

(2014) 01 AP CK 0120

Andhra Pradesh High Court

Case No: C.R.P. No. 3102 of 2013

Mallipudi Adinarayana
and Another

APPELLANT

Vs

Singuluri Lakshmi and
Others

RESPONDENT

Date of Decision: Jan. 21, 2014

Citation: (2014) 3 ALD 248 : (2014) 3 ALT 747

Hon'ble Judges: Nooty Ramamohana Rao, J

Bench: Single Bench

Advocate: J. Sreenivasa Rao, for the Appellant; Sai Gangadhar Chamarti, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Nooty Ramamohana Rao, J.

This Revision is preferred by the two plaintiffs in O.S. No. 409 of 1998 on the file of the Principal Junior Civil Judge's Court at Tanuku, challenging the order dated 24-04-2013 setting out that the document Ex. B-1 requires no stamp duty. Two civil suits bearing O.S. No. 409 of 1998 and O.S. No. 245 of 1997 were instituted and earlier, a final decision was also rendered therein. The unsuccessful parties carried the matter in Appeal. The Appellate Court remanded the matter back. A common judgment was rendered in A.S. Nos. 20 and 24 of 2006 directing the Trial Court to note the objections raised by the parties and provide an opportunity to both the parties to lead evidence in respect of Ex. B-1, dated 15-09-1986 and then, decide as to whether the said document requires stamp duty and penalty or not. Consequently, the Trial Court has taken up the issue relating to Ex. B-1. The principal question that was engaging the attention was whether Ex. B-1 requires stamp duty and also registration or not.

2. Heard Sri J. Sreenivasa Rao, learned counsel for the petitioners and Sri Sai Gangadhar Chamarty, learned counsel for the contesting respondents.

3. The learned counsel for the petitioners would urge that as per Section 2(15) of the Indian Stamp Act, 1879, an "instrument of partition" is defined in the following words:

2(15). Instrument of partition - "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue authority or any Civil Court and an award by an arbitrator directing a partition.

4. It is contended by Sri Sreenivasa Rao that all instruments of partition are now attracted by this definition and consequently, they are required to be stamped. The learned counsel would further submit that as per Section 35 of the Act, no instrument, which is otherwise chargeable with duty, shall be admitted in evidence for any purpose by any person and hence, Ex. B-1, which is not properly stamped and is not registered, should not have been admitted to evidence at all. Per contra, Sri Sai Gangadhar would submit that Ex. B-1 is a mere "Kararnama" and it is not a partition deed at all for it to be charged to stamp duty.

5. The contents of Ex. B-1, which are in Telugu, have been extracted in para 6 of the order passed by the Trial Court. The recitals of Ex. B-1, dated 15-09-1986 clearly set out that of the three parties to this instrument, the first party, namely Sri Mallipudi Adinarayana, the 1st petitioner in this Revision and also the 1st plaintiff in O.S. No. 409 of 1998 and the sole plaintiff in O.S. No. 245 of 1997, has certain ancestral property, whereas the second party to the instrument, namely Sri Kola Nageswara Rao and the third party, namely Smt. Puvvula Veeramma have acquired separately and independently properties of their own. But however, there appears to be some boundary dispute between Mallipudi Adinarayana Rao and Sri Kola Nageswara Rao. To get that dispute resolved, a civil suit was also filed and it is pending. However, during August, 1986, due to floods, the thatched houses of the parties have collapsed. Therefore, there was an imminent necessity for the parties to reconstruct their respective houses. For achieving this objective, they needed to resolve the existing boundary dispute. Consequently, the parties have sought for the assistance of the village elders and in their presence, their dispute has been amicably settled by demarcating each one's property and duly delineating it clearly. Therefore, the Trial Court arrived at a conclusion that the document Ex. B-1 dated 15-09-1986, is not a partition deed, but it is only a "kararnama" and hence, does not require to be charged to stamp duty. It is this order, which is under challenge.

6. At the very outset, it will also be important to notice the definition of "instrument" as can be found in Section 2(14) of the Indian Stamp Act, which reads as under:

2(14). Instrument. - "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished recorded.

If a document is to be construed as an instrument, such document must create, transfer, limit, extend or extinguish any right or liability. Similarly, if a document is to be construed

as an "instrument of partition", it should be an instrument whereby co-owners of any property divide or agree to divide such property in severalty. Therefore, the first and the foremost requirement is that if the document in question, namely Ex. B-1, does not create, transfer, limit, extend or extinguish any right or liability, it does not answer the description of an "instrument" and similarly, if it is not a document whereby the co-owners of any property divide or agree to divide such a property in severalty amongst themselves, it cannot get attracted to the definition of an "instrument of partition". It was never the case of the plaintiffs that the property is owned jointly by them with the defendants in the suit. On the other hand, the contents of Ex. B-1 dated 15-09-1986, in clear words, spelt out that the property of Sri Adinarayana Rao is an ancestral one, while the adjoining properties of the remaining two parties to the document are their respective self-acquired properties. Therefore, the parties to this document Ex. B-1 are not co-owners at all for the instrument Ex. B-1 to be described as an "instrument of partition" as defined in Section 2(15) of the Act. Similarly, the document Ex. B-1 is neither created afresh, extended nor extinguished any right in any property amongst them for it to be attracted towards the definition of an "instrument" as defined in Section 2(14) of the Act. When once Ex. B-1 does not get attracted by the definitions contained in Sections 2(14) or 2(15) of the Act, the question of bar contained in Section 35 of the Act, does not get attracted. Hence, the Revision is without any merit and accordingly, the same is dismissed at the admission stage, but however, without costs.

Consequently, the miscellaneous petitions, if any, shall stand dismissed.