
(2005) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Rev. CMP No. 8039 of 2004 in CRP No. 3982 of 2003 and Rev. CMP No. 9153 of 2004 in CRP No. 4349 of 2003

Mandakini Naik

APPELLANT

Vs

G.K. Naik and Others

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 136, 226, 32

Citation : (2005) 3 ALD 353

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Mahmood Ali and V.V. Prabhakar Rao, for the Appellant; P.V. Vidyasagar and N. Ravi Kumar for the Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—There review petitions were filed by the revision petitioner in CRP Nos. 3982 and 4349 of 2003 respectively against a common order dated 3.3.2004 passed by this Court.

2. The review petitioner is same in both the revisions. She filed the revision petitions against the order dated 17.6.2003 passed by the II Additional Senior Civil Judge, City Civil Court, Hyderabad and the order dated 25-7-2003 in review petition covered by IA No. 788 of 2003 in OS No. 821 of 1986. The review petitioner is the sixth defendant in OS No. 821 of 1986 filed for partition of the suit schedule property. The review petitioner while getting herself examined as DW2 sought to mark two documents describing them as "Wills". The II Additional Senior Civil Judge, City Civil Court, Hyderabad passed an order on 17-6-2003 upholding the objection raised by the plaintiff and rejected to receive those documents in evidence. Against the said order, the review petitioner filed review petition covered by IA No. 788 of 2003 under Order 47, Rule 1 CPC before the

Trial Court, requesting to review the order dated 17-6-2003. The Trial Court dismissed the review petition on 25.7.2003 and the review petitioner being aggrieved by the orders of the Trial Court filed the above revision petitions in respect of two documents, which were described as "Wills". Since both the revision petitions relate to the same point, both the revision petitions were clubbed and a common order dated 3.3.2004 was passed by this Court.

3. The review petitioner contended in the revisions that the documents filed before the Trial Court ought to have been treated as "Wills" by taking into consideration the intention of the testator, the back ground of the parties and the contents of the documents irrespective of the absence of two essential ingredients. She further contended that the absence of certain recitals in the document does not invalidate the same. She, therefore, requested to direct the Trial Court to receive the documents subject to objection, if any, at the time of marking of those documents.

4. The learned Counsel for the respondents contended that the two disputed documents disclose that the properties were bequeathed in the present time and there is no indication that they should come into operation after the life time of the executant and the lower Court after going through the contents of the documents declared that they are inadmissible in evidence and as they are in the nature of conveying the property, they require stamp duty and registration and as they are unregistered and unstamped documents, they cannot be received in evidence. Hence, the revision petitions are liable to be dismissed.

5. This Court after going through the definitions of the "Will" and "codicil" and after referring to the case law on the subject, observed that unless a document satisfies two conditions viz., "it must be intended to come into effect after the death of the testator and it must be revocable", it cannot be treated as "Will". This Court further observed that a document cannot be treated as a "Will" by a mere reading of the heading of the document. As the review petitioner could not locate from the documents the essential ingredients of a "Will", this Court confirmed the order of the Trial Court and dismissed both the revision petitions. The review petitioner being aggrieved by the common order of this Court filed these review petitions with the following contentions:

(a) The Court ought to have seen that the absence of certain recitals in the Will neither changes the nature of the document as a "Will" nor renders it invalid.

(b) The Court ought to have seen that the "Will" need not contain the recitals that the testator has the right to revoke the "Will" and the plain reading of the documents indicate that there is no transfer of interest in the present time, therefore, they shall be treated as "Wills".

(c) The Court while holding that the documents are not "Wills", did not deal with the nature of those documents. The Court did not consider either the case law relied upon by the review petitioner or the specific grounds urged in the revision petitions.

(d) The Court ignored the pleadings and did not take into consideration the ratio of the judgments cited and as such a strong case for review of the order is made out.

(e) The Court has every power to correct the mistakes without compelling the review petitioner to seek the remedy before the Honourable Supreme Court, therefore, requested to set aside the order by allowing the review petitions.

6. In the light of the contentions raised by the review petitioner, the point for consideration is, whether there are grounds to review the common order dated 3.3.2004 of the Court?

7. Point: One Krishnaji Naik was the owner of the suit property. The suit was filed for partition of the suit property into five equal shares and to put the plaintiff into possession of 1/5th share of the suit schedule property. Late Krishnaji Naik died in 1963 leaving behind him nine daughters and four sons. During his lifetime, a registered family settlement was executed among himself, his wife and children on 24.6.1959. Late Krishnaji Naik and his wife were given some properties in the family settlement. The revision petitioner and another sister (died) claimed that the entire property given to Krishnaji Naik and his wife were bequeathed by two "Wills". Therefore, after their death, the property should go as per the Wills. The sons of Krishnaji Naik are contending that their parents did not execute such "Wills" and the properties that fell to the share of the parents were enjoyed by all the family members as joint family properties, therefore, they are liable for partition. The Respondents 1 and 2 herein filed OS No. 821 of 1986 for partition of the suit property and other properties. During the trial of the suit, the review petitioner produced two documents purporting to be "Wills" and sought to mark them as exhibits. On an objection taken by the opposite party by contending that they are not "Wills", the Trial Court passed an order dated 17.6.2003 holding that those documents are inadmissible in evidence. A revision petition covered by CRP No. 3982 of 2003 was filed by the review petitioner against the order dated 17.6.2003 for not making the documents. The review petitioner also filed IA No. 788 of 2003 to review the order dated 17-6-2003 before the Trial Court, but that was also dismissed on 25.7.2003. The review petitioner being aggrieved by that order also, preferred CRP No. 4349 of 2003. This Court passed a common order dated 3.3.2004 in both the revision petitions, confirming the order of the Trial Court. These review petitions were filed against the said common order, challenging the same on the grounds mentioned above.

8. The learned Senior Counsel Sri N. Subba Reddy drew the attention of this Court, in support of the contention of the review petitioner, to various decisions rendered by various Courts, the Law Lexicons etc., and contended that the absence of the words "this will is revocable" does not invalidate the document as "Will" and submitted that subject to objection the documents may be directed to be marked by the Trial Court by allowing the review petitions as prayed for.

9. The learned Counsel for the respondents submitted that due to the pendency

of the review petitions, the trial of the suits has been stalled and as the review petitioner resorted to delay the matter, appropriate orders may be passed expeditiously.

10. Whenever a document relating to the rights of the parties is filed into Court, the Court has to examine the contents of it, and if the Court after going through its contents comes to a conclusion that the recitals attract the ingredients of a particular document, it will be treated as such document, and necessary stamp duty and penalty will be collected if it is a compulsorily registerable document, and only Stamp Duty and penalty will be collected if it is not a compulsorily registerable document. Immediately after filing of the documents, the Court would examine as to what is the nature of the document, and not its binding nature on the respective parties. In the light of the contents of the document filed by the review petitioner, it has to be tested whether there is transfer of property in present time. If the recitals of the documents indicate immediate transfer of the property, it cannot be treated as a "Will". Therefore, the review petitioner will not be entitled to get those documents marked without convincing the Court, that they come within the purview of a particular category of documents.

11. The learned Counsel for the review petitioner repeatedly submitted that the binding nature or otherwise of the documents can be decided by the Trial Court after their marking, therefore, the Trial Court shall be directed to mark the documents without raising any objection regarding the nature of the document.

12. It is the obligation of the Court to see that the State do not suffer revenue loss and the Court has to test whether the transfer of title over the property was effected through the said documents during the life time of the author and after satisfying with the nature of the documents, the Court would permit the respective parties to mark the document and later the Court tests the document about its binding nature on the opposite party. The nature of the document would depend upon the contents of the document and not from its title.

13. By keeping the above aspects in view, I wish to examine the legal position and other material placed on behalf of the review petitioner. In Law Lexicon "bequest" is defined as "a gift of personal property by will; a legacy", but, it generally means "any gift by Will whether it consists of personal or real property". In Wharton's Law Lexicon, "bequest" is defined as "a gift of personal property by will; a legacy". "Bequeath" as per Wharton's Law Lexicon, means, "to leave by will to another. The word is properly applied to personality only, but in a will avails to transmit real property, as well as the word "devise", which is the proper word; and vice versa."

14. In AIR 1931 109 (Privy Council) , the Privy Council considered the construction of a deed and observed as follows:

"The material part of a document executed by a Brahman Karanam was as follows; "As I have had no issue I have brought you up while you were young

and have adopted you and celebrated your Upanayanam, etc., and have chosen you as a son, so I have communicated this fact to the revenue authorities and got your name registered for the office of the Karanam held by me. Further, you shall be my son and you shall be entitled to my entire property as a son". The executant was ill at the time he executed the document and died four months later."

The Privy Council also held:

"that the document did not purport to convey anything *de presenti*, and further it could not be read either as being itself intended as an act of adoption or as being an authority to adopt. But the last sentence of the document clearly referred to succession to the writer's entire property on his death, and has testamentary effect in favour of the person alluded to in the document."

15. In *Sellayya Pillai v. Devaraya Pillai* 1972 (1) MLJ 297, the Madras High Court dealt with the construction of the documents and the tests to be satisfied to consider a particular document as a "Will" or a "Settlement". The Madras High Court held that there are several tests for determining whether a document is a "Will" or a settlement. Some of them are : (i) the name by which the document is styled; (ii) the registration of the document; (iii) reservation of life estate in favour of the executant; (iv) express words as to when possession passed; (v) user of the present or future tense in the document; and (vi) reservation of the power of revocation. In the said judgment, the Madras High Court referred to a passage in Halsbury's Laws of England, Simonds Edition, Vol.39, at Pages 888 and 844 respectively:

"A will is of its own nature revocable and therefore though a man should make his testament and last will irrevocable in the strongest and most express terms, yet he may revoke it, because his own act and deed cannot alter the judgment of law to make that irrevocable which is of its own nature revocable." "The revocable nature of a will cannot be lost even by a declaration that it is irrevocable, or a covenant not to revoke it."

16. In *Board of Control for Cricket, India and Anr. v. Netaji Cricket Club and Ors.* 2005 (1) D T (SC) 35, the Supreme Court while dealing with the aspect relating to review, observed as follows:

"Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason."

"Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and

circumstances of the case. The words "a sufficient reason" on Order 47 Rule 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravat".

17. In Sellayya Pillai's case (supra), the Madras High Court while dealing with Order 47 CPC, held:

"By reason of the document in question containing a clause: "This settlement cannot hereafter be cancelled by me on any account", the document was a settlement deed and not a will. That is an error of law apparent on the face of the record because the absence of a clause relating to revocation or the mention of a clause containing the statement that the settlement is not revocable, is not decisive on the question as to the character of the document".

18. The learned Counsel for the petitioner tried his best to impress upon this Court that in the absence of certain recitals and also in the absence of registration and stamp duty, the documents filed by the review petitioner can be directed to be marked after receiving them and the binding nature of the documents can be considered during the trial of the suit and the party cannot be denied the opportunity of filing the documents and marking them on her behalf.

19. The learned Counsel for the respondents drew the attention of this Court to certain judgments of the Supreme Court regarding the scope of review in Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma and Others, . The Supreme Court while considering the scope of Order 47 Rule 1 CPC, held that the review on the ground that certain documents forming part of the record not considered is unjustified. The Supreme Court further observed as follows:

"There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground".

20. In Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , the Supreme Court held as follows:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An error apparent on the face of record must be such an error, which must strike one on mere looking at the record and would

not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of Court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226".

21. In *Parsion Devi and Others Vs. Sumitri Devi and Others*, , the Supreme Court, while considering the scope of Order 47, Rule 1, CPC., held as follows:

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error, which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

22. In *Lily Thomas v. Union of India* 2000 (2) ALD 686 >: 2000 (6) ALD 16 : AIR 2000 SC 1650, the Supreme Court while considering the scope of Order 47, Rule 1 CPC held as follows:

"The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the Larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practiced. However, the Supreme Court in exercise of its power under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment".

23. The above legal position makes it clear as to what is the scope of Order 47 Rule 1 CPC and under what circumstances the judgment of a Court can be reviewed.

24. In the case on hand, the review petitioner is trying to interpret the wording used in those documents and tried her best to convince this Court that they are the "Wills". Whenever a document is produced before a Court of Law, a plain reading of the document should indicate its nature and the rights that were

transferred in presenti or in future. The construction of the document would be considered basing on the wording used in the document. When a party claims that a particular document is a "Will", the Court would examine whether the contents of the document indicate that it is a "Will" and if the contents do not indicate that it is a "Will", the Court would refuse to take it as a "Will" and the responsibility of the Court was only to that extent. If the party wants to treat it as a document useful for some other purpose, it is for the said party to put forth the claim regarding the nature of any other kind of document and on raising such plea, the Court would examine its contents, whether the plea of the party that it can be treated as a particular document, can be sustained or not and the Court acts accordingly, whether such document is a compulsorily registerable document, whether it properly stamped, if not, whether such document is admissible in evidence, and whether it requires any stamp duty and penalty etc. Since the review petitioner took a specific plea that the documents filed before the Trial Court are "Wills" the Trial Court rightly held that they cannot be treated as "Wills" and they cannot be admitted in evidence as "Wills" and it was also confirmed by this Court. In the above revision petitions, this Court after carefully going through the contents of the documents, after verifying the relevant provisions of the law and the legal position, came to a conclusion that there are no grounds to interfere with the order of the Trial Court. Though elaborate arguments have been advanced on behalf of the review petitioner, I do not find any force in the submissions made on behalf of the review petitioner to review the order dated 3.3.2004 of this Court and I do not find any merits in the review petitions.

25. In the result, both review petitions are dismissed. No costs.