

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL REVISION PETITION No.1462 OF 2022

ORDER:

This Civil Revision Petition has been filed by the petitioners/plaintiffs Nos. 1 to 7 against the order of the learned II Additional Senior Civil Judge, Warangal made on 31.12.2021 in O.S.No.119 of 2010 where under the learned Senior Civil Judge gave finding about the admissibility of documents dated 20.05.1966 which is sought to be filed by the petitioners/plaintiffs on the ground that it is a as compulsorily registerable document, thereby refused to receive the same in evidence.

2. As could be seen from the order, impugned in the present revision during the course of trial in O.S.No.19 of 2010 the petitioners/plaintiffs wanted to confront DW1 with an unregistered document which is termed as "Faisalnama" and they wanted to mark the document through cross examination of DW1. However, counsel for the defendants raised an objection on the ground that the

document cannot be marked as exhibit on the ground that it being memo of understanding requires stamp duty and penalty apart from registration. Therefore, the Court below having heard both parties, gave a finding that document to be marked is partition deed and it requires compulsorily registration and since it was an unregistered document, rejected the request of the petitioners/plaintiffs. The Court below made an observation that the contents of the document disclose partition of the properties among two brothers. Therefore, the present revision is filed on the following grounds:

The Court below committed an error by rejecting the document which is termed as Faisalnama on the ground that it cannot be received in evidence. According to the petitioners, the Court below ought to have seen that it is well settled law that the contents of document have to be taken into consideration, but not the nomenclature of the document. The petitioners have claimed that the contents of the document termed as Faisalnama discloses past oral partition thereby it does not require any stamp duty nor it

require registration and the said legal position was already held by High Courts and Hon'ble Supreme Court. The petitioners have claimed that the Court below failed to consider the well-established principles with regard to the Memorandum of Oral Partition, thereby they sought for setting aside the docket order dated 31.12.2021 in O.S.No.119 of 2010 on the file of II Additional Senior Civil Judge, Warangal.

3. Heard both parties.

4. Now the point for consideration is :

Whether the document sought to be marked by the petitioners herein does not require registration, thereby the order of trial Court is liable to be set aside ?

5. **POINT:**

Learned counsel for the petitioners has submitted that the Court below ignored the well-established principles by which a past oral partition among the brothers need not be registered. As per the contents of the document, it is quite clear that the document was executed evidencing the prior partition between the brothers and

about the terms and shares of the parties. Therefore, the finding of the Court below is liable to be set aside. In support of his contention, the learned counsel placed reliance on judgment between ***Korukonda Chalapathi Rao and Another vs Korukonda Annapurna Sampath Kumar***¹.

6. Learned counsel has submitted that in the above referred judgment the Hon'ble Apex Court placed reliance on the judgment between Kale vs Deputy Director of Consolidation, reported in AIR 1976 SC 807. A copy of the above referred document which is in Telugu language is filed along with English translation before this Court.

7. As rightly argued by the counsel for the petitioners, though the document is termed as Faisalnama, the contents of the document would show that there was prior partition between Dharmapuri Veeraiah, Dharmapuri Radhaiah who are sons of one Dharmapuri Mallaiah with regard to the self acquired and ancestral properties. The

¹ 2021 SCC Online SC 447

recitals of the document would show that both the brothers have to provide maintenance to their mother by name Mallamma. She was allowed to retain all the gold, silver and other articles during her lifetime. They have also mentioned the details of landed property that fell to the shares of the brothers. Para No.4 of the Failsalnama clearly shows the details of the landed property given to these brothers. There is recital in the document that the properties fell to the share of younger brother Radhaiah was already handed over to him.

8. Therefore, all these recitals would show that the document was reduced into writing by incorporating the shares of the property that fell to the brothers and also about the property that was given to their mother. In the above referred judgment, the Hon'ble Apex Court was pleased to observe that "when there has been partition, then there may be no scope for invoking the concept of antecedent right which is inapposite after a disruption in the joint family status and what is more an outright partition by metes and bounds." When the document

clearly indicates partition of the joint family property and when it is clear from khararnama wherein it is stated that they have already divided the joint family property, the properties which are mentioned in the khararnama became the separate properties of the parties. The judgment between Kale vs Deputy Director of Consolidation wherein the Hon'ble Apex Court summed up the essentials of family settlement was also referred in this judgment.

9. Therefore, as could be seen from the recitals of the above referred Faisalnama, the document was executed evidencing the prior partition between the brothers. Therefore, it does not require registration, thereby the Court below ought not to have rejected the document.

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

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 14.12.2022
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