

(1996) 06 AP CK 0068

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 748 of 1996

Smt. Kommuri Prameela

APPELLANT

Vs

Mahankali Annapurnamma and Others

RESPONDENT

Date of Decision : 05-06-1996

Acts Referred:

Registration Act, 1908 — Section 17, 49
Stamp Act, 1899 — Section 35, 36

Citation : (1996) 3 ALT 349 : (1996) 2 CivCC 407

Hon'ble Judges : S. Dasaradha Rama Reddy, J

Bench : Single Bench

Advocate : Ghanta Rama Rao, for the Appellant; C.C.S. Sastry, for the Respondent

Final Decision : Allowed

Judgement

S. Dasaradha Rama Reddy, J.—This is revision petition filed by the plaintiff against the order of the trial Court admitting a document overruling the objection raised by her that the document sought to be marked by the respondent/defendant is a partition deed and cannot be admitted in evidence as it is neither stamped nor registered. The deed which is in Telugu is dated 7-7-1980. The recitals are as follows:

(Telugu version - omitted)

Relevant Matter:

"Asti Pampakam Kararunama - Suryanarayanaku Rabadina Aasti Vivaram - Satyanarayana Ravuku Vachina Vaata Vivaram - Parikattuku Sharachesi Vrayinchukagalvaram.

2. The lower Court held that the recitals are in past tense and hence the deed is a family arrangement regarding partition that has already taken place.

3. The contention of Mr. Ghanta Rama Rao, learned counsel for petitioner is that

the conclusion of the lower Court is patently contrary to the recitals in the deed. I agree with him. As can be seen from the recitals extracted above, there is no whisper of any past partition and the document is unambiguously a partition deed and requires stamp and registration.

4. Mr. CCS. Sastry, learned counsel for the respondents submits that u/s 36 of the Stamp Act when once the document is admitted in evidence the order cannot be challenged either in appeal or in revision and the only remedy of the petitioner is to have recourse to Section 61 of the Stamp Act. He relied on *Javer Chand and Others Vs. Pukhraj Surana*, where it was held that once a document has been admitted in evidence it is not open to lower court or court of appeal or revision to go behind that order and that such a judicial order is not liable to be reviewed or revised by the same Court or a Court of superior jurisdiction. This apparently supports the learned counsel for respondents. But in a subsequent decision in *H.S. Ltd. v. Dilip Construction* AIR 1969 SC 1238 the Supreme Court observed as follows:

" By that Section (Section 36 of the Stamp Act) an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not only duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector u/s 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped."

5. These two decisions were explained by this Court in *Pilla Narasimhaswamy Patrudu and Others Vs. Bank of Baroda*, . In that case the trial Court without considering the objection raised by the plaintiff's counsel marked a document which was not stamped. This Court held that as there is no judicial determination of the admissibility of the document it cannot be said that it was admitted in evidence. The Court further held that even when a document is admitted in evidence the question whether it can be acted upon or not is still res-integra and it is open to the Court to decide that question, as otherwise it will render otiose Section 42(2) of the Stamp Act which says that every instrument endorsed by the Collector u/s 42(1) shall be admitted in evidence and may be acted upon as if it has been duly stamped. I agree with this view of Justice Seetharam Reddy. In the instant case also, though the document has been admitted in evidence it does not prevent the petitioner from contending that it cannot be acted upon. Apart from this, the bar u/s 36 does not apply as the objection raised is not only regarding stamp duty but also against non-registration.

6. Realising this difficulty, the learned counsel for the respondents raised a technical plea that even assuming that the order of the trial Court is not correct, this Court cannot interfere u/s 115 C.P.C. as the order of the trial Court does not

come within the meaning of "case decided" occurring in Section 115 C.P.C. He relied on Parsuram Dubey Vs. Mahanth Laxman Das and Others, and Sagarmal Vs. Gulab Chand and Others, . In both these cases it was held that an order of the Court admitting a document in evidence overruling the objection that it is not admissible, is not a case decided and hence not revisable u/s 115. But, as rightly pointed out by Mr. Rama Rao learned counsel for the petitioner these are decisions rendered construing Section 115 as it stood before the Amendment Act 104 of 1976. The amendment in 1976 added the following explanation:

"Explanation: In this Section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding"

Relying on the Explanation the Orissa High Court in Tata Iron and Steel Co. Ltd. Vs. Rajarishi Exports (P) Ltd., held that an order rejecting the petition requiring plaintiff to answer interrogation in a more specific manner is a case decided within the meaning of explanation and hence revisable. This supports the contention of Mr. Rama Rao. He relied on a decision of Division Bench of this Court in Media Anasuyamma v. Choppela Lakshmamma 1991 (1) APLJ 370. There it was a reverse case of non-admitting a document on the ground that it was not stamped or registered. Overruling the decision of Syed Shah Mohammed Quadri. J in K. Obaiah v. T. Venkatamma 1988 (2) ALT 435 the Division Bench held that though there is no express adjudication of the rights of the parties, the result of the order treating the document as inadmissible is that the parties are precluded from claiming title based on the said document and will amount to "case decided". The Division Bench left, open the question whether revision lies against an order admitting a document as distinct from non-admitting a document. So this decision does not help the counsel for the petitioner. But it may be noted here that the explanation introduced by amendment Act 104 of 1976 was not brought to the notice of the Division Bench which reached the conclusion even without the aid of the explanation.

7. For the above reasons, I hold that the order of the trial Court admitting the document comes within the meaning of "case decided" and is revisable u/s 115 C.P.C. and as the document is a partition deed, it requires stamp and registration. It is open to the respondent to get the document marked in accordance with Section 35 of the Stamp Act. He can also rely on it for collateral purpose under Proviso to Section 49 of Registration Act.

8. In the result, the C.R.P. is allowed. No costs.

9. As the suit is of the year 1987, the Court below is directed to dispose it of by 31st August, 1996.