
(2023) 01 TEL CK 0015

In the Telangana High Court

Case No : Civil Revision Petition Nos. 2058, 2059 Of 2022

P.Ramalinga Reddy And Others

APPELLANT

Vs

P.Raja Reddy And Others

RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 18 Rule 17
Indian Stamp Act, 1899 — Section 33, 35

Citation : (2023) 01 TEL CK 0015

Hon'ble Judges : P.Sree Sudha, J

Bench : Single Bench

Advocate : T V Kalyan Singh, Aruva Raghuram Mahadev

Final Decision : Allowed

Judgement

1. These Civil Revision Petitions are filed against the orders of the trial Court in I.A.Nos.1933 & 1932 of 2022 in O.S.No.25 of 2017 both dated 06.09.2022.

2. Petitioners before the trial Court filed an application in I.A.No.1933 of 2022 in O.S.No.25 of 2017 under Order XVIII rule 17 r/w Section 151 C.P.C seeking to recall P.W.1 for marking partition deed dated 20.04.1959 with translation. They also filed another application in I.A.No.1932 of 2022 in O.S.No.25 of 2017 seeking to reopen the evidence of plaintiff for marking documents and the same were dismissed by order dated 06.09.2022. Aggrieved by the said orders, these revision petitions are preferred.

3. They mainly contended that they filed suit before the trial Court for declaration of title, recovery of possession and perpetual injunction. The family properties of Narsimha Reddy were partitioned between P. Kista Reddy and P. Raja Reddy through a family settlement deed dated 20.04.1959. As per the said settlement deed Kista Reddy got Ac.1 – 06 gts and Raja Reddy got Ac.1 – 06 gts in Sy.No.479 which includes cattle shed, houses and open land. The name of P. Narsimha Reddy was reflected in the revenue and Gram Panchayat records for

the aforesaid properties. The cattle shed allotted to the plaintiffs bearing GP No.7-76 and GP No.7-77 allotted to Raja Reddy.

4. P.W.1 was examined on 17.02.2022, later the matter was posted for defendant evidence and D.W.1 was cross-examined on 06.07.2022. At the time of cross-examination of D.W.1, it was noticed that family settlement deed dated 20.04.1959 along with translation was not marked though it was the part of the Court record, as such I.A.No.1932 of 2022 was filed to re-open the plaintiff evidence and I.A.No.1933 of 2022 was filed to recall P.W.1, but both the applications were dismissed by orders dated 06.09.2022 passed by the trial Court. The revision petitioners stated that family settlement deed dated 20.04.1959 does not require any registration, but the trial Court erred in holding that when a document is inadmissible in evidence either for re-opening of suit for marking of the same nor recalling of P.W.1 does not arise. The respondent No.1 also admitted in his counter regarding the partition between the parties in the year 1959, as such there is no dispute for marking the said document. It should be sent for impounding under Section 33 of the Indian Stamp Act. The trial Court failed to consider that the memorandum of family settlement does not create or extinguish any rights in immovable property and thus it does not require compulsory registration. They also relied upon the decision of the Hon'ble Supreme Court in the case of Ravinder Kaur Grewal Vs. Manji Kaur and others 2020 (9) SCC 706. Therefore, requested this Court to set aside the Orders of the trial Court in I.A.Nos.1933 & 1932 of 2022 in O.S.No.25 of 2017 both dated 06.09.2022.

5. Heard arguments of both sides and perused the entire record.

6. O.S.No.25 of 2017 is filed by the plaintiffs to declare them as the owners of the suit schedule property and to deliver the vacant and physical possession of the same and also to declare the sale deed dated 18.09.2015 executed by the first defendant in favour of defendants 5 to 8 as invalid and void document, not binding on the plaintiff and also for injunction from alienating and changing the nature of the property. During the pendency of the proceedings and during cross-examination of D.W.1 when they intend to mark the partition deed dated 20.04.1959 on the ground of inadvertence they could not mark the same and the trial Court dismissed the application. The petitioners in their application stated entire facts and relied upon the partition deed though, due to oversight it was not marked as exhibit.

7. The defendant No.1 in his counter admitted regarding family settlement deed dated 20.04.1959 and further stated that they got only Ac.0 – 15 gts each as P. Narsimha Reddy was having only Ac.0 – 30 gts in Sy.No.479. He admitted regarding two cattle sheds which are allotted to each of them. He stated that plaintiffs sold away land and cattle shed in Sy.No.479 in favour of defendant No.1. He also stated that P.W.1 was examined on 17.02.2022, later it was posted for defendants evidence and thereafter D.W.1 cross examined on 06.07.2022. During the examination of P.W.1, they intended to mark the said partition, but it

was rejected as it was not duly stamped and not impounded and closed their evidence, as such the contention of the petitioner that it could not be marked due to oversight is not tenable. As the marking of document is already rejected, they requested the Court to dismiss the petition.

8. The trial Court also observed that there is no dispute regarding the partition deed and it was admitted by both the parties, as such even if it is marked through P.W.1, no prejudice cause to the parties and moreover as the document was unregistered and unstamped, as per Section 35 of the Indian Stamp Act it could not admitted into evidence. As such the question of marking inadmissible document does not arise at the fag end of the case. It is also stated that respondents in their Counter admitted the partition deed dated 20.04.1959, but the contents of the document are disputed regarding the extent of land. As such the marking of unstamped and unregistered document is not maintainable and accordingly dismissed the application.

9. Now, it is for this Court to see whether the Order of the trial Court is on proper appreciation of facts or not.

10. Admittedly, the suit was filed for declaration regarding the properties mentioned in the partition deed dated 20.04.1959. No doubt, even the defendants in the suit not disputed the partition deed, but they disputed the extent of land, as such marking of the document is necessitated for arriving to the proper conclusion. Though, petitioners simply stated that due to oversight they could not mark the document it was available in the record that the defendants in the suit objected the same on the ground that at the time of marking the document through P.W.1, it was rejected on the ground that it was not properly stamped and registered. The petitioners herein even after the objection, never took any steps to send the documents for impounding and not made any efforts to mark the same through D.W.1 cross-examination. The petitioners also contended that it is only family settlement deed and it does not require any registration and again they stated that the trial Court instead of sending the document under Section 33 of the Indian Stamp Act for impounding rejected the marking of the document. Plaintiffs filed suit for declaration and relied upon the partition deed dated 20.04.1959 and it was also available in the record, but he never took any steps either for impounding the document or for registration of the same. When it was objected at the time of marking through P.W.1, they kept quiet and later did not take steps to mark the said document through D.W.1, when it was rejected by the Court they filed application to mark the said document and the same were also dismissed. Hence, they preferred these revision petitions.

11. Considering the nature of the suit filed by the plaintiffs and also the fact that defendants disputed the extent of land mentioned in the said document. The marking of document is necessary for deciding the case on merits, but the plaintiffs has never took steps for impounding the said document and the trial Court has to decide whether it is a family settlement deed or partition deed and

requires registration or not before marking the said document. The suit was filed in the year 2017 and I.A.No.1933 & 1932 of 2022 were filed for marking the document, as the plaintiff kept quiet for nearly 5 years and came up with the said application at the fag end of the case. This Court finds it just and reasonable to grant an opportunity to the plaintiffs, but with costs of Rs.5000/- to the District Legal Services Authority, Hyderabad within 15 days from the date of receipt of the copy of this Order. As this suit is filed for declaration, sufficient opportunity has to be given to both the parties for adducing the best possible evidence. Therefore, this Court finds that it just and reasonable to set aside the Orders of the trial Court and remand the matter with the above direction.

In the result, both Civil Revision Petitions are allowed by setting aside the Order of the trial Court in I.A.Nos.1933 & 1932 of 2022 in O.S.No.25 of 2017 both dated 06.09.2022.

Miscellaneous petitions pending, if any, shall stand closed.