IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

CIVIL REVISION PETITION No.5019 of 2012

(Through physical mode)

Mettu Hanimi Reddy S/o. Appireddy,
Aged 60 years, agriculture,
R/o. Achanapalli, Bodhan Mandal,
Nizamabad District.

.. Petitioner

versus

Mettu Govindareddy S/o. Appireddy,
Hindu, aged about 69 years, Cultivation,
Peda Makkena (V), Pedakurapadu Mandal,
Guntur District, and others.

.. Respondents

ORAL ORDER

Dt: 28.04.2023

Challenge in this civil revision petition is to the docket order dated 23.07.2012 passed in O.S.No.146 of 2007 by the learned V Additional District & Sessions Judge (FTC), Guntur, whereby the objection raised by the petitioner herein/plaintiff in the suit regarding admissibility of compromise decree dated 21.12.1944 passed in O.S.No.267 of 1944 on the file of District Munsif Court, Guntur, in evidence in the present suit, on the ground that it was not registered, was rejected and the said compromise decree was admitted in evidence.

2. The objection as to the admissibility of compromise decree dated 21.12.1944 in O.S.No.267 of 1944 appears to have been raised on the ground that the said compromise decree comprises property other than that which is the subject matter of the suit, and thus, in terms of Section 17(2)(vi) of the Registration Act, 1908 (for short, 'the Act of 1908'), the said compromise decree is compulsorily registerable and without registration, the said decree is not admissible in evidence and cannot be marked as an exhibit.

3. Mr. P. Girish Kumar, learned Senior Counsel appearing for the petitioner/plaintiff, would draw the attention of this Court to the suit schedule property in O.S.No.267 of 1944 and the compromise decree dated 21.12.1944 passed in the said suit, to point out that some properties, which were not part of the original suit schedule, were included in the compromise decree and, therefore, in terms of Section 17(2)(vi) of the Act of 1908, the compromise decree in O.S.No.267 of 1944 is compulsorily reigsterable and is inadmissible in evidence without registration. He would submit that whether it is a compromise decree for partition or any other decree, the rigour of law as contained in Section 17(2)(vi) of the Act of 1908 would equally apply to all decrees and no exception can be carved out for applying the principle differently. Learned Senior Counsel would refer to the law laid down by the Hon'ble Supreme Court in the decision in **K. Raghunandan v. Ali Hussain Sabir** reported in **(2008) 13 SCC 102** and also the decision

of the erstwhile High Court of A.P. in **G. Sanjeeva Reddy (died) per L.Rs. v. Indukuru Lakshmamma** reported in **2001 (4) ALT 490**, in support of his submissions.

4. *Per contra*, Mr. S. Dilip Jaya Ram, learned counsel for respondent Nos.7 and 11, would submit that in view of the law laid down by the erstwhile High Court of A.P. in **C. Prabbn Rajarao v. Ch. Thirupathamma** reported in **1988 (1) ALT 842**, a family arrangement entered into between the parties and reduced by the Court into a compromise decree is not compulsorily registerable, even if some properties, which are not the subject matter of the suit originally, are included in the compromise decree.

5. Having considered the submissions made by the learned counsel for the parties and on due consideration of the matter, this Court is of the opinion that this civil revision petition must fail for the reasons discussed hereinbelow.

6. It is to be noted that though as per Section 17(2)(vi) of the Act of 1908, a compromise decree passed by a Court is registerable if it comprises immovable property other than that which is the subject matter of the suit, the fact remains that an instrument of partition is never held to be compulsorily registerable.

7. In **Maturi Pullaiah v. Maturi Narasimham** reported in **AIR 1966 SC 1836**, the Hon'ble Supreme Court has dealt with the issue of requirement of registration of family arrangements. The terms of the family arrangement in the said case would speak about respective shares of the family members that would come into effect only in future if and when division takes place and there was neither division in status nor a division by metes and bounds. The Hon'ble Supreme Court has taken note of the observations made in Halsbury's Laws of England, 3rd Edn., Vol. 17 at pp. 215-216, concerning the nature of family arrangements and conditions for their validity, to the effect that family arrangements are governed by principles which are not applicable to dealings between strangers, and that the Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account, and that the matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements. Having considered the issue, it was observed by the Hon'ble Supreme Court that though conflict of legal claims *in praesenti* or in future is generally a condition for the validity of a family arrangement, it is not necessarily so and even *bona fide* disputes, present or possible, which may not involve legal

claims will suffice and that the members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement and that if such an arrangement is entered into *bona fide* and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it. It was held that if the family arrangement did not create any interest in immovable properties *in praesenti*, the same is not registerable, but if it is *in praesenti,* the same is compulsorily registerable.

8. In another decision in **Kale v. Deputy Director of Consolidation** reported in **AIR 1976 SC 807**, the Hon'ble Supreme Court reiterated the earlier view taken that registration of a family arrangement would be necessary only if the said arrangement creates title *in praesenti*, and that if it only records a prior arrangement between the parties, then the same is not compulsorily registerable. Having considered the earlier decisions on the subject, including **Maturi Pullaiah** (supra), it has been observed that the members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement and that even if one of the parties to the settlement has no title but under the arrangement, the other party relinquishes all its claims or title 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 would be upheld and the Courts would find no difficulty in giving assent to the same.

9. It is, thus, clear that a family arrangement or partition is ordinarily not compulsorily registerable if it did not create any interest in immovable properties *in praesenti.* In the case on hand, it is not in dispute that O.S.No.267 of 1944 was between the members of a joint family. The compromise petition presented by both the parties in the said suit would record that there was an earlier partition deed dated 19.06.1934, but according to the defendants, the same was recorded only to overcome family problems and no partition had actually taken place. However, with the intervention of elders and mediators, the parties have now entered into a compromise as per the terms set forth in the compromise petition, duly partitioning A, B and C schedule properties and accordingly, a compromise decree was passed in terms of the said compromise petition. The compromise decree itself records that the suit was for permanent injunction and in the alternative, for partition of 'B' Schedule property into two equal shares and delivery of one such share to the plaintiff; however, compromise was entered into and recorded in respect of A, B and C schedule properties as mentioned in the compromise petition.

10. Thus, it is clear that the members of the joint family, who are parties to O.S.No.267 of 1944, while agreeing to enter into a compromise in the terms set forth in the compromise petition, have consented that the

properties contained in schedules 'A' and 'C', in addition to Schedule 'B', are joint family properties, which are made available for partition by way of a compromise decree. Under the well known principle relating to the concept of joint ownership of the property amongst the members of joint family, each member of the joint family has right, title and interest over each inch of the joint property, unless it is partitioned. It becomes exclusive property of a particular member of the joint family only after the partition is effected by metes and bounds. Therefore, when one member of the joint family consents that a particular part of the joint family property goes to the exclusive share of other member, by entering into compromise to that effect, he merely relinquishes his right, title and interest over that part of the property on the other member, by making it exclusive property of the other member, and does not create a fresh title in favour of that other member. In the instant case also, the parties to O.S.No.267 of 1944, being members of a joint family, entered into a family arrangement, whereunder relinquishment of one's right over a particular part of the joint family property on the other member/co-owner was accepted and no fresh title was created in favour of the parties mentioned therein. In that view of the matter and in the light of the settled principle that the family arrangement needs registration only if it creates any interest in immovable property *in praesenti* in favour of the parties mentioned therein, it can be held that the subject compromise decree passed in O.S.No.267 of 1944, though

comprises property other than the subject matter of the suit, would not be covered within the mischief of Section 17(2)(vi) of the Act of 1908, inasmuch as it was not a case between strangers but was a case where a compromise decree was passed in between the family members.

11. The decision in **K. Raghunandan** (supra), relied upon by the learned Senior Counsel appearing for the petitioner, which states that if a right is created by a compromise decree or is extinguished, it must compulsorily be registered if it comprises immovable property which was not the subject-matter of the suit, is not applicable to the facts of the present case.

12. In view of the above discussion, this Court is not inclined to interfere with the order passed by the learned trial Court rejecting the objection raised by the petitioner as to admissibility of the subject compromise decree in evidence for want of registration.

13. Accordingly, this civil revision petition is dismissed. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

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