

SUPREME COURT OF INDIA

Yellapu Uma Maheswari & Anr.

Vs.

Buddha Jagadheeswararao & Ors.

C.A.No.8441 of 2015

(Ranjan Gogoi and N.V.Ramana, JJ.,)

08.10.2015

JUDGMENT

N.V.Ramana, J.,

1. Leave granted.

2. This Appeal has been preferred aggrieved by the orders passed by the High Court of Judicature of Andhra Pradesh in CRP No. 3419 of 2013, dt. 27/12/2013 wherein and whereby the learned Judge has dismissed the Revision Petition preferred by the Appellants/Defendant Nos. 1 & 2 by confirming the orders passed in O. S No. 10 of 2004, dt. 08/07/2013 on the file of Principal Senior Civil Judge, Anakapalle.

3. The brief facts which are necessary for adjudicating the dispute involved in the present appeal, in nutshell, are as follows.

4. The 1st respondent/plaintiff filed O.S No. 10 of 2004 on the file of Senior Civil Judge Court, Anakapalle against the appellants and others for the relief of partition claiming %th share in Item No. 1, ^ share in Item No. 2 of the suit schedule properties.

5. It is the specific case of the 1st respondent/plaintiff that one Jaggayya, who is the foster father of the plaintiff, had acquired certain properties during his life time and executed a Registered Will dt. 22/05/1964 in a sound and disposing state of mind bequeathing his immovable properties in favour of the plaintiff/respondent and 1st defendant/appellant No.1 by giving life estate in favour of his wife Mahalakshamma, and the said Mahalakshamma died on 20/05/2001, as such plaintiff/respondent No.1 and the defendant Nos.1 & 2/appellants became entitled to the plaint Schedule properties in equal shares. On his demand, when the defendants failed to partition the properties by giving him his legitimate right, he has approached the Court by filling the above suit.

6. The appellants herein (Defendant Nos.1 & 2) resisting the plea of the plaintiff/respondent No.1 filed the written statement that appellant No. 1 being the sister's daughter of

Mahalakshamma and the plaintiff/respondent No. 1 who is the sister's son of late Jaggayya were treated as foster son and daughter as Jaggayya had no issues. In the year 1969 properties were partitioned between the parties. The plaintiff/respondent No. 1, in spite of having his share in the properties, taking advantage of appellant No.1's innocence and helplessness, has taken other properties which are not allotted to him, having no other go she (appellant No.1) kept quiet. According to the defendants/appellants, after the partition they have been enjoying the properties fell to their respective shares. It is their further case that on 05-6-1975 plaintiff/respondent No.1 and the first defendant/appellant No. 1 got executed the Deed of Memorandum of earlier partition. Both the plaintiff/respondent No.1 and the 1st defendant/appellant No.1 were given pattadar passbooks and title deeds in respect of properties fell to their share and in fact, the plaintiff/respondent No.1 has alienated some of his properties. Mahalakshamma in a sound and disposing state of mind executed a Registered Will dated 27/03/1999 bequeathing all the properties in favour of 1st defendant/appellant No.1. Further, Mahalkshamma has given away her life estate in favour of appellant No.1/defendant No.1 and the plaintiff/respondent No.1. Hence, it is pleaded that as properties were already partitioned in the year 1969, the question of again partitioning the properties does not arise and sought for dismissal of the Suit.

7. The appellant No.1/defendant No.1 filed her chief examination affidavit and sought to mark Exhibits B1 to B 48. The plaintiff/respondent No.1 raised objection with regard to admissibility of Exhibits B-21 and B-22. Exhibit B-21, dated 05/06/1975 according to the defendant/appellant is Deed of Memorandum witnessing earlier partition effected between the plaintiff/respondent No.1 and the defendant No.1/appellant No.1. Exhibit B-22 is the Agreement dated 04/06/1975 entered between Late Mahalakshamma, plaintiff/respondent No.1 and the defendant No.1/appellant No.1.

8. The plaintiff/respondent No.1 took objection with regard to admissibility of Exhibits B-21 and B-22 on the ground that whole contents referred to in the Memorandum dated 05/6/1975 discloses that the second party thereto relinquished her right through the said documents. Therefore, the Agreement dated 04/06/1975 and Memorandum dated 05/06/1975 have to be construed as relinquishment deeds. A relinquishment deed which is compulsorily registerable document under Sec 17 (b) of the Registration Act, 1908 and hence, the unregistered document is not admissible in evidence. The plea of the defendants is that the recitals of the said document discloses past transaction with reference to division of property and further it discloses the intention of the parties to enter into a separate agreement for sharing the properties and that the terms therein have to be implemented in future.

9. Both the Trial Court and the High Court upheld the objection raised by the plaintiff/respondent No.1 and came to a conclusion that two recitals i.e. Exhibit B21 and Exhibit B22 are not evidencing the past transaction, but they prima facie disclose the partition of the property and relinquishment of rights by one of the parties. As such, both documents require stamp duty under the Indian Stamp Act, 1899 and registration under the Registration Act, 1908. As Exhibits B21 and B22 are unregistered and unstamped documents, they are not admissible in evidence. The Trial Court gave a specific finding that

even both the exhibits are not admissible for collateral purpose also. Aggrieved by that, the present appeal is filed.

10. We have heard the learned senior counsel for the appellants/defendant Nos.1 & 2 and the learned counsel for the respondents/plaintiff.

11. It is urged by the learned senior counsel Mr. V. V. S. Rao that Exhibits B21 and B22 are admissible in evidence as both the documents evidence the past transaction which does not require any registration and both the Courts below erred in coming to a conclusion that Exts B21 and B22 require registration ignoring the true nature of the documents. It is urged that the amendment that is brought to the Registration Act in 1986, whereby even the past transaction becomes registerable and the same is not applicable to Exhibits B21 and B22. It is further urged by the learned senior Counsel that even assuming that Exhibits B21 and B22 require registration, still the unregistered documents are admissible in evidence for collateral purpose.

12. The learned counsel Mr. G.V.R. Choudary, appearing for the respondents, on the other hand, has submitted that the Courts below were perfectly right in coming to a conclusion that Exhibits B21 and B22 are compulsorily registerable documents and prayed for dismissal of the Suit.

13. Now the issue that falls for consideration is:

“(1) Whether the Courts below were right in holding that Exhibits B21 and B22 are not admissible in evidence as they are compulsorily registerable documents?”

(2) Whether Exhibits B-21 and 22 are admissible in evidence for collateral purpose?”

14. Before we go in to the merits of the matter, we deem it appropriate to extract the relevant provisions of the Registration Act, 1908. Sec. 17 of the Registration Act, 1908 Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Registration Act, 1866, or the Registration Act, 1871, or the Registration Act, 1877, or this Act came or comes into force, namely:—

“(a) Instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

(f) any decree or order or award or a copy thereof passed by a Civil Court on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under section 35 of the Indian Stamp Act, 1899 (2 of 1899), such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; and

(g) agreement of sale of immovable property of the value of one hundred rupee and upwards Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. Section 49 of the Registration Act.1908 Effect of non-registration of documents required to be registered.— No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt; or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.”

15. Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be

registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered u/s 17 of the Act.

16. Coming to the facts on hand, the defendant No.1 wanted to mark Exhibits B21 and B22, according to her, these two documents are Agreement and a Memorandum which were unregistered and unstamped documents and do not require registration. We have seen Exhibits B21 and B22 which are placed before us. Exhibit B22, dated 04/06/1975 as per the recitals, an Agreement between the plaintiff/respondent No.1, defendant No.1/appellant No.1 and late MahaLakshamma. Clause 1 of the Agreement speaks about relinquishment of rights of Mahalakshamma in favour of plaintiff/respondent No. 1 and defendant No.1/appellant No. 1 and Clause 4 specifies that the life estate of Mahalakshamma is devolved upon the plaintiff/respondent No.1 and the defendant No.1/appellant No.1 equally. It is further specified that the stock amount of Rs 50,000/- in the shop was given to Mahalakshamma and left over amount will be divided between plaintiff/respondent No.1 and defendant No.1/appellant No.1 and further it was agreed upon that Mahalakshamma was entitled to reside in the house where she was residing. She was at liberty to reside in the house of the plaintiff/respondent No. 1 and the plaintiff/respondent No.1 and the defendant No.1/appellant No.1 shall not raise any dispute over this. Coming to Exhibit B21, date 05/06/1975 which is an agreement between Mahalakshamma, plaintiff/respondent No.1 and defendant No.1/appellant No.1 wherein at Clauses 4 to 6 the recitals pertain to relinquishment of shares between the parties to the agreement. It is stated in the Memorandum, Ext. B 22, that each of them having partitioned the properties by good and bad qualities, have been enjoying the respective properties that fell to their shares, in proof thereof, the Deed of Memorandum is executed. Taking us through the recitals of these two documents, the learned senior counsel tried to impress upon this Court particularly through the last few lines from Exhibit B-21, that these documents are only evidencing the past transaction of partition that has taken place but through these documents no rights in immovable property have accrued to the parties as envisaged under Sec. 17 of the Registration Act and which makes these documents out of the purview of Section 49 of the Registration Act.

17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of section 17 (i) (b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

18. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy , AIR 1969 A.P (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.

19. Accordingly, Civil Appeal is partly allowed holding that Exhibits B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy.