

(1998) 07 AP CK 0019
In the Andhra Pradesh High Court
Case No : Rev. CMP No. 12282 of 1998

K. Ramulu and another	Vs	APPELLANT
K. Narsimulu and another		RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Evidence Act, 1872 — Section 91
Registration Act, 1908 — Section 17(1), 49
Stamp Act, 1899 — Section 35

Citation : AIR 1999 AP 83 : (1999) 1 ALD 99 : (1999) 1 ALT 569

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : Mr. A. Panduranga Rao, for the Appellant; Mr. M. Raja Malla Reddy, for the Respondent

Judgement

1. This is a review petition against the order dated 3-4-1998 in CRP No.3037 of 1996.
2. The Review Petition arises in the following circumstances. Sri A. Panduranga Rao, learned Counsel for the petitioners was not keeping good health for some time during the period preceding 3-4-1998. The Civil Revision Petition was adjourned several times on that ground and ultimately the order under review has been passed after hearing Sri M. Raja Malla Reddy, learned Counsel for the respondents. Aggrieved by that order, this Review Petition is filed.
3. Sri A. Panduranga Rao, learned Counsel for the respondent have been heard at length in the main Civil Revision Petition which is directed against the docket order dated 9-8-1996 in OS No.2 of 1989 on the file of the Subordinate Judge, Sanga Reddy.
4. The following question has been formulated for consideration by the learned Subordinate Judge:

"Whether the document in question is an award, compulsorily registerable u/s 49

read with Section 17(1)(c) of the Registration Act and if so whether it is admissible in evidence.'"

5. After setting out the pleas of both sides, the contents of the document in question have been considered and it has been held that the document is an award and it is compulsorily registerable and also require stamp. It is further held that the recitals in the document do not reveal the nature of the property, possession or status of the parties except creating rights thereunder, and hence, it cannot be marked even for collateral purpose. It is, however, noteworthy that in the preceding paras the learned Judge held that the document in question can be looked into for collateral purpose of knowing about the nature of property as contended by the learned Counsel for the defendants. The conclusion is that the document cannot be marked even for collateral purpose. It is this order that is impugned in the Civil Revision Petition.

6. Sri A. Pandu Ranga Rao, learned Counsel for the petitioners, has taken me through the document in question and he mainly contended that it is not an arbitration award and in any event it is admissible in evidence for collateral purpose namely, nature of possession of the revision petitioners over the plaint schedule land. His thrust of argument was that there was no division by metes and bounds through this document and hence it cannot be held that it is inadmissible. He relied on Venkata Subbaiah v. Subbamma AIR 1956 AP 195, Roshan Singh v. Zile Singh AIR 1988 SC 881 , and Bakhtawar Singh v. Gurdev Singh, (1996) 9 SCC 370 . He also relied on a judgment of Madras High Court in C.S. Kumaraswami Gounder Vs. Aravagiri Gounder and Another, . He pointed out that the ratio laid down in judgment cited C.S. Kumaraswami Gounder Vs. Aravagiri Gounder and Another, has been relied on by this Court in Sikhari Lakshmaiah and Others Vs. Sikhari Peddamallaiah (Died) and Others, , and argued that this Court has been consistently holding that an unregistered document is admissible for the collateral purpose of proving the nature of possession as well as factum of possession and relied on the decision in S.R. Tamma v. D. Narasaiah 1977(1)APLJ 1.

7. On the other hand, Sri M. Raja Malla Reddy, learned Counsel for the respondents contended that the nature of the document is an arbitration award and inasmuch as the arbitrators have effected division of the properties among the sharers the lower Court has rightly held that it is compulsorily registerable and hence inadmissible in evidence. Adverting to the contentions of Sri A Pandu Ranga Rao, he contended that there is no recital in the document that possession was delivered to any of the parties thereunder and that the factum of possession and enjoyment of the property which is sought to be established by the revision petitioners is not a collateral purpose as held by this Court in Ghoushia Bee Vs. Rajan Bee and Another, . He also referred to Montey Appalaraju and another Vs. Kotteti Talupulamma alias Tallamma and others, , and Lachhman Dass Vs. Ram Lal and Another, , in support of his contentions.

8. I have carefully considered the rival contentions. It is necessary to look into

the factual background of the case for proper appreciation of the above contentions. The suit is filed for declaration of title and delivery of possession of the schedule property. It is the cases of the respondents-plaintiffs that the suit property is self-acquired property of their grand father by name K. Ramanna and subsequently it was developed by their father whereas the revision petitioners are contending that it is ancestral property of the revision petitioners (D1 and D2) and the respondents-plaintiffs. According to them there was a partition between the plaintiffs and the defendants on 23-6-1966 and a document has been rendered by the elders to effect the partition and it has been signed by the panchas and the mother of the plaintiffs representing them as guardian. It is asserted by the defendants that the suit schedule property has fallen to the snare of D3 to D14, and hence, they are entitled to the same. The aforesaid document is pressed into service by the revision petitioners and when the same was sought to be marked through K. Ramulu (DW1) in the course of chief-examination on 11-10-1995, an objection has been raised by the respondents-plaintiffs that it is neither stamped nor registered as required by law, and hence, it is inadmissible. After hearing both sides, the learned Subordinate Judge held that it is a compulsorily registerable document and it also suffers from the defect of insufficiency of stamp. The contention of the learned Counsel for the revision petitioners that it may be marked for the purpose of proving the nature of property and possession being collateral purpose, the impugned order has been passed holding that it is inadmissible in evidence even for collateral purpose.

9. The impugned order shows that the learned Subordinate Judge perused the document and came to the conclusion that the recitals are not at all revealing the nature of the property, possession or status of the parties except creating rights under this document. For the benefit of understanding the said recitals, para 2 of the document is extracted below:

A plain reading of the above recitals would show that the suit land was sold to one Nandi Kandi Venkatram and it was recovered back by the efforts of Pedda Ramulu and hence Pedda Ramulu and Chinna Ramulu will be entitled to equal shares therein. It is also recited that in the half share of Pedda Ramulu, his step-mother, Agamma shall have half share. It is abundantly clear that the nature of property and who are all in possession and enjoyment of the property and to what extent are mentioned in the above document. At the end of the document, it is also recited that the parties shall enjoy their respective shares as per this document. When a question arises whether the above property is self-acquired property of someone or whether it is joint family property, one has to look into the above recital to decide that question. It is now for consideration whether the document can be marked for collateral purpose for deciding the nature of the property or possession of parties over the property. Sri A. Pandu Ranga Rao strenuously contended that the above document shows that it is joint family property, and therefore, it was held that Pedda Ramulu and Chinna Ramulu are equally entitled to the above property. It is further argued on the basis of the concluding part of the document that they have been in possession and

enjoyment of their respective shares. He, therefore, urged that the impugned order may be set aside and the learned Subordinate Judge may be directed to mark the document for collateral purpose of proving the nature of the property and also possession of the parties. In *Roshan Singh v. Zile Singh* (supra) it is held that--

"It is well settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration u/s 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of Will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and docs not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it is not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondly, evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition."

It is further held that :

"It is also well settled that the document though unregistered can however be looked into for the limited purpose of establishing a severance in status, though that severance would ultimately affect the nature of the possession held by the members of the separated family as co-tenants. The document in the instant case can be used for the limited and collateral purpose of showing that the subsequent division of the properties allotted was in pursuance of the original intention to divide. In any view, the document was a mere list of properties allotted to the shares of the parties."

In the above case, the purport of document has been held to effect the division of the property by metes and bounds and held to be inadmissible in evidence for the purpose of proving the said transaction. At the same time, it has been held that it can, however, be looked into for the limited purpose of establishing a severance in status. In the judgment in *C.S. Kumaraswami Gounder* (supra), it is

held that:

"In the case of an express completed partition there are three different stages:

- (1) the stage of effecting a division in status;
- (2) the stage of dividing the properties by metes and bounds; and
- (3) the stage of parties taking possession of the properties allotted to them.

Every one of the stages can be effected orally and no document is necessary. In respect of stages 1 and 3 even if there is a document, it need not be registered as the said stages cannot be said to "declare, assign, limit or extinguish" any right, title or interest to or in immovable property. It is only with regard to the second stage, namely division of properties in different shares and allotment thereof to the various members, if the same is reduced to writing, it requires registration u/s 17(1)(b) of the Act.

An unregistered partition deed though not admissible to prove the terms of the partition can be admitted in evidence for proving the stages (1) and (3) namely the division in status and the taking of possession of the shares allotted, these being collateral purposes".

I have already indicated above that the parties have been directed to enjoy their respective shares as per the above document that means that this case is covered by clause 3 namely, parties taking possession of the property allotted to them, A Division Bench of Madras High Court has held that an unregistered partition deed though not admissible to prove the terms of partition can be admitted of proving stages 1 and 3 namely, the nature and character of possession of the shares allotted. It is held in unmistakable terms that these are collateral purposes. Following the above ratio, this Court held in judgment in *S. Lakshmiah v. S. Peddamallaiah* (supra), as under:

"Where all the joint family members got themselves divided and partitioned the properties and started enjoying their respective shares separately but at the time of that general partition kept an item of property joint for future division and took possession thereof subsequently by effecting its partition as per terms agreed in the general partition by a deed in writing, then, even though that deed was not registered, oral evidence could be let in to show that the members of the coparcenary took over their respective shares of the property assigned under the partition deed effected subsequently."

Likewise in *M. Venkatasubbaiah v. M, Subbamma*, (supra), and in *S.B. Taramma v. I). Narasciah* 1977 APLJ 1 (NRC), it has been held that an unregistered document can be admitted for the collateral purpose of proving possession. As against the above case law, Sri Raja Malla Reddy, placed heavy reliance upon a judgment of this Court in *Ghousia Bee v. Rajan Bee* (supra). In that case my learned brother P. Venkatarcima Reddi, J., considered the question of admissibility of unstamped and unregistered document conveying title to

immovable property. A document styled as "receipt" was sought to be marked. The document showed that the plaintiffs father-in-law purchased the suit property and out of the sale consideration, a sum of Rs.800/- was paid earlier and the balance amount due upto date was paid by the plaintiffs husband. In that document, it is declared that absolute rights have been conveyed over the site and house from "today" and that the vendors or her heirs will have no rights whatsoever. An objection was taken to the admissibility of the said document on the ground that it is hit by Section 49 read with Section 17(1)(c) of the Registration Act and Section 35 of the Stamp Act. When the lower Court upheld the objection, it was canvassed in this Court that the document is admissible for collateral purpose. After looking into the document, his Lordship held that there is no recital about the petitioner or his predecessor being in possession of the property pursuant to the sale and in that context, it has been held that the collateral purpose does not mean proof of possession and enjoyment. I carefully read the above judgment and I am of the view that the above observation of my learned brother as regards the collateral purpose is in the context and in view of peculiar circumstances of that case, but it is not a general proposition laid down by him. Sri Raja Malla Reddy seeks to rely upon a judgment of the Supreme Court in Lachhman Dass Vs. Ram Lal and Another, , wherein it is as follows:

"Where a party to an arbitration proceeding claims that 1/2 share in the disputed immovable property is held by the opposite party as benamidar for him and that he is the real owner of the entire property and the arbitrator passes an award accordingly, the award does create, declare or assign a right, title and interest in the immovable property. The award declares that 1/2 share of the ownership of the opposite party shall be owned by the first party. Therefore, the award declares the right of first party to the said share of the said property mentioned in that clause. The property is immovable property and it is not merely a declaration of the pre-existing right but creation of new right of the parties. It could not be said that the award merely declared the existing right and did not create any new right, Section 17 enjoins registration wherever the award "purports or operates to create, declare, assign, limit or extinguish" whether in present or in future any right, title or interest of the value of Rs.100/- or upwards in immovable property."

It is noteworthy that the question whether such a document is admissible for collateral purpose or not has not been considered by the Supreme Court in the above judgment. Therefore, the above judgment is not helpful to the respondents.

10. The conspectus of the above case law is that there are three stages of partition; (1) division in status, (2) division of properties by metes and bounds and (3) parties taking possession allotted to them. If any document, be it arbitration award like the one in this case, effects division of properties by metes and bounds through that document, it is compulsorily registerable; otherwise it is not compulsorily registerable if it merely shows division in status or parties

taking possession of the properties allotted to them. In cases other than partition, it is well settled that an unregistered document is admissible for the purpose of proving the collateral transaction or purpose, namely nature of possession, starting point of adverse possession and the like.

11. Turning to the case on hand, it has been noticed above that there is no division by metes and bounds through this document, and hence, it does not fall within the category 2 of the cases as laid down by the Madras High Court in C.S. Kumaraswami Gounder v. Aravagiri Gounder (supra), and the Supreme Court in Roshan Singh v. Zile Singh (supra). The suit land namely, "Bavikadi lands" have been held to be joint family lands of the parties and Pedda Ramuhi, father of the respondents/plaintiffs and Chinna Ramuhi (D1) are held to be entitled to equal shares therein. Thus, it is clear that nature of property which is a collateral purpose can be determined by looking into the above document. The concluding portion of the document also shows that the parties shall enjoy their respective shares. It amounts to saying that each party is in possession of their respective shares, and therefore, it is enjoined that they shall enjoy their shares accordingly. Thus, nature of possession is also evident from the above document. That again is a collateral purpose.

12. Thus, I am satisfied that the finding of the learned senior Civil Judge that it is an arbitration award is correct but the other limb of the order that it is not admissible for collateral purpose cannot be sustained. It is, however, made clear that it requires Stamp Duty and hence it is open for the learned senior Civil Judge to impound the document and collect stamp duty. As the suit pertains to the year 1989, it would be proper to direct the learned senior Civil Judge to complete the formalities of impounding the document by himself and expedite the trial and dispose of the suit as early as possible.

13. In my order dated 3-4-1998, it has been held that the above document is an award and it is compulsorily registerable and requires stamp duty, but I did not go into the question whether it is admissible for collateral purpose or not. The order, is therefore, fit to be reviewed, and accordingly, Review CMP No. 12282 of 1997 is allowed.

14. For the above reasons, the civil revision petition is allowed, the impugned order is set aside and the document in question is held to be admissible for the collateral purpose of proving (i) nature of property and (ii) nature of possession of the parties. There will be no order as to costs.