



A.S.(MD)No.1 of 2020 and Cros.Obj.(MD)No.16 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.08.2023

PRONOUNCED ON:10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.1 of 2020

and

Cros.Obj.(MD)No.16 of 2022

and

C.M.P.(MD)Nos.5285, 5286 and 5287 of 2023

A.S.(MD)No.1 of 2020

R.Pandiyan : Appellant/Plaintiff

Vs.

1.Pappammal

2.Ganesan

3.Ayyappan

4.Chitra

5.Maragathavalli

6.Sasikala

: Respondents/Defendants

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 30.11.2016 made in O.S.No.18 of 2006, on the file of the Additional District Court (Fast Track Court)), Kumbakonam.



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For Appellant : Mr.K.Govindarajan

For Respondents : Mr.S.A.Ajmal Khan
for R.1, R.3 to R.6
: Mr.G.Karnan
for R.2

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1.Pappammal
2.Ayyappan
3.Chitra
4.Maragathavalli
5.Sasikala : Cross Appellants/
Respondents 1, 3 to 6

Vs.

1.R.Pandiyan : 1st Respondent/Appellant
2.Ganesan : 2nd Respondent/2nd Respondent

PRAYER:- Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Judgment and Decree, dated 30.11.2016 made in O.S.No.18 of 2006, on the file of the Additional District Court (Fast Track Court)), Kumbakonam.

For Cross Appellants : Mr.S.A.Ajmal Khan

For Respondents : K.Govindarajan
for R.1
: Mr.G.Karnan
for R.2



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COMMON JUDGMENT

The Appeal Suit and the Cross Objection are directed against the judgment and decree passed in O.S.No.18 of 2006, dated 30.11.2016, on the file of the Additional District Court (Fast Track Court), Kumbakonam.

2. The suit is for partition.

3. Admittedly, the plaintiff and the defendants 2 and 3 are the sons and the defendants 4 to 6 are the daughters of the first defendant and her deceased husband Rajagopal. It is not in dispute that the said Rajagopal is the only son of the deceased Kalimuthu and that “A” schedule suit properties are the ancestral and joint family properties of the said Kalimuthu and Rajagopal. It is also not in dispute that the said Kalimuthu and his wife died before 1956 and that the said Rajagopal died intestate on 23.11.2002.



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4. The case of the plaintiff is that his father Rajagopal purchased “B” schedule properties from and out of the joint family income derived from the joint family properties for the benefit of the joint family in his name as well as in the names of his wife, son and daughter, that “B” schedule properties were treated as joint family properties by the said Rajagopal and his heirs, that “C” schedule properties are the movable properties belonging to Rajagopal, his wife and children, that after the death of Rajagopal, since the first defendant mother began to show aversion to the plaintiff obviously at the instance of her other children, the plaintiff did not want to be in joint possession of the properties and hence, he demanded partition, that there was a panchayat on 24.08.2003 and an attempt was made to effect partition, but the defendants had refused to accept the suggestions made by the panchayathars, that thereafter, the plaintiff has sent a legal notice dated 18.01.2006 demanding partition, but the defendants 1 to 5 have sent a reply notice raising false and untenable allegations, that no family arrangement was ever made and no division of properties were made and that therefore, the plaintiff was constrained to file the above suit claiming 7/24th shares in the suit properties.



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5. Admittedly, the sixth defendant – daughter of the first defendant, sister of the plaintiff and the other defendants, had remained exparte.

6. The defence of the defendants 1 to 5 is that after the death of Rajagopal, Ex.M.L.A. Pappa Subramanian, Thambi Dhanabalan, Mannarkudi Manickavasagam, Inchikollai Kovindarajan, Narayanamangalam Swaminathan and others mediated between all the heirs of Rajagopal and effected a family arrangement on 24.08.2003 in which the properties have been allotted to the sons of Rajagopal and provisions were also made for payment of debts due by Rajagopal and provisions for daughters were all made, that all the mediators have signed in the family panchayat document, that the plaintiff has also signed the said document accepting the family arrangement, that the family arrangement was given effect to and was acted upon, that the plaintiff has been in exclusive possession and enjoyment of the properties allotted to him separately as absolute owner and that therefore, the plaintiff is not entitled to claim partition.



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7. It is the further defence of the defendants that the third item of “A” schedule properties is a thottam and the samathi of Rajagopal is situated in that property, that the defendants are lighting vilakku in samathi daily, that the fourth item in “A” schedule is a Madras terrace building constructed in third item and the same is being used to celebrate the death anniversary function of Rajagopal, that they used to cook food and serve the same to the poor people during the death anniversary of Rajagopal and that therefore, the third and fourth items in “A” schedule properties are kept in common and as such, they are not liable for partition. It is their further case that items 7 to 10 in “B” schedule properties are the self-acquired properties of the second defendant, that items 11 and 12 in “B” schedule are the self-acquired properties of the fourth defendant, that items 13 to 19 in “B” schedule are the self-acquired properties of the first defendant, that items 1 to 6 in “B” schedule are the self-acquired properties of the deceased Rajagopal and that therefore, “B” schedule properties are not liable for partition.

8. It is their further defence that the defendants are not in possession of any of the immovable properties shown in “B” schedule,



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that items 1 and 2 of “C” schedule properties are the imaginary articles and jewels of the plaintiff, that 1.44 acres of land in R.S.No.160/5 purchased in the name of the plaintiff by Rajagopal and the land in R.S.No.223/2 measuring 1.46 acres, which is a leasehold land in the name of the first defendant were allotted to the plaintiff under the family arrangement dated 24.08.2003 and that the plaintiff has wantonly suppressed the above properties and as such, the suit is bad for partial partition.

9. Pending suit, the plaint was amended and the property measuring 1.44 acres of land in R.S.No.160/5 of Kozhiyakudi Village of Kumbakonam Taluk was added as “D” schedule in the suit schedule properties. The learned trial Judge, considering the above pleadings, has framed the following issues and additional issues:

- (1) Whether the suit properties are the joint family properties?
- (2) Whether the family arrangement dated 24.08.2003 is true, valid and is binding on the plaintiff?
- (3) Whether the items 3 and 4 of “A” schedule properties are the joint family properties?
- (4) Whether the above properties are not liable for partition?



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(5) Whether items 7 to 10 of “B” schedule properties are the self-acquired properties of the second defendant?

(6) Whether the items 11 and 12 of “B” schedule properties are the self-acquired properties of the fourth defendant?

(7) Whether the items 13 to 19 of “B” schedule properties are the self-acquired properties of the first defendant?

(8) Whether the items 20 and 21 of “B” schedule properties are not liable for partition?

(9) Whether any provision was made for the marriage of the defendants 2, 3 and 5 at the time of partition?

(10) Whether the suit is hit by the doctrine of partial partition?

(11) Whether the items 1 and 2 of “C” schedule properties are not liable for partition?

(12) Whether the joint family was indebted as stated in paragraph No.19 of the written statement?

(13) Whether the plaintiff is entitled to get 7/24 shares in the suit properties?

(14) To what other relief, the plaintiff is entitled to?



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Additional issues:

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(1) Whether “D” schedule properties are the self-acquired properties of the plaintiff?

(2) Whether the said property is not liable for partition?

10. During trial, the plaintiff has examined himself as P.W.1 and two other witnesses viz., Thiru.Chockkalingam and Thiru.Ramalinga Viswarayar as P.W.2 and P.W.3 respectively and exhibited 52 documents as Exs.A.1 to A.52. The defendants 1 to 5 have examined the second defendant Ganesan as D.W.1 and three other witnesses viz., Thiru.Anbazhagan, Thiru.Govindaraj and Thiru.Chellakannu as D.W.2 to D.W.4 respectively and exhibited 18 documents as Exs.B.1 to B.18. The learned trial Judge, upon considering the evidence both orally and documentary and on hearing both sides, has passed the impugned judgment dated 30.11.2016, holding that the family arrangement dated 24.08.2003 is true and valid and is binding on the plaintiff and hence, the plaintiff is not entitled to claim any partition, dismissed the suit. Aggrieved by the impugned judgment and decree, the plaintiff has preferred the present Appeal Suit.



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11. The learned Counsel for the appellant would submit that Ex.B.1 is an unregistered document through which, the defendants claimed alleged partition between the parties and the said document, being an unregistered document, cannot be looked into and there cannot be a finding based on the unregistered document, that the learned trial Judge has failed to notice that Ex.B.1 document itself was not marked in the trial and the plaintiff's signature alone was marked as Ex.B.1, that the learned trial Judge ought not to have discussed or given a finding with regard to the alleged recitals in Ex.B.1, that the trial Court has come to an erroneous decision that the plaintiff admitted the mediation on 24.08.2003 and as such, Ex.B.1 was correct, that the properties in "A" schedule are fertile lands and income generating properties in the Delta region, that all the "B" schedule properties were purchased only from the income derived from the "A" schedule properties and as such, "B" schedule properties were also to be treated as joint family properties, that the trial Court erred in placing the burden on the plaintiff and on that basis dismissed the suit and that therefore, the judgment and decree passed by the trial Court is liable to be set aside.



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12. The points for determination in the appeal are:

(1) Whether the learned trial Judge erred in giving a finding that the family arrangement dated 24.08.2003 is true, valid and binding on the plaintiff, despite showing the fact that Ex.B.1 family arrangement document was not at all exhibited as evidence, but on the other hand, the plaintiff's signature in Ex.B.1 alone was marked as Ex.B.1 and that Ex.B.1 which is an unstamped and unregistered document, cannot be looked into and no finding can be based on the said document?

(2) Whether the impugned judgment and decree dated 30.11.2016, passed in O.S.No.18 of 2006 is liable to be interfered with?

(3) To what other reliefs, the parties are entitled?

13. Pending appeal, the defendants 1, 4 and 5 have filed the Cross Objection alleging that the first appellant in the Cross Objection is a senior citizen and suffering from her old age problems, that the second appellant is taking care of the first appellant, that the respondents – Pandiyan and Ganesan, who are the sons of the first appellant, had not maintained their mother, that the cross objectors are not able to enjoy the fruits of the properties, due to the pendency of the suit proceedings, that all the parties are entitled to get shares in the suit properties as per the



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Hindu Succession Act, that since the appellant's family is consisting of “7” members, each of them is having 1/7th share and that in order to give quietus to the issues pending between the parties, the Cross Objection came to be filed, that the respondent – Ganesan filed a criminal complaint in Cr.No.328 of 2019 before the Nachiyarkoil Police against the cross objectors and created encumbrances in the suit properties and their family members, that they had discharged a mortgage loan with regard to the property in S.Nos.214/1 and 160/5, that the respondent – Ganeshan attacked the first cross objector on 14.12.2019 and as such, she filed a complaint before the District Collector, Thanjavur and others and there is no cordial relationship between the cross objectors and the respondents and that therefore, the cross objection is to be allowed by setting aside the judgment and decree passed in O.S.No.18 of 2006.

14. The points for consideration in the cross objection are :

- (1) Whether the cross objectors are entitled to take such a stand in the appeal contrary to the defence taken before the trial Court?
- (2) Whether the plaintiff and the defendants 1 to 6 are entitled to get 1/7th share each in all the suit properties?



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15. The cross objectors have filed two applications in C.M.P. (MD)Nos.5285 and 5287 of 2023 under Section 151 C.P.C., seeking orders to include four items of the properties in the appeal as well as in the cross objection respectively.

16. The case of the cross objectors in the affidavits filed in support of the above petitions is that when the appeal was taken up for hearing, they have found that several family properties were not included in the suit schedule properties, that their Counsel on record instructed them to add the missed out family properties in the appeal as well as in the cross objection and thereafter they have filed the necessary applications to include the properties, that the properties are situated at Koliyakkudi Village, Thandalam Village, Thirumalaimaruthur block, Kumbakonam Taluk and that the cross objectors will be put to irreparable loss and hardship, if the properties are not included.

17. The first respondent/plaintiff has filed a counter affidavit raising serious objections that the properties in S.No.223/2 measuring 1.46 acres, now sought to be included in the suit schedule was originally a lease property in the name of Rajagopal obtained from one



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Radhakrishnan, that the legal heirs of the said Radhakrishnan have approached the plaintiff to give back the leased land stating that the plaintiff had been in possession and enjoyment of the said land for more than the agreed period and alternatively suggested the plaintiff to buy the said land at the prevailing market rate, that the said land was purchased in the name of the plaintiff's son namely P.Vignesh vide registered sale deed dated 20.01.2000, that while purchasing the land in S.No.223/2, land measuring an extent of 20 cents in S.No.159/4B was also purchased from the legal heirs of the said Radhakrishnan through same sale deed dated 20.01.2000, that though the petitioners are fully aware of the above aspects, they have chosen to file the above applications to include the properties bought by his son for valid consideration from its title holders with oblique motive to grab the same and that therefore, the said properties purchased by his son Vignesh cannot be treated as family properties and consequently not liable for partition.

18. The second respondent/second defendant has also filed a counter affidavit stating that the cross objectors have not assigned any valid reason for the delay in filing these petitions, that the cross objectors have taken “U” turn and claiming partition totally contradicting the



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written statement already filed in the suit and that therefore, the petitions are liable to be dismissed.

19. The only point for consideration in the above two C.M.Ps is as to whether the properties shown in the petitions are to be included in the main appeal and in the cross objection?

20. Admittedly, the properties sought to be included stand in the name of the plaintiff's son Vignesh and more importantly the said Vignesh is not a party before the trial Court or before this Court. It is the specific case of the cross objectors that the properties shown in the above petitions are also the joint family properties and are liable for partition. But on the other hand, it is the specific stand of the plaintiff that the properties are the self-acquired properties of his son Vignesh and as such, the same are not liable for partition. It is pertinent to note that the second defendant has raised objections for including those properties on the ground that the properties are not the joint family properties.

21. The learned Counsel for the cross objectors would submit that in a suit for partition, an application for amendment at the instance of



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other parties to the suit is maintainable under Order 6 Rule 17 C.P.C., and as such, the above two petitions for adding the properties is legally maintainable and relied on the decision of the Hon'ble Division Bench of this Court in ***Solavaiammal and others Vs. Ezhumalai Goundar and another*** reported in ***2011-5-L.W.859***.

22. No doubt, the Hon'ble Division Bench has specifically observed that in a partition suit, the Court could certainly entertain an application for amendment to include the properties which are left out, but at the same time, if there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on that ground and the relevant passage is extracted hereunder:

“19. However, in an application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on



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that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties. As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.”

23. At this juncture, it is also necessary to refer the judgment of another Hon'ble Division Bench of this Court in ***O.M.Subramanian and others VS. N.Palani (O.S.A.No.46 of 2017, dated 08.08.2017)***, wherein it has been held as follows:

“7. Having heard the learned counsel for the parties and perused record as also the judgement of the Division Bench, we are of the view that, if, there is a contestation with regard to whether or not a particular property is partible, then, even in a partition suit, amendment cannot be ordered at the behest of the opposite party. The rationale of the Division Bench in coming to the conclusion, which it did, stems from the logic that in a partition suit, there is strictly no plaintiff or defendant.”



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24. When an order permitting the amendment of the plaint for inclusion of a property at the instance of the defendant, was challenged before this Court in ***Thomai Vs. Jeyaraj and Others*** reported in **2021(3) MWN 440**, this Court, relying on the decision of the Division Bench of this Court passed in a reference in ***Solavaiammal Vs. Elumalai Gounder*** reported in **2012(1) CTC 159**, has specifically held that in a suit for partition, application for amendments at the instance of either party to the suit is maintainable under Order 6 Rule 7 CPC and it is necessary to refer the relevant paragraphs hereunder;

11.Considering the above, it is very much clear that a party cannot be permitted to amend the pleadings of the opposite party in all categories of suit, except in partition suit. Even in partition suit, if the nature of the property is disputed, then also amendment to include the properties at the instance of the defendant cannot be permitted. To put it in other way, if there is a contestation with regard to whether or not a particular property is partible, then even in a partition suit, amendment cannot be permitted at the bequest of the opposite party.

12.The Honourable Division Bench has further observed that the only course open to the defendant is to file the separate



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suit for partition by including those properties. In addition to the above, one other course is also available and the defendant can very well file his written statement cum counter claim with respect to those properties, but at the same time, subject to the conditions contemplated under Order 8 Rule 6 (A) CPC.

13.In the present case, as already pointed out, the first and third defendant have taken a specific stand that the property sought to be included is the joint family property and whereas according to the plaintiff and the second defendant, it is the separate and self acquired property of the second defendant. No doubt, the second defendant in an attempt to prove that it is the separate property, has produced the documents under Ex.R.1 to Ex.R19.

14.The learned trial Judge, by observing that whether the property sought to be included is the joint family property or the separate property of the second defendant can only be gone into and decided at the trial, allowed the amendments.

15.Considering the settled position of law, above referred, allowing the amendment so as to include some properties at the instance of the defendant, is legally impermissible.”

25. In the present case, as already pointed out, the plaintiff has disputed the nature of the properties and taken a stand that the properties



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are not liable for partition. As per the legal position referred above, the amendment / inclusion of the properties cannot be ordered at all. Hence, this Court has no hesitation to hold that the above petitions are devoid of merits and the same are liable to be dismissed.

Points in Cross Objection:

26. As already pointed out, the defendants 1, 3 to 5 have taken a stand that as per the provisions of Hindu Succession Act, after the death of Rajagopal as intestate, the suit properties devolved on the plaintiff and the defendants and as such, all are entitled to get 1/7th share in the suit properties. According to them, the cross objection came to be filed in order to give quietus to the issues among their family members.

27. It is pertinent to note that when originally the second defendant has filed the written statement mainly contending that there was a family arrangement on 24.08.2003 and the properties were allotted to the sons of Rajagopal and the provisions were made to clear the debts due by Rajagopal and for daughters, the defendants 1, 3 to 5 now the cross-objectors have adopted the written statement filed by the second defendant. No doubt, the plaintiff has disputed the family arrangement



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dated 24.08.2003 alleged by the defendants. After trial, the learned trial Judge has come to a decision that the family arrangement on 24.08.2003 is true, valid and is binding on the plaintiff and on that decision, dismissed the suit. To put it in other way, the trial Court has accepted the defence taken by the defendants 1 to 5 including the cross-objectors, that there was a family arrangement and as such, the plaintiff is not entitled to claim partition any more. But when the defeated plaintiff has preferred the above appeal, challenging the dismissal of the suit, the defendants 1, 3 to 5 have filed the cross objection by raising a case / stand contrary to the defence taken before the trial Court along with the second defendant, which was accepted by the trial Court.

28. The learned Counsel for the cross-objectors would submit that mere filing of the written statement before the trial Court will not curtail the cross-objectors from raising their legal rights as they are entitled to get share as per the Hindu Succession Act and that there is no estoppel against the statute. No doubt, the Full Bench of the Hon'ble Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma and others* reported in **(2020)9 SCC 1** has settled the legal position that a daughter born before the date of enforcement of 2005 amendment Act, has same rights as



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daughter born on or after the amendment and that a daughter who is alive on the date of enforcement of amendment Act, ie., on 09.09.2005 becomes a coparcener irrespective of whether she was born before the said amendment and that the provisions contained in substituted [Section 6](#) of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

29. In the case on hand, as already pointed out, “A” schedule suit properties are the ancestral and joint family properties of the deceased Rajagopal and as such, the daughters, in the absence of any testamentary instrument or partition or family arrangement in their family, are entitled to invoke the provisions of Hindu Succession Amendment Act, 2005 and claim share as that of a male member. But in our case, the defendants have taken a specific stand that there was a family arrangement in the family on 24.08.2003 and the properties were allotted to the sons of Rajagopal and the provisions were made for daughters.

30. Admittedly, the cross objectors have not raised any pleadings for the stand now taken in the cross objection. As rightly contended by



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the learned Counsel for the second defendant, the cross objectors even in their grounds have not even challenged the finding recorded by the trial

Court, that there was a family arrangement and the same was acted upon. As rightly contended by the learned Counsel for the plaintiff as well as the second defendant, since the cross objectors have taken a specific stand before the trial Court and after getting the decision in their favour, they are certainly not entitled to canvass a new case or stand which is contrary to the earlier stand taken and was accepted by the trial Court. To put it in other way, the cross objectors are clearly estopped from raising the present plea that they are entitled to get share invoking the provisions of Hindu Succession Amendment Act, 2005. Without challenging the impugned judgment and decree in the manner known to law, their attempt by way of cross objection to upset the judgment by raising a stand which is totally contrary to the earlier stand, cannot be entertained at all.

31. Considering the above, this Court has no other option, but to hold that the cross objection is legally unsustainable and is liable to be dismissed.



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Points in the Appeal Suit:

32. The plaintiff in the present appeal has mainly challenged the judgment and decree of the trial Court on the ground that the trial Court by relying only on Ex.B.1 the alleged partition document which is unstamped and unregistered document is legally inadmissible and more importantly the said document was not at all exhibited, but the plaintiff's signature alone was marked. No doubt, as rightly pointed out by the learned Counsel for the plaintiff, the family arrangement or partition document dated 24.08.2003 was not at all exhibited as a document, but on the other hand, the plaintiff's signature found in that document alone was marked as Ex.B.1. It is pertinent to note that the plaintiff has specifically admitted that the panchayat was convened on 24.08.2003. The defendants in their reply notice dated 24.01.2006 under Ex.A.33 issued in response to the plaintiff's legal notice and in the written statement, they have specifically named the panchayathars who had taken part in the mediation and according to them, Ex.M.L.A. Pappa Subramanian, Thambi Dhanabalan, Mannarkudi Manickavasagam,



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Inchikollai Kovindarajan, Narayanamangalam Swaminathan and others were present. The plaintiff as P.W.1 in his cross-examination would specifically admit that Ex.M.L.A. Pappa Subramanian, Thambi Dhanabalan, Mannarkudi Manickavasagam, Inchikollai Kovindarajan, Narayanamangalam Swaminathan and some others had participated in the panchayat. P.W.1 would also say that the panchayathars are the persons known to his father and are respectable persons and the relevant portion is extracted hereunder:

“24.8.2003 அன்று பங்களாயத்து நடந்தது என்றால் உண்மைதான். நேத பங்களாயத்தில் முன்னாள் எம்.எல்.ஏ.பாப்பா சுப்பிரமணியன்இ தம்பி தனபாலன்இ குடந்தை கருணாநிதிஇ மன்னார்குடி மாணிக்கவாசகம்இ ஸ்ரீசுமங்கலம் ஸ்ரீகாந்திராஜன்இ நாராயணமட்கலம் சுவாமிநாதன் மற்றும் சிலரும் பங்களாயத்து ஁பசினார்கள். ஁மற்சொன்ன அனைவரும் எனது தந்தைக்கு அறிமுகமானவர்கள். அவர்கள் மரியாதைக்குரியவர்கள். நேத பங்களாயத்தை நான்தான் ஏற்பாடு செய்தன். எந்த எந்த சொத்தை யார் அனுபவிப்பதுஇ கடன் விவரம் பற்றியும் ஁பசப்பட்டது என்றால் சரிதான்.”



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33. But according to the plaintiff, the suggestions made by the panchayathars were not accepted by the defendants and that is why, the panchayat ended in failure. The plaintiff has raised a complaint that before the panchayat, the defendants had taken his signatures in 4, 5 papers and assigned reasons for taking his signatures, which are extracted hereunder:

“பங்ஸாயத்து ஆரம்பிப்பதற்கு முன்பு வெற்று ுப்பபரில் கையெழுத்து ுபாட்டால்தான் பங்ஸாயத்து நடக்கும் என்பதால் நான்கைந்து ுப்பபரில் நான் கையெழுத்து ுபாட்டுள்ளேன். பிரதிவாதிகள்தான் என்னிடம் கையெழுத்து வாட்கினார்கள். பங்ஸாயத்தார்கள் வருவதற்கு முன்பு பிரதிவாதிகள் என்னிடம் கையெழுத்து வாட்கினார்கள்.”

But in the chief examination, he would add

“சோல்ஹ்யானால் 24.8.2003 அன்று பாகப்பிரிவினைக்கு பங்ஸாயத்தார்கள் வைத்து நடவடிக்கை எடுத்த ுபாது 1 முதல் 6 பிரதிவாதிகள் பங்ஸாயத்தார்கள் ுபச்சைக் ுகட்க மறுத்துவிட்டார்கள். அவ்வாறு பங்ஸாயத்து நடத்த முற்பட்ட ுபாது 1 முதல் 6 பிரதிவாதிகள் வெற்றுத் தாள்களில் என்னுடைய கையெழுத்துக்களை பங்ஸாயத்து கூட்ட ுதவையானதென்று சொல்லி பெற்றார்கள். பங்ஸாயத்து ுபசி முடித்து பதிவான பாகப் பத்திரம் எழுதவும் கையெழுத்துக்கள் ுதவை என்று 1 முதல் 6 பிரதிவாதிகள் அவர்களுடைய நண்பர்களையும் அரசியல் சேல்வாக்குள்ளவர்களையும் வைத்து கொண்டு பெற்றுள்ளார்கள்.”



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34. It is pertinent to note that P.W.1, in his cross-examination, would categorically admit that he alone had arranged the panchayat. If that be so, this Court is at loss to understand as to why he had put his signatures in four or five blank papers at the instance of the defendants and that too before the arrival of the panchayathars. More importantly, the plaintiff had admitted his signature found in the alleged family arrangement document and the same alone was exhibited as Ex.B.1.

35. As rightly observed by the learned trial Judge, Ex.B.1 signature finds place in the middle of the first page of the document and when the plaintiff was alleging that he had put his signatures in four or five blank papers, he has not offered any reason or explanation for putting his signatures in the middle of the page. As already pointed out, before the trial Court, except the plaintiff and the sixth defendant who remained exparte, all other legal heirs of the deceased Rajagopal have specifically admitted the panchayat convened on 24.08.2003 and the family arrangement arrived at that time. The defendants have examined two panchayathars as D.W.2 and D.W.3 and both of them have deposed about the panchayat held on 24.08.2003 and the family arrangement arrived



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between the parties. Though D.W.1 to D.W.3 were subjected to cross-examine by the plaintiff's side, their evidence with regard to the family arrangement on 24.08.2003 was not at all shaken and nothing was elicited by the plaintiff's side in their favour.

36. As rightly pointed out by the learned Counsel for the second defendant, when P.W.1 was cross-examined with respect to the alleged family arrangement document, the trial Court has recorded that the plaintiff was admitting his signature found in Ex.B.1 document. (காட்டப்படும் ஆவணம் பி.த.ஆ.1 - ல் உள்ளது என்னுடைய கையெழுத்துதான்). According to the learned Counsel for the second defendant, since the plaintiff has raised objection that the document requires registration, the trial Court has refused to admit the same. But a cursory perusal of document dated 24.08.2008 would reveal that the

same is not in a document format and it is written as a chit or list of the properties given to the sharers. Admittedly, there are no wordings in the said document allotting the properties to the sharers through that document itself. It is settled law that the family arrangement can be made orally. But if a family arrangement is reduced into writing, then it



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must be properly stamped and duly registered and that the family arrangement which is not stamped and unregistered cannot be looked into for any purpose. In the present case, according to the plaintiff, since the defendants are alleging that the family arrangement was reduced into writing, the same being unregistered and unstamped, cannot be looked into and that the finding of the trial Court relying mainly on that document is legally unsustainable.

37. It is pertinent to mention that after the family arrangement, a mere memorandum is prepared for the purpose of record or for information of the Court, such memorandum itself does not create or extinguish any rights in immovable properties and that therefore, the same is not compulsorily registrable. It is necessary to refer the judgment of the Hon'ble Apex Court in *Kale and Ors.v.Deputy Director of Consolidation and Ors.* Reported in *[1976] 3 SCR 202* and the relevant passage is extracted hereunder:

"In Tek Bahadur Bhujil v. Debi Singh Bhujil, , it was pointed out by this Court that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been



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agreed to did not require registration. This Court had observed thus:-

"Family arrangement as such can be arrived at orally, its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.

.....

A Full Bench of the Allahabad High Court in [Ramgopal v. Tulshi Ram](#), AIR 1928 All. 641, 649 has also taken the view that a family arrangement could be oral and if it is followed by a petition in Court containing a reference to the arrangement and if the purpose was merely to inform the Court regarding the arrangement, no registration was necessary. In this connection the full bench adumbrated the following propositions in answering the reference:



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We would, therefore return the reference with a statement of the following general propositions:

With reference to the first question:

(1) A family arrangement can be made orally.

(2) If made orally, there being no document, no question of registration arises. With reference to the second question:

(3) If though it could have been made orally, it was in fact reduced to the form of a 'document' registration when the value is Rs.100 and upwards is necessary.

(4) Whether the terms have been 'reduced to the form of a document' is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.

(5) If the terms were not "reduced to the form of a document" registration was not necessary (even though the value is Rs. 100 or upwards); and, while the writing cannot be used as a piece of evidence for what it may be worth, e.g. as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.



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(6) If the terms were "reduced to the form of a document" and, though the value was Rs.100 or upwards, it was not registered, the absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement embodied in the document.....

Similarly, the Patna High Court in [Awadh Narain Singh v. Narain Mishra](#), pointed out that a compromise petition not embodying any terms of agreement but merely conveying information to the Court that family arrangement had already been arrived at between the parties did not require registration and can be looked into for ascertaining the terms of family arrangement. This is what actually seems to have happened in the present case when the mutation petition was made before the Assistant Commissioner."

38. In the case on hand, the document in question cannot even be considered as a memorandum and it is only a list. In the said document, there are no recitals or clauses nor terms and conditions. Considering the above, the above document is not a document which requires compulsory registration and as such, absolutely there is no bar or prohibition for admitting the said document. But however, the said document was not admitted in evidence and as such, relying the contents of that document



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does not arise at all. But the fact remains that there was a family arrangement on 24.08.2003 and as per that arrangement, the properties were allotted to the sons of Rajagopal.

39. Considering the admission of the plaintiff in his cross examination and the evidence of Panchayathars along with the evidence of the second defendant and the other evidence available on record, the finding of the learned trial Judge that the family arrangement dated 24.08.2003 is true, valid and binding on the plaintiff, cannot be found fault with and this Court is in entire agreement with the findings recorded by the trial Court.

40. As rightly contended by the learned Counsel for the second defendant, the plaintiff by suppressing the family arrangement and by raising false allegations, has filed the present suit and that since the family arrangement dated 24.01.2006 is proved to be true, the claim for partition laid by the plaintiff is legally not maintainable and on that basis, the trial Court has rightly dismissed the suit. Consequently, this Court concludes that the Appeal Suit is devoid of merits and the same is liable



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to be dismissed. Considering the other facts and circumstances and the relationship between the parties, the parties are to be directed to bear their own costs and the above points are answered accordingly.

41. In the result, both the Appeal Suit and the Cross Objection are dismissed and C.M.P.(MD)Nos.5285 and 5287 of 2023 are also dismissed and consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

10.11.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Additional District Court (Fast Track Court)), Kumbakonam.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.1 of 2020
and
Cross Obj.(MD)No.16 of 2022

10.11.2023