

(2003) 02 AP CK 0043
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3576 of 2002

Idamakanti Ananthamma and Another	APPELLANT
Vs	
Idamakanti Ramanamma and Others	RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 35, 36

Citation : (2003) 2 ALT 331 : (2003) 2 CivCC 86

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : A. Giridhar Rao, for the Appellant; G. Jhansi, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—This Civil Revision Petition is filed challenging the order dt 5-7-2002 made in O.S.No. 71 of 1996 on the file of the Senior Civil Judge, Markapur.

2. The order under challenge is to the effect that the document, which was sought to be marked was in the nature of a relinquishment deed and hence the same is attracted by the provisions of the Indian Stamp Act and also required to be registered.

3. The facts in brief are that the respondent-plaintiff filed the suit O.S.No. 71 of 1996 against her daughter-in-law and granddaughter for partition of the plaint schedule landed properties and also house property by claiming half share in the said properties. Originally the plaintiff filed O.S.No. 2 of 1994 for partition of the properties against her son Sivakasi Reddy. During the pendency of the suit it appears that there was some compromise and pursuant to the said compromise the deceased mother relinquished her rights in favour of the defendant (son) in the said suit and the suit was withdrawn as settled out of Court. Subsequently, the son died. After the death of the son the mother again filed the present suit

O.S.No. 71 of 1996 against the daughter-in-law and granddaughter, who is a minor on the date of the filing of the suit. During trial, the defendant wanted to press into service the document on which basis the earlier suit was dismissed as withdrawn, and also to show that there was a settlement between the deceased son and the deceased plaintiff. When the witness on behalf of the plaintiff was confronted with this present disputed document, an objection was taken by the plaintiff as regards its admissibility. The controversy is that according to the plaintiff the said document is a relinquishment deed but not a deed of conveyance. Upon such objection the trial Court considered the issue and held that the said document is a deed of relinquishment, but not a conveyance. As the said document is held to be a relinquishment deed, the trial Court came to the conclusion that the document is inadmissible.

4. The learned counsel for the petitioner-defendant contended that in view of the language used in the said document, it has to be treated as a deed of conveyance. In order to treat the above document as a deed of conveyance some recitals in the document were also highlighted. One of the crucial recitals in the said document was that the mother has received certain amount in lieu of her claim.

5. The present dispute is with regard to the admissibility of the document. While it is the contention of the learned counsel for the plaintiff that the document has to be treated as a deed of relinquishment, the learned counsel for the defendant contended that the document has to be treated as a deed of conveyance. The Court below having gone into this question elaborately, rejected the contention of the defendant and found the disputed document as a deed of relinquishment, hence the same is liable to be compulsorily registered and duly stamped. Accordingly, the document was held to be inadmissible. Challenging the same the present revision petition is filed.

6. In this factual background, it is to be noted that the disputed document when tried to be pressed into service during trial, an objection was taken by the plaintiff. It was specifically contended by the learned counsel for the plaintiff that it was only a deed of relinquishment and in which event, it is required to be registered compulsorily and duly stamped. In normal course the document being devoid of these requirements has to be discarded by the Court as inadmissible.

7. But whole dispute is with regard to the nature of the document which is a crucial one and which ultimately decides the main question involved in the suit and it will have sufficient bearing on the findings in the judgment in favour of either party. It is also to be noted that, if the document is undisputedly either not registered or duly or insufficiently stamped, the disqualifications u/s 35 of the Indian Stamp Act and Section 17 of the Registration Act would automatically come into play and the Court has the duty to proceed in accordance with law.

8. In the instant case there is a serious contest between the parties as regards the nature of the document and its admissibility. Therefore, the Court was

required to decide the nature of the document i.e., whether the document is a deed of relinquishment or a deed of conveyance.

9. Now, the question that falls for consideration before this Court is as to whether the trial Court is justified in giving definite finding as regards the admissibility of the document at the threshold i.e., during the trial itself upon the objection taken by the plaintiff.

10. It is to be noted that there is no evidence as regards the nature of the document by either side. The Court has to necessarily go in to the said controversy after allowing both the parties to adduce any evidence either oral or documentary in order to establish their respective contentions as regards the nature of the document, but that did not happen in the instant case. The trial Court simply, on the objections raised by one party, had gone into the matter in detail by taking up the task of examining the document by itself and gave a specific finding vide the impugned orders stating that the disputed document has to be treated as a deed of relinquishment but not as a deed of conveyance and accordingly held that the same is not admissible in evidence.

11. Having heard both the counsel at length on this aspect, in my considered opinion the impugned order cannot be sustained inasmuch as there is a serious dispute with regard to the nature of the document and its admissibility, and also in view of the fact that the finding on this issue is likely to affect the rights of either party either way even before the trial is concluded. Therefore, the lower Court ought to have allowed the parties to adduce evidence during trial after receiving the said disputed document with an endorsement "subject to admissibility" on all issues including the nature of this document, and only thereafter I could have decided the issue.

12. The procedure of receiving a document subject to admissibility has been approved by the apex Court as long back as in the year 1978 in *Ram Rattan (Dead) by Lrs. Vs. Bajrang Lal and Others*, . Their lordships held as under:

"When the document was tendered in evidence by the plaintiff while in witness box objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however, would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would nonetheless be obligatory upon the court to decide the objection..... The endorsement made by the learned trial Judge that "objected, allowed subject to objection", clearly indicates that when the objection was raised it was not judicially

determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted."

13. The procedure suggested and approved by the Supreme Court is obviously to preempt the suit proceedings go unnecessarily multiplied and proliferated. The apparent intention is that all the issues including the nature of the disputed document has to be decided finally after conducting full trial. As already pointed out, if there is no dispute with regard to the nature of the document and if it is found that the document suffers from any disqualification either under the Registration Act or Indian Stamp Act, automatically the law would take its own course.

14. It is also brought to the notice of the Court the decision of the learned Single Judge of this Court in Bandameedi Narayana Vs. Bandameedi Rajaiah, , wherein, the learned Judge held that it is not desirable to go into the question of admissibility or otherwise of the document at the initial stage. The learned Judge further observed that if the disputed document which is sought to be received is compulsorily registerable, that will be thrown out at the time of the trial of the suit and hence it was held that it is premature to consider that aspect at that stage itself. The said principle is followed by another learned Judge of this Court in CR.P.No. 1633 of 1999 in his judgment dated 13-12-1999. In the same lines, another learned Judge of this Court also in C.R.P. No. 2892 of 2001 dated 21-8-2001 took the view that it is only after considering the evidence, a finding can be recorded as to whether it is compulsorily registerable document or not. It was a case where no evidence was let in on the said aspect.

15. For the foregoing discussion and the Judgments referred supra the impugned order is liable to be set aside and accordingly it is set aside and the matter is remitted to the court below for fresh consideration as to the nature of the disputed document after allowing both the parties to adduce evidence on this aspect during trial along with other issues and then arrive at a finding basing on such evidence. Any such finding in the suit as regards the disputed document and its nature shall be given uninfluenced by any of the observations made by the lower Court in the impugned order.

16. In the result, the C.R.P. is allowed subject to the above directions.