

Dokala Veeramma and Others Vs Dokala Ramayamma and Others

Court: Andhra Pradesh High Court

Date of Decision: June 17, 2002

Citation: (2002) 6 ALT 392 : (2003) 2 RCR(Civil) 385

Hon'ble Judges: G. Bikshapathy, J

Bench: Single Bench

Advocate: V.S.R. Anjaneyulu, for the Appellant; M.V. Durga Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Bikshapathy, J.

The Civil Revision Petition is filed against the Orders passed by the learned Senior Civil Judge, Kovvur in Memo

bearing SR. No. 3871 of 1999 in O.S. No. 144 of 1996, dated 9-7-1999.

2. Petitioners are the Plaintiffs. They filed a suit for declaration of title and perpetual injunction in O.S. No. 144 of 1996. During the course of

evidence, petitioners filed three documents namely registered partition deed dated 1-9-1957, endorsement dated 30-9-1976 on the said partition

deed and another list of partitioned items dated 28-8-1978. The receipt of those documents were objected by the other side. But, however, two

documents were allowed. The third document viz., endorsement dated 30-9-1976 on the partition deed dt. 1-9-1957 was not received in

evidence on the ground that it is a compulsory registrable document and it was rejected for want of stamp duty and registration. The said Order of

the lower court is assailed in this Civil Revision Petition.

3. The learned counsel Mr.V.S.R Anjaneyulu for the petitioners/Plaintiffs strenuously contends that the Order passed by the lower court is illegal

and contrary to the catena of decisions of the Supreme Court and the High Courts on this subject. He submits that it is only a family arrangement

made in pursuance of the earlier division and therefore, it is not compulsorily registrable document. He relies on the decisions reported in Venku

Bai v. Raju Bai (alias) Rajeswaramma 1987(1) ALT 360 MT. Girja Bai v. Sadashiv Dhundiraj AIR 1916 PC 104 Full Bench decision of Jammu

& Kashmir High Court reported in *Bharilal v. Behari Lal* AIR 1972 J & K 114 and *Narender Kumar and Others Vs. Hans Raj and Another*,

4. On the other hand, the learned counsel for the respondents Mr. Durga Prasad, however, submits that the Order of the lower Court cannot be

said as illegal or contrary to law inasmuch as the partition was made in 1957, the question of joint family property would not arise. Even in the

endorsement, it is clear that the property was divided between two sons and Mr. Papaiah, who got certain properties out of the joint family (out of

which) had already gifted away certain properties to his daughter. Therefore, this itself shows that the property is not a joint family property and

hence, it amounts to property acquired through partition held in 1957. Therefore, when once the property which fell to his share is transferred to

Appanna, it amounts to creating rights in favour of Appanna and therefore, it requires registration and such a finding of the lower Court is quite

legal and valid and the same is valid.

5. The issue that involves in the revision is whether the endorsement dated 30-9-1976 made in partition deed dated 1-9-1957 is compulsorily

registrable as required u/s 17 of the Registration Act.

6. It is not in dispute that in a partition deed dated 1-9-1957, the joint family properties were divided between Appanna and Papaiah and it is

revealed that Papaiah was suffering with incurable diseases and therefore, he made endorsement on 30-9-1976 on the partition deed to the effect

that except the property, which is gifted to his daughter, the balance property will be enjoyed absolutely by Appanna on a condition that he shall

maintain his two wives till their life time.

7. The lower Court found that consequent on the partition having been held, the property which fell to the share of Papaiah is absolute property

and therefore, he had relinquished certain properties in favour of Appanna. Therefore, it amounts to creating interest in Appanna and it requires

registration.

8. An identical issue is considered by the Supreme Court in *Kale and Others Vs. Deputy Director of Consolidation and Others*, , after considering

various decisions in Para 10 observed thus:

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form

of the following propositions:

(1) The family settlement must be a bonafide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of

properties between the various members of the family.

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction

should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum

prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making

necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not

fall within the mischief of Section 17(2) (sic) (Section 17(1)(b) ?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the

property, which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement

the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title

must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bonafide disputes, present or possible, which may not involve legal claims are settled by a bonafide family arrangement which is fair and

equitable the family arrangement is final and binding on the parties to the settlement.

9. Therefore, it is to be seen whether the document falls under Clause (4) or Clause (5). The lower Court has held that by virtue of this

endorsement, the interest in the property has been transferred in favour of Appanna and therefore, it is not a case of memorandum of past partition

or family arrangement and hence the endorsement required registration. The view of the lower Court is completely protected and saved by the

judgment of the Supreme Court more especially Clause 4. Therefore I refrain from referring to the decisions cited by the learned counsel for the

petitioner. Even from the recitals of the endorsement itself, it shows that out of the property which fell to the share of Papaiah a part of the property

was already gifted by him in favour of his daughter. That itself shows that the property was not a joint family property and it was divided between

them in pursuance of the partition deed dated 1-9-1957. Therefore, the question of again continuing the joint ownership in the property does not

arise. The very endorsement speaks for itself that the properties were being enjoyed by them individually in pursuance of partition deed dated 1-9-

1957. The lower Court has come to a right conclusion that the interest has been passed on to Mr. Appanna. Therefore, it required registration. I

do not find any ground to come to a different conclusion as endorsement itself in no uncertain terms records that the property was being enjoyed

by them independently and individually in pursuance of the partition deed dated 1-9-1957. Thus, I do not find any ground to interfere in the Order

passed by the lower Court.

10. Accordingly, the Civil Revision Petition is dismissed.

11. The learned counsel for the petitioner, however, submits that though it cannot be received for lack of registration stamps, it could be looked

into for collateral purpose. But, this aspect is left open to be considered by the lower Court at the appropriate time.

12. No costs.