

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL REVISION PETITION No.476 of 2021

ORDER:

Heard Sri Bankatlal Mandhani, learned counsel for the petitioner. Despite service of notice, none appears for the respondents. Perused the material available on record.

2. The present Civil Revision Petition is filed questioning the validity and legality of the order, dated 09.04.2019, passed by the III Additional District Judge, Warangal in O.S.No.228 of 2013, whereby the trial Court declined to receive the unregistered Award dated 11.06.2010 as evidence on behalf of the plaintiff, on the ground that the same is hit by Section 17 of the Registration Act.

3. The brief factual background which led to filing of the present Revision is that the suit was filed for the relief of partition of the suit properties into five equal shares and to allot one such share to the plaintiff by meets and bounds. The defendants filed their written statement and later, issues were settled for trial and the trial commenced. During the course of trial, plaintiff filed her chief-examination affidavit and intended to mark an unregistered Award dated 11.06.2010 passed by the Arbitrators in respect of partition of the family properties. However, learned counsel for the

defendants opposed to mark the said Award on the ground that it is unregistered and hence, hit by Section 17 of the Registration Act.

4. Learned counsel for the petitioner mainly contended that the trial Court failed to appreciate that the unregistered Arbitral Award could be used for the collateral purpose i.e., to establish the character, nature, identity and location in respect of the subject matter and committed irregularity in declining to receive the said document in evidence on the ground that the said document is hit by Section 17 of the Registration Act inasmuch as it was unregistered and hence, prayed the Court to allow this Revision.

5. To buttress his contentions, learned counsel for the petitioner relied upon the decisions of the Hon'ble Apex Court in ***M. Anasuya Devi v. M. Manik Reddy***¹, ***Bipin Shantilal Panchal v. State of Gujarat & Anr***² and ***Yellapu Uma Maheswari v. Buddha Jagadheeswararao***³.

6. In ***M. Anasuya Devi***'s case (cited supra), the Hon'ble Apex Court held as hereunder:-

“Section 34 of the Arbitration and Conciliation Act, 1996 provides for setting aside of the award on the grounds enumerated therein. It is not in dispute that an

¹ (2003) 8 SCC 565

² 2001 (3) SCC 1

³ (2015) 16 SCC 787

application for setting aside the award would not lie on any other ground, which is not enumerated in Section 34 of the Arbitration and Conciliation Act. The question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Arbitration and Conciliation Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter, the exercise undertaken to decide the said issue by the civil court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act.”

7. In **Bipin Shantilal Panchal’s** case (cited supra), the Hon’ble Apex Court at para 14 of the judgment held as under:-

“Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such

evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)”

8. In **Yellapu Uma Maheswari**'s case (cited supra), the Hon'ble Apex Court at para 13 of the judgment held as under:-

“Section 17(1)(b) of 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 documents that are required to be registered under Section 17 of required to be registered under Section 17 of the Act.”

8.1. It is further held in Para 15 as hereunder:-

“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 Exs.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 registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exs.B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable 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 Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.”

8.2. Further, in para 16 it was held as follows:-

*“Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in **Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy**⁴ 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*

⁴ 1967 SCC OnLine AP 4

and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant 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 Exs.B-21 and B-22 for collateral purpose subject to proof and relevance.”

9. From the aforesaid decisions, it is clear that the Hon’ble Supreme Court held that the document, which is compulsorily registrable, if not registered, is inadmissible in evidence for proving the primary purpose for which it was executed. In a suit for partition, an unregistered document can be relied upon only 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. It was further held that an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Therefore, if a party wants to mark the document for collateral purpose, it is open for it to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark the

said document for collateral purpose subject to proof and relevancy.

10. Thus, the law is well settled that an unregistered document can be admissible in evidence only for collateral purpose, which is other than the primary purpose of execution of the said document.

11. Even as per the proviso to Section 49 of the Registration Act, collateral purpose implies that contents of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction.

12. When the said legal proposition is applied to the instant case, the unregistered Award can be admissible in evidence only for collateral purpose to the extent of establishing the severancy of title, nature of possession of various shares, i.e., in other words to establish the character, nature, identity and location in respect of the subject matter, but not for proving the factum of partition of the suit properties.

13. In the instant case, the trial Court observed that since the Award dated 09.04.2019 is unregistered, it is not admissible in evidence and accordingly, declined to mark the said document.

14. The subject suit was filed by the plaintiff seeking to partition of the suit properties into five equal shares and to allot one such share to the plaintiff by metes and bounds. During the course of trial in the said suit, the plaintiff sought to mark the unregistered Award dated 11.06.2010, under which the Arbitrators have partitioned the movable and immovable properties among the legal heirs of Adluri Krishna Murthy.

15. A purpose would be collateral, if it is other than the one, which the document itself serves. For instance, if the document is an Award regarding partition of the property, any purpose, which is other than the division of the properties, can be treated as collateral.

16. Such being the legal position, the unregistered Award, dated 11.06.2010, can be used for collateral purpose other than that of partition of the suit properties. In other words, the said unregistered document can be used for the collateral purpose to the limited extent of establishing the nature, identity and location of the properties sought to be partitioned.

17. For the foregoing reasons, discussion and the legal position, this Court is of the considered view that the trial Court ought to have received the unregistered Award in evidence for the collateral purpose, instead of declining to receive the unregistered Award dated 11.06.2010 in evidence on the ground that the same is hit by Section 17 of the Registration Act. Therefore, the impugned order is liable to be set aside.

18. Nevertheless, it is to be noted that an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Therefore, if the plaintiff intends to mark the said unregistered Award dated 11.06.2010 for collateral purpose, it is open for her to pay the stamp duty together with penalty and get the document impounded. Upon impounding of the said document, the trial court is at liberty to mark the said document subject to proof and relevancy, only for the collateral purpose of establishing the nature, identity and location of the suit properties sought to be partitioned.

19. Subject to the above observations and directions, this Civil Revision Petition is allowed. The order, dated 09.04.2019, passed

by the III Additional District Judge, Warangal in O.S.No.228 of 2013 is hereby set aside. No costs.

20. Pending miscellaneous applications, if any, shall stand closed.

Date:22.04.2024
dr

JUSTICE LAXMI NARAYANA ALISHETTY