

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.1985 of 2023

ORDER:

This revision petition is filed under Article 227 of the Constitution of India against the order, dated 10.05.2023, dismissing I.A.No.425 of 2023 in O.S.No.54 of 2012 on the file of the Court of II Additional District Judge, Proddatur, filed by the defendants No.1 to 13 under section 151 CPC and Section 35 of the Indian Stamp Act, 1899, and Section 49 of the Registration Act, 1908.

2. Heard *Sri J.U.M.V.Prasad*, learned counsel for the petitioner and *Sri Rayala Bhagya Raja*, learned counsel for respondents 2 to 5.

3. The respondents No.1 to 5 are the plaintiffs who filed suit against the 14th defendant seeking partition of the plaint schedule properties. The 14th defendant is the 6th respondent. Opposing the suit, the defendants No.1 to 13 took the plea that there was a past partition *vide* unregistered deed, dated 01.03.2000. Therefore, for the purpose of impounding the said document by the District Registrar, Proddatur, by collecting stamp duty and penalty, the defendants No.1 to 13 filed petition with a view to use the document for collateral purpose of establishing the past partition.

The petition was opposed by filing the counter of the plaintiffs No.2 to 5 stating that the unregistered document can be received for collateral purpose only and that the proposed unregistered document created rights of the parties over the schedule properties exceeding value of Rs.100/-, and therefore, it must be registered as per Section 17 of the Registration Act. It is further contended that the registration authorities may collect the stamp duty and penalty, but, they cannot register the document. These respondents further relied on the decision of the Supreme Court in ***Vineeth Sarma Vs Rakesh Sarma and others***¹ in support of the contention that whenever a partition takes place, it must be by way of registered partition deed only. Thus, these respondents prayed to dismiss the petition.

4. After hearing both sides and perusing the record, the trial court held that an unregistered partition deed can be used for collateral purpose by collecting stamp duty and penalty. But, in the present case, the defendants who are opposing the suit for partition on the ground that there was an earlier partition under this document and the said document cannot be used for collateral purpose as there is no such collateral purpose to the main purpose of the suit for partition. Further, it observed that the petitioners/

¹ (2020) AIR 3717 (SC)

defendants No.1 to 13 did not take any steps for more than 11 years to get the document impounded and did not assign any reason for such long delay in not taking steps. Thus, the trial court dismissed the petition.

5. Aggrieved by the order, this revision petition is filed by the 13th defendant only and the other petitioners/defendants No.1 to 12 are shown as respondents No.7 to 18. Defendant No.6 is shown as 6th respondent. The plaintiffs are shown as respondents Nos.1 to 5.

6. The petitioner stated in the grounds that the trial Court ought to have seen that the defendant had taken the defence since the initial stage that there was an earlier partition between the parties and the same was only reduced into writing and as such, the document evidencing earlier partition does not require any registration, and thereby, the trial Court erred in dismissing the application.

7. The learned senior counsel for the petitioner submitted that in fact, the document is a mere record of past partition, and therefore, registration is not required, however, as a matter of caution, filed the petition to get the stamp duty and penalty collected by the District Registrar so as to use the document for collateral purpose of establishing that there was past partition. The learned senior

counsel placed reliance on the decision of the Supreme Court in **Korukonda Chalapathi Rao and another Vs. Korukonda Annapurna Sampath Kumar**².

8. The learned counsel representing the respondents 1 to 5 submitted that the document is a deed of partition and the same was also admitted by the petitioners themselves, and therefore, they filed the petition for collection of stamp duty and penalty and now, they cannot take 'U' turn and say that the document does not require registration. He further submitted that the contents of the document would also reveal that the partition was affected on that day only and therefore, it requires registration. He placed reliance on the decision of this High Court in **Habeebuddin Vs. Md. Ibrahim and others**³, wherein the document in question before the Court was held inadmissible to establish the factum of partition of the property by metes and bounds, however, it was held to be admissible for the purpose of establishing severance of status.

9. There is no disagreement on the proposition of law that deed of partition requires registration by virtue of Section 17 of the Registration Act. In each case, the contents of the document needs examination to verify whether the document would fall within the

² 2021 SCC Online SC 847

³ 2004 (4) ALD 84

scope of Section 17 of the Indian Registration Act, which read as follows:

"17. Documents of which registration is compulsory.—(I) The following documents 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, or the Indian Registration Act, 1871, or the Indian Registration Act, 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;
 - (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
 - (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent
- xx xx xxx"

10. Learned senior counsel for the petitioners submitted that the deed in question state that they recorded partition already effected as suggested by the elders. He has also drawn the attention of this Court to the words used in the document at page No.4 indicating seemingly it is a past action. For the purpose of clarity, the relevant statement is mentioned hereunder in vernacular language.

ఈ క్రింద కనపరచిన షెడ్యూలు ప్రకారం భాగ పరిష్కారములు చేసుకుని ఉన్నాము

It means – the following shown schedule properties are/were partitioned. But, before that in page one (1) and two (2) they narrated the facts and circumstances relating to the transaction in the document. The relevant part of the document in vernacular language at pages No.1 and 2 is as follows:

Page No.1

భాగ పరిష్కారపు ఖరారు నామా తేది 1.3.2000 సవంత్సరము మార్చి నెల ఒకటవ తేదీన కడప జిల్లా ఎర్రగుంట్ల మండలం, ఎర్రగుంట్ల గ్రామ కాపురస్తులైన వ్యవసాయం వలన జీవనాధారం చేయుచున్న జిరాయితి కీ॥శే॥ సానెపల్లె చిన్న క్రిష్ణ రెడ్డి, సానెపల్లె లలితమ్మ, సానెపల్లె రవి ప్రసాద్ రెడ్డి అందరం ఏకస్తులమై గ్రామ పెద్దల సమక్షంలో సమ్మతితో వ్రాసుకున్న భాగ పరిష్కార అగ్రిమెంటు.

It means in English as follows:

(1) Smt. Sanepalli Chennamma, W/o late Sanepalli Chenna Reddy, and his sons (2) Sanepalli Chenna Krishna Reddy, (3) Sanepalli Lalithamma, (4) Sanepalli Ravi Prasad Reddy, all agriculturists and residents of Yerraguntla village & Mandal, Kadapa District, jointly agreed and executed this partition deed in the presence of the village elders.

Page No.2

మాకు ఎర్రగుంట్ల గ్రామ మండలం, వలుగుపల్లె గ్రామ పొలము, కోడూరు గ్రామ పొలము నిడుజువ్వి గ్రామ పొలము, అలాగే కమలాపురం మండలం లోని కోగటం గ్రామ పొలములో మనకు వారసత్వము వలన సంక్రమించిన స్థిర చరాస్తులను పంచుకొనవలయునని తలంపుతో ఉన్నందున మనమందరము ఉమ్మడి కుటుంబం నుండి విడిపోయి వేరు వేరుగా కాపురము ఉంటున్నందున మనమందరము గ్రామ పెద్దల నిర్ణయము మేరకు క్రింద కనపరచిన షెడ్యూలు దాఖలా ఆస్తులను క్రింద కనపరచిన విధముగా పంచుకొనుచున్నాము.

It means in English language as follows:

We have lands situated in the limits of Yerraguntla, Valasapalle, Kodur and Nidujuvvi villages of Yerraguntla mandal and also Kogatam village of Mallapuram Mandal inherited by succession and since intend to partition the immovable and movable properties and living separately dividing from the joint family, we are dividing the following schedule shown properties as decided by the village elders in the following manner.

Thereafter, it is stated that the schedule properties were divided.

11. The settled principles of construction of document say that the title of a document does not decide its nature, but its contents decide its nature and further that the whole document shall be read to understand the intent of the parties and the content of the document.

12. In **Chinnappareddigari Peda Mutyala Reddy Vs. Chinnappareddigari Venkata Reddy & others**⁴, a larger Bench of this Court held that even an unregistered partition deed can be received in evidence for collateral purposes. In Will later part prevails over the previous part and in other documents, the previous part prevails over the later part.

⁴ AIR 1969 AP 242 (FB)

13. Further, the document in question initially stated that to resolve the dispute regarding joint family properties, as per the decision of the village elders, the following schedule properties are being partitioned.

14. The contents of first page indicate that Sanepalli Chellamma and her sons together got the resolution of partition deed executed in the presence of the elders. In the next page, it is stated that since they intend to divide their movable and immovable ancestral properties and they are living separately on division of the joint family as per the decision of the village elders, they are dividing the schedule shown properties as shown below in the document. Nextly, at page 4, it is stated that the partition is done as in the schedule shown below in the document. Therefore, on a combined reading of these statements together indicate that by virtue of this document only, partition by metes and bounds was affected. Therefore, it is not a mere deed of list of past partition. Even then it requires registration, as per Section 17(1) of the Registration Act, as noted above. It is to be noted that the petitioners themselves intended to use this document for collateral purpose of establishing the severance of status under Section 49 of the Registration Act, since it requires registration under Section 17 of the Registration Act. The decision in **Habibuddin** (supra) also stated that an

unregistered deed of partition can be used for collateral purpose of establishing severance of status of properties of a joint family. Therefore, merely because the document requires registration, it should not be rejected in evidence. It can be used for proof of collateral transaction, however on payment of necessary stamp duty and penalty by applying Section 35 of the Indian Stamp Act, 1899.

15. Therefore, the trial Court erred in dismissing the petition to send the document to the District Registrar for collection of stamp duty and penalty thereon stating that the document requires registration. Moreover, when an unregistered document which requires registration is placed before the person having authority to receive evidence etc. as per Section 33 of the Stamp Act, it is the obligation of the said person to impound the same.

Section 33(1) of the Stamp Act is excerpted hereunder:

“33. Examination and impounding of instruments.—(1)

Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same.”

16. In **State of Andhra Pradesh Vs. P. Laxmi Devi**⁵, it was held at paras 16 & 17 as follows:

"16. A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorised to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word *shall* in Section 33(1) shows that there is no discretion in the authority mentioned in Section 33(1) to impound a document or not to do so. In our opinion, the word *shall* in Section 33(1) does not mean *may* but means *shall*. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions. Hence the view taken by the High Court that the document can be returned if the party does not want to get it stamped is not correct.

17. In our opinion, a registering officer under the Registration Act (in this case the Sub-Registrar) is certainly a person who is in charge of a public office. Section 33(3) applies only when there is some doubt whether a person holds a public office or not. In our opinion, there can be no doubt that a Sub-Registrar holds a public office. Hence, he cannot return such a document to the party once he finds that it is not properly stamped, and he must impound it."

⁵ (2008) 4 SCC 720

Thus, there is obviously error on the face of the order and the same needs to be set aside.

17. Whenever a document is taken in evidence for collateral purpose, the Court should indicate as to what is the collateral purpose for which the document would be received in evidence. Since that stage has not come as the present petition is only to send the document for collection of stamp duty and penalty. When the document is tendered in evidence, the trial Court is directed to indicate the collateral purpose and receive the document in evidence by marking as an exhibit.

18. In the result, the Civil Revision Petition is allowed setting aside the order, dated 10.05.2023, passed in I.A.No.425 of 2023 in O.S.No.54 of 2012 by the II Additional District Judge, Kadapa, and consequently, allowing I.A.No.425 of 2023. The trial Court is directed to indicate an exhibit, when this document is tendered in evidence.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

29-11-2023
KMS/RAR

B.S. BHANUMATHI, J