
(1973) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Appeal No. 218 of 1969 and C.M.P. No's. 6815, 8689 and 8690 of 1972

Y. Laxmi Prasannam

APPELLANT

Vs

Y. Narasayya and Another

RESPONDENT

Date of Decision : 31-12-1973

Acts Referred:

Stamp Act, 1899 — Section 2(15)

Citation : AIR 1975 AP 91

Hon'ble Judges : Sriramulu, J;A. Kuppuswami, J

Bench : Division Bench

Advocate : N. Rajeswara Rao, for the Appellant; M. Jagannadha Rao, P.V.R. Sharma and Principal Govt. Pleader, for the Respondent

Judgement

Sriramulu, J.—O. S. No. 14 of 1962 was filed in the Court of the Subordinate Judge, Machilipatnam, by the wife against her husband (defendant No. 1) husband's adopted son (defendant No. 2) and husband's brother (defendant No. 3) for the recovery of possession of the two items of plaintiff's schedule properties which consisted of wet land measuring Ac. 6-88 cents in Medur village, and for past and future mesne profits, on the basis of the registered gift-deed dated 11-9-1951 executed in her favour by her husband, defendant No. 1,

2. The defendants resisted the suit contending that the said gift deed was executed under coercion and was, therefore, not valid and binding on them. Defendant No. 2 claimed rights to the plaintiff's schedule properties of defendant No. 1 as the adopted son of D-I. Defendant No. 3, the brother of defendant No. 1, claimed rights to some of the properties of the 1st defendant on the basis of certain gift deeds.

3. The trial Court held that the gift-deed, on the basis of which the plaintiff had claimed the plaintiff's schedule properties, was executed and registered under coercion by the plaintiff and was, therefore, not binding on the defendants. The trial Court, accordingly, dismissed the plaintiff's suit.

4. It may also be noted here that, in Criminal Appeal filed by the plaintiff and others against their convictions the Supreme Court gave a finding that defendant No. 1 had voluntarily executed the gift-deed dated 11-9-1951. In civil proceedings, which came up to this Court, this Court finally held that the 2nd defendant was validly adopted by defendant No. 1 and was his adopted son.

5. Aggrieved by the trial Court's Judgment, the plaintiff filed A. S. No. 218 of 1969 in this Court, During the pendency of the appeal, the parties filed a compromise-memo. The Court held that defendant No. 1 was a person who was not capable of protecting his own rights and interests, and appointed a guardian for him. The parties to the appeal then filed a compromise-memo and requested this Court to allow the appeal and pass a decree in terms of compromise. This Court found that the compromise was beneficial to all the parties, and it was also in the interests of defendant No. 1. Accordingly this Court accepted the compromise and passed a decree in terms thereof. The plaintiff's appeal was allowed as against defendants 1 and 2 and dismissed against defendant No. 3 on the basis of the said compromise.

6. It is necessary to reproduce below the relevant terms of the said compromise:--

"..... (1) The appellant plaintiff shall be absolutely entitled with all rights of sale, gift, etc., to item 2 of the plaint "A" schedule which is an extent of Ac. 2-25 cents in R. S. No. 595/3 in the village of Medur, Gannavaram Taluk within the following boundaries:--

East: Polimera Donka

South: Land of K. Kotamma & others.

West: K. Kotamma's Land.

North: Land of Yelamanchili Kutum-biah and the possession of the land shall be delivered without any obstruction or hindrance and without spoiling the land or cutting any trees etc. on the land and the delivery of the land will be made on or before 14th August, 1972 failing which the appellant can take delivery through Court without any obstruction.

(2) The respondents 1 and 2 are entitled to item 1 of the plaint "A" schedule equally in two divided shares and the eastern half of item 1 abutting the land of Yelamanchili Ramakrishnayya shall belong to the 2nd respondent with absolute rights and the western half of item 1 of "A" schedule abutting the land of Kutumbayya and others shall be enjoyed by the 1st respondent during his lifetime and vested remainder is hereby created in favour of the 2nd respondent in the said land.

(3) The land allotted to the share of the 1st respondent for his life shall be under the management of the 1st respondent's adopted son i.e. the 2nd respondent, and the 2nd respondent shall maintain the 1st respondent during the lifetime of

the 1st respondent as the 1st respondent is not capable of looking after his affairs,

(4) After the lifetime of the 1st respondent, the land allotted to the 1st respondent for his life as mentioned in clause (II) above shall vest and devolve on the 2nd respondent. The 2nd respondent shall be entitled to the same with absolute rights.

(5) The 1st and 2nd respondents shall be liable to pay a total sum of Rs. 3,000/- (Rupees three thousand only) to the appellant (plaintiff) as the land given to the appellant fell short of about Act 0.35 cents to Ac. 2-50 cents. The same shall be deposited in the trial Court on or before the 1st day of March 1973 and till the same is deposited it shall carry interest at the rate of 6% per annum and after the amounts are deposited the appellant shall be entitled to withdraw without any conditions or restrictions. In default, the appellant can execute the decree and recover the said amount and there shall be a charge for this amount on item 1 of plaint "A" schedule property which is allotted to respondents 1 and 2.

(6) The appellant (plaintiff) shall not lay any further claim in regard to deficiency in extent if any in item 2 of the plaint "A" schedule as the compensation of Rs. 3,000/- paid in the aforesaid manner includes compensation for any deficiency in extent.

(7) The Court-fee payable by the plaintiff-appellant in the Court below and in this Hon'ble Court shall be divided into three equal parts and the appellant will be liable to pay 1/3rd, the 1st respondent shall be liable to pay 1/3rd and 2nd respondent shall pay another 1/3rd and each of the said amounts shall be a charge on the respective extents of property allotted to the share of each person as mentioned earlier

(8) The appellant (Plaintiff) has no rights whatsoever to any other property except item 2 of the plaint "A" schedule and that, after the lifetime of the 1st respondent, the 2nd respondent shall be entitled to the entire item 1 of the plaint "A" schedule and any other property that the 1st respondent may die possessed of."

7. By relying upon the decision in *N. Venkiah v. Venkamma* (1958) 2 An WR 12 : (AIR 1958 AP 457) the Office submitted that the decree passed by this Court on the basis of the above compromise, was an "instrument of partition" within the meaning of S. 2(15) of the Indian Stamp Act and the decree has, therefore, to be drawn up on a Non-judicial Stamp of Rs. 585-10 Ps. The Office, accordingly, gave notices to the advocates for the parties on 27-3-1973, requesting them to file, on or before the 13th of April, 1973 the Non-Judicial Stamp Worth Rs. 585-10 Ps. as provided in the Stamp Act. The parties, however, failed to file the non-judicial stamps to enable the office to draw up a decree in accordance with law. The Office has therefore, placed the matter before this Court,

8. Notice was issued to the Government. The Government Advocate, as well as

the advocates appearing for the parties, were heard.

9. The short question that falls for our decision is, whether the decree passed by this Court in appeal, on the basis of the compromise filed by the parties, is an "instrument of partition" within the meaning of Section 2(15) of the Indian Stamp Act.

10. The earliest case in which this question came up for consideration before the Court was a reference under the Stamp Act, which is reported in *Re From the Board of Revenue u/s 46 of the Indian Stamp Act (1879)* ILR 12 Mad 198. The facts of that case were: A mother died leaving the property to two daughters, who enjoyed it jointly. One daughter died and her husband quarrelled with the surviving daughter about the property. To stop such quarrelling, the property was divided. The surviving daughter executed a deed in favour of the sisters husband, and the latter also executed a document in favour of the surviving daughter. Both those documents were styled as Deeds of Relinquishment. On a reference made by the Board of Revenue, the Full Bench of the Madras High Court, consisting of Sir Arthur J. H7 Collins, C. J., and Muttusami Ayyar, Parker and Wilkinson, JJ., held that both the documents should be read together as one being the counterpart of the other and that, although the documents were styled as "Releases", they were, in fact, instruments of partition, since the parties purported to be the co-owners of the property and, in that capacity, agreed to divide the property in severally,

11. In *Thiruvengadathamiah v. Mungiah* (1912) ILR 35 Mad 26, a decree was passed on the basis of a compromise. The decree allotted specific portions to the several parties, and directed the other parties to deliver possession, and also provided for the execution of a sale-deed and a lease of certain immovable properties. Mr. V. V. Srinivasa Ayyangar, advocate appearing for the plaintiff in that case, contended that the order by which the decree was passed, was not a final order, because it was not made in execution delivering to the parties the shares that had been determined by the decree of the Court. Hence the document did not amount to an "instrument of partition" within the meaning of Section 2(15) of the Stamp Act, Rejecting that contention, the learned judge, Bakewell. J. held that the decree effected an actual partition of the properties among the parties and it vested specific portion or the estate in particular parties and was, therefore, a final order in the suit, effecting a partition and was, accordingly, chargeable with duty as an instrument of partition. The learned Judge further held that the decree being a consent decree, was an instrument whereby the co-owners had agreed to divide the property in severally and, therefore it fell within the ambit of Section 2(15) of the Stamp Act.

12. In *(Gurram Pedda) Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others*, Division Bench of the Madras High Court, consisting of Sundaram Chetty and Walsh, JJ., held that:--

"..... .The very fact of the reference to properties as those in which the parties

have certain shares indicates that they purport at least to deal with them as co-owners. Even if the description as co-owner is not actually found in a document, it is still open to the Court to find on proper construction of the terms thereof whether the parties purport to be co-owners of the property, or not....."

In holding so, the learned Judges relied upon the Full Bench decision of the Madras High Court in (1879) ILR 12 Mad 198. referred to above. The Court further held that, u/s 2(15) of the Stamp Act, the parties need not be co-owners in the eye of law. Still, if they purport to be co-owners and if a document of that kind is executed in that capacity, it would come within the definition of an "instrument of partition."

13. In *The Secretary to the Board of Revenue (Separate Revenue) Vs. Rm. Pl. N. Rm. Alagappa Chettiar and Another*, , the facts were: A division of the partnership properties was effected between the partners by means of an Award passed by arbitrators, calling the deed, in question, as a "Deed of Dissolution of Partnership." At the relevant time, Section 2(15) of the Stamp Act, which defined the "instrument of partition", read thus:

"..... an instrument of partition is any instrument whereby co-owners of any property divide or agree to divide such property in severally, and it includes also an award by an arbitrator directing a partition."

On the basis of the above definition of the "instrument of partition" at the relevant point of time, a Special Bench of the Madras High Court, consisting of Varadachariar, Burn, and Pandurang Row, JJ. held that:--

"..... In the definition of an instrument of partition as defined in Section 2(15) the true antithesis is between the original common ownership and the subsequent cessation of that common ownership. Whether the substituted ownership is created by way of allotments to each individual amongst the original common owners or to groups of individuals is not really the point for consideration but whether the original common ownership had ceased to exist or not." The Court, accordingly held that the deed though styled as a "Deed of Dissolution or Partnership" amounted to an "instrument of partition" within the meaning of Section 2(15) of the Stamp Act.

14. Relying upon the decisions of the Madras High Court in *(Gurram Pedda Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others*, , a Special Bench of the Lahore High Court, in *West Punjab Govt. v. Gain Chand* AIR 1949 Lah 126 ; held that:--

"Whether a document is a deed of partition within the meaning of Section 2(15) is to be determined by its language. The real test of "instrument of partition is whether there was any property of which the parties were co-owners and the property was being divided by that deed in severally. Even if the description as co-owners is not actually found in a document, it is still open to the Court to find on a proper construction of the terms thereof, whether the parties purport to be

co-owners of the property, or not. And even if the parties are not really co-owners in the eye of law, still if they purport to be co-owners and if a document of this land is executed in that capacity, it would come within the definition of an "instrument of partition." Courts are only concerned with the construction of the terms of the document and not with the legality of the claim set up by one or the others."

15. In *Musammat Jiban Kuar Vs. Govind Das*, , a Full Bench of the Allahabad High Court, consisting of three Judges, held that:

"..... Where each of the two rival claimants to a property claims to be the sole and full owner of the property but in order to avoid litigation agrees to release in favour of the other a certain portion of it, the deed executed by either of them is a deed of release and not a deed of partition and is liable to a stamp duty under Art, 55, Schedule I, of the Stamp Act.....".

In arriving at that decision, the Allahabad High Court followed the decision in *Musammat Jiban Kuar Vs. Govind Das*,

16. In *N, Venkiah v. Venkamma* AIR 1958 AP 457 : (1958) 2 An WR 12, a Division Bench of this Court, consisting of Chandra Reddy J. (as he then was) and Srinivasachari, J.) refused to place reliance upon the Full Bench decision of the Allahabad High Court in *Musammat Jiban Kuar Vs. Govind Das*, ; and relying upon the decisions of the Madras High Court in *Musammat Jiban Kuar Vs. Govind Das*, and (*Gurram Pedda*) *Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others*, held that:--

"..... The expression "co-owners" (under Section 2(15) of the Indian Stamp Act) is of wide connotation and includes all kinds of co-ownership such as joint tenancy, tenancy in common etc., and is not confined in the strict sense of the term. To attract the clause it is not necessary that one should be a co-owner in the real sense. If the persons who divide the property purport to do it as co-owners, the relevant provisions of the law govern the case."

(underlining ours) The learned Judges further held that:--

". ... In deciding a case involving the question of the applicability or otherwise of the Section (Section 2(15) and Section 6 and Schedule I, Article 45 of the Stamp Act) the test is not whether originally the right of each of the parties was recognised to a part of the property but the basis upon which they settled to partition the property. It is only by recognising the antecedent title of one another that the agreement to divide it in a particular mode is reached. It is not the language of document alone that will determine the issue. It is not what purports outwardly that matters, but it is the real character of the document that should furnish the basis for the decision.."

(Underlining ours)

It is very significant to note the facts this case. A suit was brought by the

daughter's daughter's daughters of the last male-holder, who were in possession of the property, contending that they were disturbed in the enjoyment of their properties by the defendants who were trespassers. The defendants' defence was that as reversioners to the estate, they were entitled to the properties. In appeal by the defendants, against whom the decision went in the suit, a decree was directed to be passed in terms of compromise, by which the parties had agreed to divide the properties in a particular way. It is on those facts that the Division Bench of this Court held that the compromise which resulted in a division of the properties practically into two equal shares, was an instrument of partition, requiring to be stamped on non-judicial stamps u/s 6 read with Article 45 of the Indian Stamp Act.

17. Before we consider the Judicial interpretation given by Courts to the definition of an "instrument of partition" it is necessary to know the exact language used in defining the Instrument of partition" in Section 2(15) of the Indian Stamp Act, 1899. Section 2(15) of the Indian Stamp Act reads thus:--

".... Instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any Revenue authority or any Civil Court, and an award passed by an arbitrator directing a partition....."

18. A plain reading of the above definition shows that the requisite of an instrument of partition is that co-owners of any property should by that document, divide or agree to divide such property in severally. A final order for effecting a partition passed either by a Revenue authority or by a Civil Court and an award passed by an arbitrator directing partition, are also included in the definition of an "instrument of partition."

19. It is seen from the aforesaid decisions that, the real test for determining the question whether a document is an "instrument of partition" u/s 2(15) of the Indian Stamp Act, is whether there was any property of which the parties were co-owners and that property was being divided by the deed in severally. It is not necessary to recite in the instrument itself that the parties were co-owners of the property which was divided under the deed. In the absence of such a recital it is always open to the Court to find, on proper construction of the terms of the instrument, whether the parties purported to divide the property as co-owners. The expression "co-owners", occurring in Section 2(15) of the Indian Stamp Act, has got a wider connotation and includes all kinds of ownership and is not confined to the strict sense of that term. Parties need not, really, be the co-owners of the property in the eye of law. It would suffice if they purport to be the co-owners of the property and divide or agree to divide it in severally. Courts are concerned only with the legality of the claim set up by one or the other of the parties to the document. The nomenclature given to the document by the parties would not be conclusive for the determination of the nature of the document. Consistently the Madras High Court and this Court have taken the view that the parties to an instrument of partition need not be co-owners in the eye of law and

that, it would suffice to bring the instrument within the definition of an instrument of partition" u/s 2(15) of the Indian Stamp Act if they purport or deal with the property in the document as co-owners.

20. The Allahabad High Court in AIR 1915 All 421 (FB) held that, where each of the two claimants to a property claimed to be the sole and full owner of the property but, in order to avoid litigation agreed to release, in favour of the other a certain portion of it, the document would be a "release deed" and not an "instrument of partition", This decision has not been followed by our High Court in AIR 1958 AP 457.

21. A final order for effecting a partition, passed either by a Revenue authority or by a Civil Court, and an award passed by an arbitrator, also fall within the ambit of the definition of the "instrument of partition." A final order is one which effects a partition of property owned or claimed to be owned by more than one person and allots specific portions in severally to the others. If, by the order of the Court, possession of the property, after effecting a partition, is delivered in accordance therewith, it would, certainly, amount to a final order. An order would not cease to be a "final order" if, by the deed, the properties are divided and allotted to the parties but the possession of the same has to be taken in execution of the decree,

22. In the case before us, although each party claimed to be the full and absolute owner of the entire land, they have purported to divide it as co-owners. The decree on the basis of compromise, passed by this Court, has put an end to the original common ownership and substituted it by ownership of the portions of the property in severally. Specific portions have been allotted to different parties and they have agreed to deliver possession to the respective parties, entitled to such portions under the deed. If possession of the specific property, allotted to each of the parties, is not delivered to the party entitled to it under the deed, he or she is left to seek that remedy through the Court in execution proceedings. These facts do bring the compromise decree within the definition of an "instrument of partition" as defined u/s 2(15) of the Indian Stamp Act. We are not inclined to follow the Full Bench decision of the Allahabad High Court in *Musammatt Jiban Kuar Vs. Govind Das*, . The facts of the present case directly fall within, the ratio laid down by the Division Bench of this Court in *Musammatt Jiban Kuar Vs. Govind Das*, which is binding on us.

23. We may now consider the decision of Kondaiah J. in *Kuncham Gavara Raju Vs. Kuncham Satyanarayana and Others*, . The learned Judge at page 137 of the report (at p. 303 of AIR) observed that:--

"..... .The compromise decree is no doubt a final decree 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 Chidambarani. 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."

With those observations, the learned Judge held that:

".... . 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 these 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 and 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...."

This decision appears to run counter to the decisions of the Madras High Court in (1889) ILR 12 Mad 198 (FB) and (Gurram Pedda) Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others, and the decision of this Court in (Gurram Pedda) Venkatappa Naidu Vs. (Gurram) Musal Naidu and Others, The decision cannot therefore, be accepted as correct.

24. We therefore, hold that the order passed by this Court in the first-appeal allowing it in terms of compromise and allotting item No. 1 to the plaintiff and half of item No. 2 to defendant No. 1 and the other half of it to defendant No. 2, is a final order of a Civil Court effecting partition and comes within the definition of an "instrument of partition" u/s 2(15) of the Indian Stamp Act, The parties to the decree have divided the property in severally, We are only concerned with the interpretation of the terms of the compromise decree and not with the legality of the claims put forward by the parties to the said property, The parties have divided the said property purporting to be the co-owners thereof. It, therefore, follows that the decree passed by this Court, on the basis of compromise, is an "instrument of partition" within the meaning of Section 2(15) and is liable to be drawn up on a non-judicial stamp in accordance with the provision of Section 4, and Article 45 in Schedule I, of the Indian Stamp Act.

25. It is now well settled that, a final decree for partition has no existence as a decree until it is engrossed on a proper non-judicial stamp paper, and till that is done, the suit will be considered as pending; (see Pandivi Satyanandam and Others Vs. Paramkusam Nammayya and Another,)

26. In Board of Revenue v. Moideen AIR 1956 Mad 207 (FB) a Full Bench of the Madras High Court held that, if the parties do not furnish the Court with non-judicial stamp-paper of sufficient value, the Court can certainly refuse to draw up

a final decree and sign it.

27. In *Inturi China Venkatappa Vs. Inturi Peda Venkatappa and Others*, the Madras High Court held that, before a decree for partition could be executed, the holder must pay the stamp duty required by Article 45 of the Stamp Act and have the decree drawn up on non-judicial stamp paper; Raja-mannar, C. J., speaking for the Full Bench of the Madras High Court in AIR 1956 Mad 207 (FR) further" observed that, if the parties choose to take the risk and do not furnish the stamp-papers, the Court has no power to draw up a decree on unstamped paper and sign it,

28. Respectfully following the above Full Bench decision of the Madras High Court, we direct the parties to deposit the requisite Non-Judicial Stamp for the purpose of drawing, up a decree on it. We order accordingly.