

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.7241, 7260 & 7377 of 2018

COMMON ORDER:

Heard the learned counsel for the petitioners and Sri Vijay Kumar Heroor, learned counsel for the respondents.

2. These Revision Petitions arise out of the same suit between the same parties. Therefore, they are being disposed of by this common order.

3. Petitioners in these three Revision Petitions are defendants in O.S.No.26 of 2010 on the file of the Senior Civil Judge, Narayanapet. The said suit was filed for injunction by the respondents against the petitioners.

4. After completion of evidence of both sides, petitioners filed I.A.No.596 of 2018 to reopen the evidence of D.W.1 for the purpose of marking a partition deed dt.05-09-1991, I.A.No.597 of 2018 to recall D.W.1 for the purpose of marking the said document and I.A.No.588 of 2018 to mark the said partition deed for collateral purpose only.

5. These applications were opposed by the respondent who contended that the said document is a fabricated document and since it is unregistered, it cannot be marked in evidence.

6. It is not in dispute that similar applications had been filed earlier by the petitioners as I.A.Nos.381 to 383 of 2018 but they were

rejected on 10-07-2018 by the Court below and the petitioners have challenged the same in C.R.P.Nos.4606, 4597 and 4634 of 2018. By three separate orders dt.10-08-2018 the said Revisions Petitions were dismissed as withdrawn granting liberty to the petitioners to file fresh applications and that was how the present applications I.A.Nos.588, 596 and 597 of 2018 were filed.

7. The Court below dismissed I.A.No.588 of 2018 and as a consequence dismissed I.A.Nos.596 and 597 of 2018. The reason given by the Court below for dismissal of I.A.No.588 of 2018 filed to receive original partition deed dt.05-09-1991 is that the suit was filed only for an injunction and they wish to mark the said document to show that the sharers thereunder came into possession of their shares. It also held that since the petitioners are intending to claim possession based on the partition deed, it cannot be marked and that it is not for a collateral purpose.

8. Assailing the same, these Revision Petitions are filed.

9. Learned counsel for the petitioners contended that as per the decision of Five Judges' Bench of the erstwhile combined High Court of Andhra Pradesh reported in **Muthyala Reddy Vs. Venkata Reddy**¹ and the judgment of the Supreme Court in **Roshan Singh Vs. Zile Singh**² apart from **Kaheeda Moin and others Vs. Md. Iqbal Ali**

¹ AIR 1969 AP 242

² AIR 1988 SC 881

and others³, an unregistered partition deed can be received in evidence to prove the severance in status and also nature of possession and the petitioners intended to mark the said document only for these collateral purposes and not for the purpose of proving the terms of the partition.

10. The Five Judges' Bench judgment in **Muthyal Reddy** (1 supra) as well as judgment of the Supreme Court in **Roshan Singh** (2 supra) permit an unregistered partition deed to be received for a collateral purpose of establishing severance in status but not to look into the terms of the partition. They also do not refer to the nature of the possession being treated as collateral purpose though certain other judgments **Rikki Ram Vs. Sada Ram**⁴ and **Nirmal Singh Vs. Gurbachan Singh**⁵ took the said view which was followed in **Kaheeda Moin and others** (3 supra).

11. However, since the decisions in **Muthyal Reddy** (1 supra) and **Roshan Singh** (2 supra) permit unregistered partition deed to be looked into only for the purpose of severance in status and not for the purpose of proving terms of partition or nature of possession, only for the said collateral purpose of proving the severance in status, the partition deed can be received and marked by the Court below subject to proof and relevancy and not for any other purpose.

³ 1998 (5) ALD 633

⁴ AIR 1977 Punjab and Haryana 94

⁵ AIR 1988 Punjab and Haryana 184

12. Therefore, C.R.P.No.7377 of 2018 is allowed; impugned order dt.10-10-2018 in I.A.No.588 of 2018 in O.S.No.26 of 2010 is set aside and the said I.A. is allowed to the above limited extent only. Consequently, C.R.P.Nos.7241 and 7260 of 2018 are also allowed and the impugned orders dt.10-10-2018 passed in I.A.No.596 and 597 of 2018 are both set aside and the said I.As. are allowed for the purpose of marking the partition deed dt.05-09-1991 to the above limited extent only. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-01-2019
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