R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

WRIT PETITION No.4290 OF 2017 (GM-CPC)

BETWEEN:

Sri.M. Surendra Rao

.. Petitioner

(By Sri. Ajay Prabhu, for Sri.B.S. Sachin, Advocate)

AND:

1. Sri. M. Raveendra Rao

2. Smt. Sarojini Rai @ Rao

3. Smt. Vidya Nayak

4. Smt. Veena Nayak
D/o late M. Pathmaraj Rao

5. M/s. Mukka Sea Food
Industries Pvt.Ltd.,
A company registeed
Under the Companies Act
Having office at 1st floor,
Trinity Complex, M.G. Road,
Attavara, Mangaluru, D.K. Dist.575 001.
Represented by its Chairman,
K. Abdul Razak,

.. Respondents

(By Sri. Pundikai Ishwara Bhat, Advocate for R-1 & R-2;
Sri. Shahbaaz Hussain, Advocate for R-5; R-3 & R-4 - served)

****

This Writ Petition is filed under Article 227 of the Constitution of India, praying to issue a writ of certiorari or order or direction quashing the impugned orders dated 04-11-2016 and 15-11-2016 passed in O.S.No.411/2015 on the

file of the Principal Senior Civil Judge and CJM, Mangalore, Dakshina Kannada as per Annexure A, etc.

This Writ Petition coming on for Preliminary Hearing in 'B' Group, through Physical Hearing/Video Conferencing Hearing, this day, the Court made the following:

O R D E R

In a suit filed by the present petitioner as a plaintiff in O.S.No.411/2015, in the Court of the learned II Additional Senior Civil Judge, Mangaluru, Dakshina Kannada, (hereinafter for brevity referred to as "the Trial Court"), the defendant No.1 (respondent No.1 herein) in his evidence, after some deliberations, got marked a document as Ex.D-3 (Annexure F herein).

2. The present petitioner as a plaintiff therein objected to the marking of the said document, contending that the said document is a compulsorily registerable document, as such, it attracts duty and the registration. The Trial Court after hearing both side, in its order dated 04-11-2016 observed that the said document is only a family agreement and that the ownership rights are not

conveyed. Therefore, by imposing a penalty of ₹1,000/- as ten times of the alleged deficit duty of ₹100/-, the Trial Court proceeded to permit the marking of the said document as Ex.D-3 on the next date of hearing, i.e. on 15-11-2016, however, after recording in the deposition sheet that, without *prejudice* to the rights and interest of the plaintiff and reserving right to him, to address his arguments at the time of main argument in the suit. Aggrieved by the said finding recorded by the Trial Court in its orders dated 04-11-2016 and 15-11-2016, the plaintiff in the Trial Court is before this Court as a petitioner.

3. Heard the arguments from both side.

4. It is the argument of the learned counsel for the petitioner (plaintiff) that, the document in question which is at Annexure F (marked as Ex.D-3 by the Trial Court) is in a sense not of mere reporting of the alleged settlement in the family nor a mere agreement, but it is a Relinquishment Deed, wherein the executant of the said document has

relinquished his right, title and interest in the immovable property in favour of the other party in the agreement, as such, under Section 17 of the Registration Act, 1908, it is a compulsorily registerable document.

In his support, he also relied upon a judgment of the Hon'ble Apex Court in the case of ***K. Amarnath Vs. Smt. Puttamma*** reported in ***ILR 1999 KAR 4634***.

5. Learned counsel for the respondent Nos.1 and 2 in his argument submitted that, the very nomenclature of the document itself would go to show that, it is a family agreement, as such, the concept of relinquishing of any right through the said document does not arise.

He also submitted that, the Trial Court has permitted the marking of the said document as an exhibit, however, reserving liberty to the plaintiff to agitate his contention regarding exhibiting of the said document at the time of the main arguments in the suit. Further, it has also collected the penalty upon the said document.

6. Learned counsel for respondent No.5 submitted that, a reading of the said document at Annexure F would go to show that, it is nothing but a confirmation of the previous settlement that has taken place in the family in the family partition and that the present document which is a family agreement, as such, it neither creates any right, title or interest in favour of any one of the parties nor it intends to create any such thing. However, to get the said arrangements done, a consideration was paid to the executant of the said document.

In his support, he relied upon a judgment of the Hon'ble Apex Court in the case of ***Korukonda Chalapathi Rao and another Vs. Korukonda Annapurna Sampath Kumar*** reported in ***2021 SCC OnLine SC 847***.

7. In ***K. Amarnath's case (supra)*** with respect to admissibility and marking of a document as an Exhibit in a legal proceedings, it was observed that when a document is produced and is sought to be exhibited, the Court should decide whether it is admissible or not, and if it is admitted

in evidence, it should be given an Exhibit Number after marking it, as required under Order XIII, Rule 4 of the CPC, but if it is rejected as inadmissible, an endorsement has to be made as prescribed under Order XIII, Rule 6 of the CPC. It was further observed in the very same judgment in para-9 that, when a document is produced and sought to be exhibited, the Court should decide whether it is admissible or not immediately, so that the parties will know whether such document could be relied upon or not. It further observed in para.10 of the very same judgment that, a duty is cast upon every Judge to examine every document that is sought to be marked in evidence. The nomenclature of the document is not decisive.

8. In ***Korukonda Chalapathi Rao's case (supra)*** wherein also, the marking of a document which is compulsorily registerable was in question, the Hon'ble Apex Court was pleased to observe in para-35 of its judgment as below:

> *"35. If we apply the test as to whether the Khararunama in this case by itself 'affects', i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(1)(a) of the Registration Act."*

It is keeping the above principle laid down in the above judgments in mind, the present case is required to be analysed.

9. Undisputedly, the suit of the plaintiff is one for partition, separate possession and also for rendition of accounts. One of the defence raised by the defendant No.1 in the suit is that, the father of the defendants has settled the suit schedule property in his favour and there was a settlement in the family on 14-03-2008. It is in that

context and to show that the plaintiff has got no claim over the said property which is alleged to be the subject matter of the alleged Settlement Deed, the defendants came up with the document at ExD-3 (Annexure F) which is described as "family agreement" between the two parties. The preamble of the said document reads as below:-

> *"whereas the immovable properties schedule here below hereinafter referred to as 'schedule property' originally belonged to the father of the parties herein (Viz: Rathnkar Rao) and he having settled the same to the Second Party herein absolutely as per Settlement Deed dated 09-03-2004 registered as Document No.5544/2003-2004 in the Office of the Sub-Registrar, Mangalore City, and ……..*
>
> *Whereas… … … … .. .. …*
>
> *… ……the parties herein have executed this family agreement."*

The above recital of the family agreement would go to show as to what necessitated the parties to enter into the so-called "family agreement" dated 14-03-2008 as per Annexure F (Exhibit D-3). However, the active portion of

the alleged "family agreement" which is the crux of the family agreement is very material. The said crux of the matter, after reciting about the passing-of of a consideration of a sum of ₹8,50,000/- from the Second Party to the First Party, the receipt of which, the First Party has acknowledged in the very same Document (family agreement) further recites at paras.3, 4, and 5 as below:

> *"3. The First party declares that the above consideration amount paid herein is full and final settlement of his claim and henceforth the first party shall not have any claim, right, title and interest whatsoever over the schedule property or portions thereof including the building situated therein or any of the assets of the father or family.*
>
> *4. The First party also declares that he is bound by the above settlement deed made by the father in favour of the Second party and he hereby further declares that the settlement deed is valid and binding document the same having been executed by the father while being in a sound disposing state of mind and neither he nor any one claiming under or through him shall have any right over the schedule property or any portions thereof.*

5. The First party declares that in the event of his claiming the right in the schedule property or any of the assets of the father or family or to file any legal proceedings against the second party by challenging the above said settlement deed, the Second party shall be entitled to recover the above said consideration amount of Rs.8,50,000/- (Rupees Eight Lakhs Only) (sic!) with interest at 15% p.a. from the date of this agreement."

A careful reading of the above, more particularly, para-3 of which is extracted above would clearly go to show that, apart from the First Party declaring that the amount received by him under the said "family agreement" is the full and final settlement of his claim also, has declared that he (First Party) shall have no claim, right, title and interest whatsoever in the schedule property. Further, he has also declared that, he is bound by the Settlement Deed and he further declared that in the event of his claiming the right in the schedule property or any of the assets of the father or family or to file any legal proceedings against the Second Party, the said Second Party is entitled to recover the said consideration amount of ₹8,50,000/-. Thus, even though

the said document in its nomenclature is called as a "family agreement", but actually and in fact, the First Party, under the agreement in return for the consideration received by him which is a sum of ₹8,50,000/-, has acknowledged and has declared that, he shall not have any claim, right, title and interest over the schedule property. Thus, he has given away his right, title and interest over the suit schedule property, in return for a valuable consideration in favour of the Second Party to the agreement.

10. Section 17 of the Registration Act, 1908, speaks about the documents that are compulsorily registerable. Section 17(1)(b) mentions that, 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,* are compulsorily registerable. (emphasis supplied)

11. In the instant case, a reading of Annexure F (Exhibit D-3) in its entirety gives the meaning that, apart from the parties to the agreement acknowledging the alleged Settlement Deed dated 09-03-2004, have through the present "family agreement" at Annexure F (Ex.D-3) declared the right of the Second Party to the agreement and it is declared that the First Party would not have any claim, right, title and interest over the schedule property and thus, it has resulted in extinguishing of the rights of the First Party with respect to the schedule property mentioned therein and generation of the rights of the Second Party for a valuable consideration. Therefore, it (Ex.D-3) is compulsorily a registerable document with appropriate stamp duty etc.

12. However, the Trial Court, without looking into these aspects, merely by going into the nomenclature of the said Document has treated this as a mere family arrangement. It is needless to say that mere reserving right to the plaintiff to rake up the point at a later stage

would not by itself entitle for exhibiting the disputed document in evidence and marking it as an exhibit and getting it admitted. As observed in ***K. Amarnath's case (supra)***, if any such disputes arise, it is the duty of the Court which records the evidence to then and there itself (immediately) hear on the objections and to decide it regarding the marking of the Document and its admissibility. Therefore, merely because the Trial Court has observed that the plaintiff therein who objected to the marking of the said document can agitate his objections at a later stage in his arguments on the main suit itself would not entitle the party to produce the said Document and to get it marked as an Exhibit and get it admitted in the evidence. As such, the finding of the Trial Court in its orders dated 04-11-2016 and 15-11-2016 which are impugned in this writ petition since do not sustain, they are required to be quashed.

Accordingly the writ petition stands allowed.

The impugned orders dated 04-11-2016 and 15-11-2016 passed in O.S.No.411/2015 by the learned Principal Senior Civil Judge and Chief Judicial Magistrate, Mangaluru, Dakshina Kannada, vide Annexure A, stands quashed.

Sd/-
JUDGE

BMV*