

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.641 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.27.02.2019 in I.A.No.1996 of 2018 in O.S.No.35 of 2011 passed by the Principal District Judge at Nalgonda.

The petitioner is defendant No.2 in the suit.

Respondent Nos.1 to 3 filed the said suit against the petitioner and others for partition and separate possession of 1/5th share in the plaint schedule properties.

Written Statement was filed by the petitioner/defendant No.2 stating that he and defendant No.1 had partitioned the joint family property on 08.08.1979 by preparing a partition list.

This document was confronted to DW.1 during cross-examination by the counsel for petitioner and it was marked as Ex.B.7, but the objections raised by the other side regarding its non-registration and insufficiency of stamp duty were not decided and the decision was postponed.

Another document dt.20.08.1998, which is also said to be a Partition Deed, was marked as Ex.B.6 during cross-examination of DW.1 by defendant No.2, but the objections

raised regarding its non-registration and insufficiency of stamp duty were also not decided.

Subsequently, respondent Nos.1 to 3/plaintiffs filed I.A.No.1996 of 2018 in O.S.No.35 of 2011 to reject Exs.B.6 and B.7 from the evidence of DW.1, contending that unregistered and unstamped Partition Deeds cannot be received in evidence; that, in fact, Exs.B.6 and B.7 are only xerox copies of unregistered and unstamped partition deeds, and the originals of Exs.B.6 and B.7 are chargeable with necessary stamp duty and penalty; xerox copies of these documents cannot be impounded; and so, the Court should reject them and delete them from the evidence of DW.1.

Counter affidavit was filed by the petitioner opposing the said contention and taking a plea that Exs.B.6 and B.7 are original documents and those are past partition lists and they do not require any stamp duty and penalty.

By order dt.27.02.2019, the Court below allowed I.A.No.1996 of 2018. After considering the recitals in the documents, the Court below held that the rights were conferred under these documents to each party and the rights of the other party in the share given to a particular party is extinguished and, therefore, the documents are compulsorily registrable and they are not prior partition lists. It also held that in view of Section 49 of the Indian Registration Act, 1908, the documents are inadmissible in evidence.

Challenging the said order dt.27.02.2019, this Civil Revision Petition is filed.

Learned counsel for the petitioner contended that when the Court below had already put off the decision on the admissibility of these two documents, when it accepted them conditionally while DW.1 was cross-examined by the petitioner/defendant No.2 on 14.12.2018, it should consider this aspect only at the time of final hearing of the suit.

I do not agree with the said contention, because the Supreme Court in *BIPIN SHANTILAL PANCHAL v. STATE OF GUJARAT*¹ held that the objection relating to deficiency of stamp duty must be decided first before proceeding further. Therefore, tentative marking of these two documents on 14.12.2018 itself was not proper. Now that objection about the stamp duty has been decided, there is no necessity to leave the issue open for reconsideration again at the stage of final hearing of the suit.

Alternatively, learned counsel for the petitioner contended that for severance of status, these two documents can be marked, because that would be a collateral purpose. In support of his contention, the learned counsel relied on the decisions in *CHINNAPPAREDDIGARI PEDDA MUTHYALAREDDY v. CHINNAPPAREDDIGARI*

¹ (2001) 3 SCC 1

VENKATAREDDY AND OTHERS² and AMANGENTI
PRAMEELA v. P. VENKAT REDDY (DIED) BY L.Rs.³

There is no quarrel with the propositions laid down therein, but it was never the case of the petitioner that these documents should be marked for collateral purpose. According to the petitioner, they are past partition lists. Having failed to prove the same in the Court below, the petitioner cannot fall back on “collateral purpose” argument now. In any event, if the document is insufficiently stamped, there is no question of receiving the said document for collateral purpose either, because under Section 35 of the Indian Stamp Act, 1899 it cannot be received in evidence for any purpose.

I, therefore, do not find any error of jurisdiction in the order dt.27.02.2019 passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

The Civil Revision Petition fails and it is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

10.04.2019.
Msr

² AIR 1969 ANDHRA PRADESH 242

³ 2004 (3) ALD 66

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