High Court in AIR 1957 Madras 472 (DB), **Ramalakshmi V. Bank of Baroda**, AIR 1953 Bombay 50) held that the word 'collateral purpose' is difficult to define. The real purpose can only be gathered from the facts and circumstances of each case and may also vary from case to case. Section 49 of the Registration Act makes it clear that a document which is compulsorily registerable, if it is not registered will not affect the immovable property comprised therein in any manner. A collateral transaction is not the transaction

affecting the immovable property, but a transaction which is incidentally connected with the transaction. Thus, an unregistered document, which is compulsorily registerable under Section 17 of the Registration Act, is inadmissible in evidence since a collateral transaction is not the transaction affecting transfer of property, but incidentally connected with the transaction.

10. Therefore, the unregistered document of partition by effecting immovable property by metes and bounds allotting each share of the family is inadmissible in evidence as the purpose of marking is to prove the previous partition set up by the petitioners. It is not for collateral purpose and it is for the main purpose of proving partition among the members of the family. Therefore, the contention of the counsel for petitioner that for collateral purpose, the document can be admitted is without any substance, since, it is for the main purpose of proving earlier partition among the members of the family. Hence, I find no ground to set aside the order passed by the Court below in O.S.No.48 of 2012 refusing to mark the document for want of registration as it is a compulsorily registerable document. Hence, the Civil Revision petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

6th February, 2018

sj