

HONOURABLE SRI JUSTICE N. BALAYOGI
CIVIL REVISION PETITION No.5826 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioner-plaintiff aggrieved by the order dated:02-11-2015 in O.S. No.275 of 2001 on the file of the Principal Junior Civil Judge at Avanigadda.

2. The petitioner filed this Petition on the ground that the Trial Court without considering the objections of the petitioner and without giving any reasons directed the District Registrar, Machilipatnam, to impound the letter/document dated:29.1.1998 for penalty, stamp duty and registration. The alleged document dated:29-1-1998 is brought with mala fide intention to grab the property of the petitioner and others after the death of all the parties to the said letter dated:29-1-1998.

3. It is further contended that the Trial Court failed to consider the expert opinion dated:09-12-2014 wherein hand writing expert opined that signature made on the alleged letter dated:29-1-1998 is forged one and the same cannot be impounded for registration and penalty and that the Court has no jurisdiction to direct the District Registrar, Machilipatnam, to impound the letter-document dated:29.1.1998 for penalty, stamp duty and registration. Thus, the said document is inadmissible in evidence and it cannot be impounded for stamp duty, penalty and registration.

4. Summons served on respondent No.3 but none appeared. Summons sent to respondent No.9 but returned with postal endorsement as died. Respondent No.10 also died. Respondent No.11 – as per the Petition-is not a necessary party.

5. *Per contra*, learned Counsel for the respondents submitted that in pursuance of document dated:29-1-1998, respondent No.1/defendant No.1 already executed registered sale deed dated:28-3-2001 in favour of respondent No.2/defendant No.2, hence, the impugned letter dated:29-1-1998 is merged with the registered sale deed. Since the stamp duty and penalty in pursuance of the Court direction has been paid and only remains registration, no prejudice would cause to petitioner by the order of the Trial Court dated:02-11-2015.

6. Now, the point that arises for determination is:

Whether the order of the Trial Court dated:02-11-2015 is legal and can be sustained?

The contention of the petitioner is that the alleged document dated:29-1-1998 is forged and brought into existence to grab the property. The parties concerned to the said document are no more. Mere payment of stamp duty and penalty cannot revive the said document and it is inadmissible in evidence to prove the alleged relinquishment.

7. On the other hand, the Counsel for respondents contended that the document is admissible in evidence and what ever relinquished in the said document is right and obtained registered sale deed and consequent to the said letter, sale deed was executed in favour of defendant No.2 on 28.3.2001. Accordingly, the said letter was acted upon. Therefore, the order of the Trial Court is legal and can be sustained.

The revision petitioner herein along with two others filed the Suit in O.S.No.275/2001 praying to direct the 9th defendant as legal heir of defendant No.1 and defendant No.2 to execute a registered sale deed in respect of undivided half of plaint schedule property i.e., Ac.1.00 cents in favour of plaintiffs and defendant No.4 and to grant decree for partition of the plaint schedule property into two equal shares by metes and bounds and allot one such share to the plaintiffs and defendant No.4 and for separate possession after demarcation and arrangement of boundary bunds by putting the plaintiffs and defendant No.4 in possession thereof after evicting the defendants there from and to grant future profits and award suit costs.

8. That, with regard to the letter-document dated:29.1.1998, the plea of the petitioner-plaintiff is that, during the life time of D. Vidya Sagar, he never requested the defendant No.1 or executed any letter in favour of defendant No.1 to execute a sale deed in favour of defendant No.2. The defendant No.2 never in possession of entire schedule property, at any point of

time, except joint possession with Vidya Sagar during his life time and therefore, the alleged letter dated:29-1-1998 is fabricated and forged one. Vidya Sagar never signed on the said letter. The alleged letter never acted upon and never intended to be acted upon. Vidya Sagar got only right in Ac.1.00 cents out of Ac.2.00 cents of the west of Ac.5.52cents in R.S.No.552 of Lakshmipuram village in view of compromise decree in O.S.No.54/1996 on the file of the Senior Civil Judge, Avanigadda.

9. Further, when the defendants produced letter dated:29.1.1998 alleged to have executed by Vidya Sagar, relinquishing his right over the said property in favour of Nadella Purna Chandra Rao during the course and when defendant No.2 pleaded to mark the said document through DW.1, petitioners / plaintiffs objected for marking the said document. When both parties were heard, the Trial Court came to conclusion that under the document dated:29-1-1998 that the executant relinquished his right over the property to one N. Purna Chandra Rao and he handed over the possession of the property to him on 26-1-1998, executant further stated that he has no right, title over the property from the date of 29-1-1998, so also he directed to one K. Venkateswara Rao to contact about the property with N. Purna Chandra Rao by the document dated:29.1.1998. So it appears to be relinquishment deed, so it should be impounded the stamp duty , penalty and registration. Hence, accordingly directed the Section to send the document to

the District Registrar, Machilipatnam for impounding stamp duty, penalty and registration.

10. Further, in pursuance of the said order, the District Collector impounded the document vide proceedings No.G1/IMP/1564/2015, dated:04-1-2016 and directed to pay stamp duty of Rs.3,300/- and penalty of Rs.9,900/-. In pursuance of the said order, according to respondents' Counsel, they have paid the stamp duty and penalty on 02-1-2016.

11. A clear reading of impugned document dated:29-1-1998 go to show that D. Vidya Sagar gave letter to Venkateswara Rao, S/o Ramakrishnaiah, wherein it is specifically stated that the matter in O.S.No.54/1996 was settled before Lok Adalat. In the said settlement they got Ac.2.00 cents of land on the west side of out of Ac.5.52cents in R.S.No.552 of Lakshmipuram village. In the said letter, defendant No.1 was directed to execute the sale deed in favour of N.Purna Chandra Rao with regard to the entire Ac.2.00cents of land. The said land was handed over to N. Purna Chandra Rao on 26.1.1998 itself, out and out relinquished in favour of N. Purna Chandra Rao.

12. The learned Counsel for petitioner placed reliance in the case of **GOLLA DHARMANNA v. SAKARI POSHETTY @ WADOOR POSHETTY AND OTHERS**¹, where the High Court of Andhra Pradesh held as under:

¹ 2013 (5) ALD 490

“An objection as to the admissibility of a document on the ground that it is not stamped or not properly stamped in accordance with provisions of the Indian Stamp Act, 1899 is different fundamentally from an objection to the admissibility of a document on the ground that it is unregistered. Merely because stamp duty and penalty have been paid and the provisions of the Indian Stamp Act, 1899 have been complied with, it would not automatically make the said document admissible in evidence, if as per law, the said document is also required to be registered.”

13. Similarly, in the case of VANGALA LAXMAMMA v. PASHAM NARSI REDDY AND OTHERS² and another decision in the case of YADGUNI (A) SATYANARAYANA v. YADGUNI (A) VARAMMA AND OTHERS³, where this High Court relying on the proposition of the law laid down by this Court in *Telugu Krishna Mohan's* case held as under:

“A plain reading of the contents of the document dated:21.5.1990 indicate that the petitioner-plaintiff is stated to have relinquished her rights in the joint family properties, both movable and immovable. It is not recording a past transaction where under the party had already relinquished her rights. Under the document in question, the petitioner-plaintiff is stated to have relinquished her rights over the joint family properties movable and immovable. Therefore, facts in the case on hand and the facts in Abdul Majeed's case are distinct and therefore, it is of no help to the respondents-defendants. Since the document sought to be marked on behalf of the respondents-defendants is a relinquishment deed and since the same is not properly stamped and unregistered, it is inadmissible in evidence.

The facts in the case on hand and the facts in the decisions relied upon by the petitioners are similar.

² 2010 (3) ALD 382

³ 2015 (6) ALD 315

Section 17(1) (b) of the Registration Act, 1908 reads as under :

"17.(1)....The followings shall be registered, if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely :

(a) Instruments of gift of immovable property ;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;"

14. A reading of the document filed by respondents-defendants dated:29-1-1998 indicate that it is relinquishment deed where under D. Vidya Sagar transferred his right and title to the extent of his share of Ac.1.00 cents in favour of Nadella Purna Chandra Rao and requested the defendant No.1 to execute the sale deed for the entire land of Ac.2.00 on the west side of out of Ac.5.52 cents in R.S.No.552 of Lakshmipuram village, in favour of N. Purna Chandra Rao. In pursuance of the said relinquishment deed, defendant No.1 executed registered sale deed in favour of defendant No.2 on 28.3.2001, where the present Suit was filed on 04.09.2001. As held in the above decisions, since the value of the property is more than Rs.100/-, it is compulsorily registrable document. Vidya Sagar relinquished his right / title over the property to N. Purna Chandra Rao which he got in pursuance of compromise in O.S.No.54/1996. Admittedly, it is not recording a past transaction where under the party had already relinquished his

rights. Under the impugned document dated:29-1-1998, D. Vidya Sagar has relinquished his right in favour of N. Purna Chandra Rao. Since document 29.1.1998 sought to be marked through Defendant.No.1 on behalf of defendant No.2, is a relinquishment deed, since the same is not properly stamped and unregistered, it is inadmissible in evidence.

Merely because stamp duty and penalty have been paid and the provisions of the Indian Stamp Act, 1899 have been complied with, it would not automatically make the said document admissible in evidence, if as per law, the said document is also required to be registered, under section 17 of the Registration Act, 1908.

15. The Trial Court has misread the contents of the document and thereby, erred in directing the Section to send the document to the District Registrar, Machilipatnam, for impounding stamp duty, penalty and registration. Hence, the said order dated:02-11-2015 in O.S. No.275 of 2001 of the Trial Court is liable to be set aside and is accordingly set aside.

16. In the result, the Civil Revision Petition is allowed.

17. Miscellaneous Petitions, if any, pending in this Petition shall stand closed.

JUSTICE N. BALAYOGI

Dated:20-3-2018

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HONOURABLE SRI JUSTICE N. BALAYOGI



CIVIL REVISION PETITION No.5826 of 2015

Dated:20-03-2018

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