

(1972) 10 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 165 of 1972

Kuncham Gavara Raju

APPELLANT

Vs

Kuncham Satyanarayana and Others

RESPONDENT

Date of Decision : 27-10-1972

Acts Referred:

Stamp Act, 1899 — Section 2(15)

Citation : AIR 1973 AP 300

Hon'ble Judges : Kondaiah, J

Bench : Single Bench

Advocate : D.V. Reddi Pantulu, for the Appellant;

Judgement

Kondaiah, J.—This civil revision petition u/s 115 of the CPC by the plaintiff-petitioner given rise to a short question of law relating to the scope and application on Section 2(15) of the Indian Stamp Act, 1899.

2. The material admitted facts which lie in a short compass leading upto this revision may briefly stated. The petitioner sued for partition and separate possession of his share in the suit properties on the ground that he is the illegitimate son of late Kuncham Chidambaram, the paternal grandfather of the first defendant, in the Court of the District Judge, Visakapatnam, in the year 1971. Defendants Nos. 2 to 5 were minors represented by their guardian and natural father the first defendant. The first defendant's father late Krishnamurthy gifted some property on 11-11-1957 under a registered gift deed to the plaintiff. That apart, about three tolas of gold, Rs. 1,800 /- cash and two bulls worth about Rs. 300 /- were said to have been given by late Krishnamurthy to the plaintiff on April 25, 1940. The defendants denied the plaintiff's right to claim partition on the ground that he is the illegitimate son of their paternal grand-father Chidambaram. On the advice of some respectful persons interested in the welfare of both the parties, a memorandum of compromise was filed into the Court on the basis of which the court-below had passed a decree. Overruling the objection of the petitioner that the compromise decree does not amount to

an instrument of partition, the court below has held that it is an instrument of partition within the meaning of Article 45 of the Indian Stamp Act (hereafter called as " the Act "), on the ground that the plaintiff would get particular items of property under the final decree. Hence this revision.

3. Mr. D. V. Reddi Pantulu, the learned counsel for the petitioner contended that the compromise decree in the instant case is not an instrument of partition within the meaning of Section 2(15) of the Act and the same need not be engrossed on a non-judicial stamp paper as ordered by the court below. None appeared for the defendants. This claim of the petitioner is resisted by the learned 6th Government Pleader contending inter alia that the plaintiff-petitioner claimed a share in the suit properties on the basis of his co-ownership and ultimately succeeded in getting certain properties exclusively under the compromise decree and therefore, it is an instrument of partition and there is no merit in this revision petition.

4. The question that falls for determination is, whether on the facts and in the circumstances, the compromise decree is or is not an instrument of partition within the meaning of Section 2(15) of the Act.

5. In order to appreciate the scope of the question, it is necessary to briefly refer to the meaning and definition of an instrument of partition. Section 2(15) of the Act defines " instrument of partition " as " any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for affecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition ". Clause 15 of Section 2 of the Act may conveniently be divided into two parts, (i) applicable to instruments whereunder co-owners of any property divide or agree to divide such property in severalty and (ii) applicable to final orders passed by any revenue authority or Civil Court effecting partition and also an award directing a partition. In order to attract the first part of Sec. 2(15) of the Act there must be deed of partition or an agreement to divide any property in severalty by co-owners. The latter portion will take in a final order of any Civil Court, effecting a partition of any property. It is pertinent to notice that the element of partition of any property by co-owners is really essential for the applicability of Section 2(15) of the Act. Either actual division or any agreement to divide the property is sufficient to attract the provisions of the section. The ingredients of partition must be established. Otherwise this section will not come into play. The co-owners referred to in Section 2(15) of the act need not be co-owners in the eye of law. It is enough if the parties purport to be co-owners. The document need not specifically refer to the parties as co-owners. Whether the parties to the document are co-owners has to be judged from the entire document. Whether a particular document or an order of the Civil or Revenue Court or the award, is or is not an instrument of partition within the meaning of Section 2(15) of the Act is a mixed question of fact and law to be decided by considering all the relevant terms in the document or order or award as the case may be. It is not the form

but the substance of the document, order, award or decree that really matters to decide whether it amounts to an instrument of partition. It must also to be noted that the nomenclature of the document or the description of the parties in the deed, award, order or decree would not by itself be decisive in finding the nature of the document. It is the cumulative effect all the facts and circumstances and the recitals of every document, order, award or decree that should be the guide to decide the nature and character of the instrument in question.

6. In the light of the aforesaid discussion we shall examine whether the compromise decree in the instant case is or is not an instrument of partition. Admittedly, the first part of Clause 15 of Section 2 of the Act is not attracted in the instant case as there is no need of partition or an agreement to divide the property by co-owners. The instrument which is now sought to be construed as a final order effecting a partition is the compromise decree passed by a Civil Court.

7. The answer to the question therefore, turns upon the very compromise decree the material clauses of which read as follows :

"(1) that the plaintiff accepts the fact that he is not the illegitimate son of late Kuncham Chidambaram and agrees never more to set up such a contention.

(2). Having regard to the fact that the plaintiff is the son of a concubine of late Chidambaram, the paternal grand-father of the defendant, the defendants herein agreed to and have delivered to the plaintiff possession of Ac. 3-50 cents of wet land..... with absolute rights with powers of alienation.

(3). In addition to the above and for the aforesaid reason the first defendant has paid the plaintiff the sum of Rs. 6,000 /- in the presence of the middle-men, the receipt whereof the plaintiff hereby acknowledged :

(4). the parties agree that the gift deed executed on 11-11-1957 by the 1st defendant in favour of the plaintiff reciting the settlement of the properties on the plaintiff by the 1st defendant's father late Krishnamurthy is true and proper and that the plaintiff received the land, cash of Rs. 1,800 /-, gold weighing 4 tolas and bulls of the value of Rs. 300 /- on 25-4-1940 and passed a receipt-cum-agreement therefore in favour of late Krishnamurthy ;

(5).....

(6). The parties agree that the plaintiff or his children have no other claim against the defendants or the divided sons of the 1st defendant or their properties in suit or otherwise and disclaim all interest therein in token of which the plaintiff's sons have attested this compromise with full knowledge of its contents."

8. The compromise decree is no doubt a final order passed by a Civil Court whereunder certain properties have been given to the plaintiff who sued for partition and possession of his share of the suit properties on the ground that he was the illegitimate son of late Kuncham Chidambaram. It is pertinent to notice

that the very basis for the claim of partition and separate possession in the suit items by the plaintiff was denied. However, the defendants have agreed to give Ac. 3-50 cents of wet land and Rs. 6,000 /- cash and acknowledged the truth and binding nature of the gift deed executed on November, 11, 1957 in view of the fact that the plaintiff is the son of a concubine of late Chidambaram. The parties have incorporated a specific clause whereunder the plaintiff and his sons disclaim all interest in the suit properties with a view to avoid any future litigation. As pointed out earlier, it is not the form but the substance of the compromise decree that really matters to decide whether it amounts to a final order of the court effecting partition of the properties by the co-owners. On a careful consideration of the entire clauses of the compromise decree, I am of the firm view that it does not amount to a final order effecting partition of the suit properties by the parties as co-owners. Where the defendants agree to give some property to the plaintiff on grounds other than the claim of the plaintiff as co-owner to divide the suit properties, a compromise decree passed under those circumstances does not amount to an instrument of partition within the meaning of Section 2(15) of the Act. The genesis or the claim to partition the properties owned jointly must be co-ownership. Where the claim for partition on the basis of co-ownership is not accepted under the compromise decree and some property has been given to the plaintiff out of love or affection or due to some other cause or consideration, the compromise decree cannot be termed to be an instrument of partition within the meaning of Section 2(15) of the Act.

9. For all the reasons stated I have no hesitation to hold that the order of the court below is vitiated by material irregularity in the exercise of its jurisdiction and the same is liable to be set aside. In the result, the civil revision petition is allowed holding that the compromise decree is not an instrument of partition within the meaning of Section 2(15) of the Act. There will be no order as to costs.

10. Revision allowed.