

YELLAPU UMA MAHESWARI & ANR.

A

v.

BUDDHA JAGADHEESWARARAO & ORS.

(Civil Appeal No. 8441 of 2015)

B

OCTOBER 08, 2015

[RANJAN GOGOI AND N.V. RAMANA, JJ.]

Deeds and Documents:

Unregistered documents – Admissibility of – In suit of partition – Defendant introduced Exbt B-21 and Exbt B-22 (Deed of Memorandum witnessing earlier partition and an Agreement respectively) – Both the documents were held by courts below as not admissible – On appeal, held: s.49 of Registration Act imposes a bar on admissibility of an unregistered document which are required to be registered u/s. 17 of the Act – Admissibility of a document is entirely dependent upon the recitals contained in the document – The contents of both the documents exhibited by the defendant show that they were compulsorily registerable documents u/s. 17(i)(b) – Since the documents were not registered, were inadmissible in evidence for proving factum of partition – Registration Act, 1908 – ss.17 and 49.

C

D

E

Unregistered documents – Exhibited in Partition suit – Whether admissible for collateral purpose – Held: 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 primary purpose i.e. division of joint properties by metes and bounds – An unstamped instrument is not admissible, even for collateral purpose, until the same is impounded – Hence, the unregistered documents, in the present case are admissible in evidence for collateral purpose subject to payment of

F

G

H

A *stamp duty, penalty, proof and relevancy – Stamp Act, 1899.*

Partly allowing the appeal, the Court

B HELD: 1.1 Section 17 (1)(b) of the Registration Act,
1908 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
C that are required to be registered u/s 17 of the Act. [Para
15] [858-B]

D 1.2 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
E introduce the document in question. A 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
F 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
G inadmissible in evidence for the purpose of proving the
factum of partition between the parties. Thus, Exhibits
B 21 and B22 are not admissible in evidence for the
purpose of proving primary purpose of partition. [Para
17] [859-D-H]

H

2. 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. Therefore, Exhibits B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy. [Paras 18 and 19] [860-C-E]

*Chinnappa Reddy Gari Muthyala Reddy Vs.
Chinnappa Reddy Gari Vankat Reddy AIR 1969
A.P. (242) – referred to.*

Case Law Reference

AIR 1969 A.P. (242) referred to. Para 18

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8441 of 2015

From the Judgment and Order dated 27.12.2013 of the High Court of Judicature at Andhra Pradesh at Hyderabad in Civil Revision Petition No. 3419 of 2013

V. V. S. Rao, Guntur Prabhakar, Ambati Srinivas, Vijayshree, G. Pramod Kumar for the Appellants.

G. V. R. Choudary, K. Shivraj Choudhuri, A. Chandra Sekhar, P. S. Kumar for the Respondents.

A The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. Leave granted.

B 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/
C 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.

D 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 ¼th
share in Item No. 1, ½ share in Item No. 2 of the suit schedule
properties.

E 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
F 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/
G 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.

H 6. The appellants herein (Defendant Nos.1 & 2) resisting

A
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.

B
C
D
E
F

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

G
H

A 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.

B 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 C 17 (b) of the Registration Act, 1908 and hence, the unregistered document is not admissible in evidence. The plea of the D 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.

E 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 F 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 G 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.

H 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 —

- A (l) 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
- B Registration Act, 1877, or this Act came or comes into force, namely:—
- (a) Instruments of gift of immovable property;
- C (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;
- D (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
- E (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
- F 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;
- G (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
- H 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

A 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.

C 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, A
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 B
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. C

17. It is well settled that the nomenclature given to the
document is not decisive factor but the nature and substance D
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 E
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, F
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 G
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. H

- A 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
- B 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
- C 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
- D 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.
- E 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.

Kalpana K. Tripathy

Appeal partly allowed.