

(2004) 03 AP CK 0104
In the Andhra Pradesh High Court
Case No : CRP No. 6729 of 2003

Amangenti Prameela and Another	Vs	APPELLANT
P. Venkat Reddy (died) by LRs. and Others		RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Evidence Act, 1872 — Section 63, 63(2), 65
Registration Act, 1908 — Section 17

Citation : (2004) 3 ALD 66 : (2004) 3 ALT 218 : (2004) 2 CivCC 465 : (2004) 4 RCR(Civil) 162

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Subba Rao, for the Appellant; P. Satyanarayana, for the Respondent

Final Decision : Allowed

Judgement

L. Narashima Reddy, J.—Petitioners filed O.S. No. 8 of 1998 in the Court of Senior Civil Judge, Nalgonda for the relief of partition and separate possession. The trial of the suit was commenced. Petitioners closed their evidence and the evidence of defendants commenced. The first defendant examined himself as D.W.I. During the course of his cross-examination, it was elicited through him that a partition took place among various members of the family on 12.1.1980 and two sets of documents were executed evidencing the said partition. It was also elicited from him that one of the documents was kept with him and the other with one Mr. Pratap Reddy. He has not filed the document dated 12.1.1980.

2. Petitioners got issued a notice to D.W.I calling upon him to produce the original of the document, dated 12.11.1980, before the Court. There was no response to this. Thereupon, the petitioners secured xerox copy of the document, dated 12.1.1980, which is said to be a partition deed. They filed I.A. No. 156 of 2001 in the Court seeking permission to adduce it as secondary evidence. They also claim to have filed LA. No. 205 of 2001 for impounding the

said document, since it was not stamped. LA. No. 205 of 2001 was dismissed on taking the view that no stamp duty can be levied on xerox copy of a document. The order of the Trial Court was confirmed by this Court in C.R.P. No. 3458 of 2001.

3. LA. No. 156 of 2001 was resisted by the contesting respondents. They took the plea that unless the original was available for comparison, the xerox copy of the same cannot be received in evidence. Through its order, dated 24.4.2001, the Trial Court dismissed the LA. Hence, this revision.

4. Learned Counsel for the petitioners submits that it was only after eliciting through D.W.1 that there existed a document dated 12.1.1980 and after issuing a notice calling upon him to produce the same, the petitioners have placed the xerox copy of the document before the Court. Learned Counsel submits that the conditions incorporated under Sections 63 and 65 of the Indian Evidence Act, 1872 (for short "the Act") are complied with and there did not exist any basis for the Trial Court in rejecting the I.A.

5. Sri Satyanarayana Peddareddy, learned Counsel appearing for Respondents 2 to 8, on the other hand, submits that a fair reading of Section 63 of the Act discloses that the secondary evidence can only be the true version of the original and in the absence of a original document, it is not possible to ascertain the veracity of the xerox copy. He submits that the Trial Court had appreciated the matter from proper perspective and no exception can be taken to the same.

6. In the suit filed by the petitioners for partition, defendants pleaded prior partition. During the course of evidence on behalf of defendants, it was elicited through D.W.I that in respect of the very family and properties, a partition took place on 12.1.1980 and that the same was evidenced through a document. D.W.I categorically stated that the document was executed in two sets and one of it was given to him. It is not denied that the petitioners got issued a notice to D.W.I calling upon him to produce the original, spoken to by him in the cross-examination. He did not respond to the same. It was in that context the petitioners have come forward with the present application.

7. Chapter V of the Act mandates that the contents of the documents can be proved through primary or secondary evidence. It is true that by and large, the documents themselves in their original form are permitted to be received in evidence. However, instances are not lacking when it becomes impossible for the parties to place the primary evidence before the Court. Section 63 of the Act classifies the secondary evidence into various categories. The circumstances, under which the secondary evidence can be received, are provided u/s 65 of the Act.

8. Section 63(2) of the Act recognizes copies made from original by mechanical process, which ensures the accuracy of the copy as one of the categories of secondary evidence. The Trial Court did not express any doubt as to the authenticity of the xerox copy of the document placed by the petitioners, since it

was the reproduction through a mechanical process. Further, the petitioners have already called upon D.W.I to produce the original and there was no response to it. Thereby a circumstance, provided for u/s 65(a) of the Act emerges, enabling the Court to receive the secondary evidence.

9. The reason for which the Trial Court did not receive the document, is non-stamping and non-registration of the same. As observed earlier, the petitioners have made an endeavour to get the document impounded and were not successful therein. The reason or the lapse on account of which the document could not be stamped or impounded, cannot be attributed to the petitioners. The next question is about registration. Since the petitioners were not parties to the said document, they cannot be held responsible for this lapse also.

10. Whatever be the justification or reason for non-registration of a document, which is required in law to be registered, it cannot be received in evidence to prove the transaction. However, under the provisions of the Registration Act, it can be received for collateral purposes. Therefore, it needs to be seen as to whether the document in question could have been received in evidence for collateral purposes.

11. A partition gives rise to or brings about three phases or legal consequences viz., (a) severance of status, (b) stipulation of condition of partition, and (c) indicating the nature of possession. Through a catena of decisions, this Court held that existence of a registered document is necessary only for the second aspect indicated above and that the other two aspects can be established even through an unregistered documents. It is in this context that an unregistered partition deed becomes admissible in evidence for collateral purposes viz., to establish the severance of status and nature of possession. Reference in this context can be made to the Judgment of this Court in Pallapothu Naga Prasad and Others Vs. Pallapothu Venkata Krishna Rao and Others, . Even if the document referred to above cannot be received in evidence to establish the factum of partition as such, it can be received in evidence for collateral purposes as indicated above. Therefore, there did not exist any basis for the Trial Court in refusing to receive the said document. It is not as if the receiving of documents is going to establish any facts by itself. The respondents can rebut the same by leading oral and documentary evidence.

12. For the foregoing reasons, the civil revision petition is allowed and the Trial Court is directed to receive the document as secondary evidence, subject to any rebuttal by the respondents.