

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2016

PRONOUNCED ON : 21.11.2016

CORAM

THE HON'BLE MR.JUSTICE **M.V.MURALIDARAN**

CRP(PD)NO.439 of 2012

and

M.P.No.1 of 2012

Sasikumar

... Petitioner

-Vs-

1.R.Munuamy

2.S.Varatha Ammal

3.Kannammal

4.R.Govarthanan

5.C.Mohan

6.P.Susila

7.K.Ganesh

8.R.Senthilnathan

9.Arasu & Associates

Rep. by

1.R.Arasappan

2.T.S.Krishnamurthy

(Respondents 2 to 9 given up)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order dated 10.12.2011 made in O.S.No.10155 of 2009 passed by VIII Assistant, City Civil Court, Chennai.

Petitioner: Mr.S.Kanniah

Respondents: Mr.C.P.R.Kamarraj (for R1)

R2 to R9 (Given up)

O R D E R

The 8th defendant is the civil revision petitioner before this Court.

2.This civil revision petition has been filed against the Docket order dated 10.12.2011 passed in O.S.No.10155 of 2009, on the file of the VIII Assistant Judge, City Civil Court, Chennai.

3.The case of the plaintiff is that the agricultural land to an extent of 1.51 acres being the Southern portion of the larger extent of land from the extent of 4.5 acres being Survey No.90, Patta No.70, situated in Selavayal Village, Tondiarpet Taluk, Chennai, originally belongs to the plaintiff's grandfather namely Late.Dharman Naicker. The said Dharman Naicker had purchased the said property under a

registered sale deed dated 23.11.1933 from its previous owners Appasamy Grammani, Manicka Grammani and Sahadeva Grammani. The property had purchased by the plaintiff's grandfather Dharma Naicker is an ancestral property of the plaintiff and upon the death of Dharma Naicker on 15.06.1970. From the date of purchase of the property, the plaintiff's grandfather namely Late.Dharma Naicker was in absolute possession and enjoyment of the property from the year 1933 and after his death the plaintiff's father Rangasamy Naicker was inherited. After the death of the said Rangasamy Naicker, the plaintiff is in absolute possession and enjoyment of the property.

4. Being the ancestral property in the case of the plaintiff, the plaintiff has entitled a $\frac{1}{2}$ share by birth and $\frac{1}{4}^{\text{th}}$ share by inheritance from his father, in order to satisfy the sentiments of his mother and his sisters, namely, defendants 1 to 3, the plaintiff was willing to proceed upon the footing that the property belonged to his father Late.Rangasamy Naicker and the same was inherited by the plaintiff, his mother and sisters each are being entitled to an equal share. The plaintiff's mother and sisters were executed separate settlement deed in favour of the plaintiff dated 11.08.1990 gives over their supposed $\frac{1}{4}^{\text{th}}$ share each to the plaintiff by receiving a sum of Rs.30,000/- from

the plaintiff on the said date i.e. 11.08.1990 and obtained the release and settlement deeds from each of them, but the said document are not registered. From that day onwards, the plaintiff is in absolute possession and enjoyment of the entire property to an extent of 1.51 acres.

5. In the above circumstances, in order to make wrongful gain for themselves, defendants 1 and 2 purported to sell an unspecified, undivided extent of 75.5 cents out of the total extent of 1.51 acres of land comprised in Survey No.90, Pata No.70, Selavayal Village to the defendants 4 and 5. In the said sale deeds executed in favour of the defendants 4 and 5 are illegal and invalid and does not in any manner affect the right, title and interest of the plaintiff. In fact, the said sale deed dated 08.01.1993 was not executed without the knowledge of the plaintiff.

6. The plaintiff also further states that challenging the said sale deed, he came to the knowledge of the plaintiff on 02.01.1998, this plaintiff has filed the Civil Suit in O.S.No.4585 of 1999 before the learned City Civil Court, Chennai for declaration declaring that the sale deed dated 08.01.1993 is not valid and the said sale deed is null and

void and also for permanent injunction.

7. Originally the said suit was decreed ex parte, later on it was set aside. Thereafter, this plaintiff has withdrawn the said suit with liberty to file a fresh suit in the same cause of action. The defendants 4 to 10 had attempted to trespass and take possession of the suit property from the plaintiff on 19.10.2009. The plaintiff has lodged a complaint to the police, which has not accepted the complaint of the plaintiff. Therefore, the plaintiff was again has approached the learned VIII Assistant Judge, City Civil Court, Chennai and filed the present suit in O.S.No.10155 of 2009, against the defendants for permanent injunction restraining the defendants 4 to 10 from in any manner interfering with the peaceful possession and enjoyment of the suit schedule of property.

8. On receiving summon in the suit, the defendants were engaged their counsel and filed their written statement.

9. The third defendant by namely Kannammal has filed the written statement stating that the third defendant is one of the legal heir of Late.Rangasamy Naicker along with the defendants 1 and 2 and

the plaintiff. The total extent of 1.51 acres comprised in Survey No.90, Selavayal Village was purchased by the plaintiff's grandfather and after the death of the third defendant's grandfather and her father, on 10.12.1992 by way of execution of partition Kuru Chit the property inherited was divided and the property was allotted to the plaintiff was sold to the 10th defendant, thereafter the 10th defendant developed the property as a residential flats, then the same was sold to other defendants.

10. The third defendant has also come forward by saying that after ending a compromise by the plaintiff with the other defendants, the plaintiff has withdrawn the suit filed by him in O.S.No.4585 of 1999 on 08.12.2004. But in order to grab money from the other defendants, the plaintiff has filed the present frivolous suit and she sought for rejection of the suit summarily in toto. The third defendant also states that originally the plaintiff has approached the third defendant for filing the suit, but the third defendant has opposing the same. Hence, the third defendant has one of the defendant in the suit since the plaintiff has no right to claim the suit schedule of property.

11. The fifth defendant also filed detailed written statement and all the defendants were sought for dismissal of the suit.

12. Later on, after framing issue, the suit has been taken up for the trial. When on 09.04.2011, the suit was posted for marking documents and on that day the defendants 4 to 10 were present and they were objected for marking of item No.2, 3 and 12 of the suit schedule of property since all the documents are unregistered one and hence for maintenance of marking of the documents, the case has been posted for hearing in respect of marking the documents on 25.04.2011. Later on, the trial Court marking the documents and finally the learned counsel for the defendants 4 to 10 were made objections for marking all the documents dated 10.12.1992 since the documents are unregistered and not properly stamped document and D1 to D3 desire right and title under this Koor chit with plaintiff on 10.12.2011. Later sold by various sale deeds to D4 to D10. Therefore, the defendants 4 to 10 were stated that under Koor chit there is transfer of interest to D1 to D3 over immovable property and hence it requires Registration and hit by provisions of Stamp Act, since D4 to D10, who are purchasers from D1 to D3 are claiming title through this document and it cannot be for collateral purpose and

hence, the defendants 4 to 10 were produced the judgment rendered by this Court reported in **2011 (5) CTC 206**.

13.Considering the above objection, the learned Judge passed an order stating that when the defendants 4 to 10 were goes to mark the document dated 10.12.1992, the plaintiff has made objections for marking all documents since it is unregistered and unstamped documents on the ground that the defendants 4 to 10 were purchased from D1 to D3 and claiming the said document dated 10.12.1992 and it cannot be said that it is a collateral purpose and the defendants were also produced the judgment rendered by this Court reported in **2011 (5) CTC 206** and pray the trial Court to accept and mark the said documents dated 10.12.1992. But, the learned Judge refused to mark the documents by saying that the said document is unregistered and it is not admissible in evidence and it cannot be marked. The judgment produced by the defendants is not applicable in the defendants' case. Therefore, challenging the docket order dated 10.12.2011, in O.S.No.10155 of 2009, the present civil revision petition has been filed before this Court, seeking to set aside the docket order dated 10.12.2011, in O.S.No.10155 of 2009, on the file of the VIII Assistant City Civil Court, Chennai and to allow the civil revision petition.

14. Heard Mr.S.Kanniah, learned counsel appearing for the petitioner and Mr.C.P.R.Kamarraj, learned counsel appearing for the first respondent. Respondents 2 to 9 are given up.

15. Admittedly, the Koor chit dated 10.12.1992 is unregistered one. Pursuant to the above Koor chit executed by the plaintiff and the defendants 1 to 3, the defendants 4 to 10 were purchased the said property based on the above document dated 10.12.1992. In fact, the said document dated 10.12.1992 is unregistered one and unstamped. The said document dated 10.12.1992 is a family arrangement between the plaintiff and the defendants 1 to 3 relating to the suit schedule of property belongs to the plaintiff's father. If the said family arrangement in writing with an object of using that writing as proof of what they have arranged and, where the arrangement has been brought about by the document as such, that the document would require registration as it is then that it will be a document of title declaring for future what rights in what properties the parties possess.

16. The petitioner has come forward by saying that the document in question was only a record of the family arrangement and

hence it did not require stamping or registration. An alternative plea has been raised that even assuming that the document requires stamping and registration, the same could be looked into for collateral purpose. But, on the other hand, the respondent / plaintiff stating that since the said document dated 10.12.1992 is a partition deed, in fact it is a family arrangement, the same should be registered. Supporting this case, the petitioner has produced a judgment rendered by this Court in ***Manickam v. Chinnasamy and others 2011 (5) CTC 206***. The said case is not supporting the petitioner. It is clearly states that it is the duty of Court of law to exclude all irrelevant or inadmissible documents, even if no objection has been taken by other side. Parties cannot violate statutory requirements by describing document as a Family Settlement or Arrangement, when in truth, it is a transfer of property. Even this Court rendered that in the above judgment, the trial Court is directed to render its decision as to admissibility and relevancy of Partition Agreement, in accordance with law. Consequent of the case, the respondent / plaintiff has produced a judgment rendered by the Hon'ble Division Bench of this Court in ***A.C.Lakshmipathy and another v. A.M.Chakrapani Reddiar and five others reported in 2001 (1) CTC 212***. The Hon'ble Division Bench of this Court is clearly held that admissibility of unregistered

document relating to undivided properties as evidence in Court. Such document could be received in evidence to establish collateral purpose only and not to establish title. The Hon'ble Division Bench of this Court has also considered that the oral partition or oral family arrangement need not be registered. The documents made to effectuate partition or in respect of any transaction specified in Section 17 should be registered to be admitted in evidence. As per Sections 17 and 49 of Registration Act, 1908, it is stated as follows:

"Registration Act, 1908, Sections 17 and 49 -
Necessity of Registration of Document - Admissibility of unregistered document and meaning of "collateral purposes" - Partition of immovable properties could be done orally - Oral partition or oral family arrangement need not be registered - Documents made to effectuate partition or in respect of any transaction specified in Section 17 should be registered to be admitted in evidence - Rigour imposed by Section 17 would apply even if such transaction is not required to be in writing"

17. As per Section 17, the transaction specified in Section 17

issued by Registrar and the same should be marked as evidence in the case. Section 49 also clearly stated that admissibility of unregistered document relating to undivided properties as evidence in Court, such document could be received in evidence to establish collateral purpose only and not to establish title. Collateral purpose has to be decided according to facts of each case. The Hon'ble Division Bench of this Court stated that if the document is stamped, but not registered could be looked into for collateral purposes. But, in the present case in hand is not stamped, it is also not registered. Therefore, that document could not be marked as evidence of the defendants and the Hon'ble Division Bench of this Court in ***A.C.Lakshmipathy and another v. A.M.Chakrapani Reddiar and five others reported in 2001 (1) CTC 212*** has clearly held as follows:

"38.From the above, we are inclined to hold that the document in question was executed with the intention that the document itself should constitute the sole repository as a document of title. When that is so, inasmuch as the document has not been stamped or registered, it cannot be looked into for any purpose.

39.The next question is whether in view of the fact that the appellant himself produced the document before Court along with the plaint, is it be taken that the appellant cannot object to for the admission of the document, so also to look into the contents of the document. It may be straight away said that the settled legal position is that if acting on the admission of execution, the document is admitted and looked into then it would amount to acting upon the unstamped document which will be violative of Section-35 of Indian Stamp Act. Reference can also be made to the following rulings:-

(i)Raghava Reddi v. Venkata Reddi, 1954 M.L.J. 131; (ii)Madho Rao v. Mukund Ram, AIR 1955 SC 481; (iii)Mallappa v. Naga, AIR 1919 Mad. 833; (iv)Ram Rattan v. Parma Nand, AIR 1946 P.C. 51; (v)Achutaraman v. Jagannadham, AIR 1933 Mad. 117

40.The next question may arise whether the rule of estoppel will apply and that inasmuch as the appellant was a signatory to the document in

question, can it be said that it would be binding on him as it would operate as an estoppel. Such a plea of estoppel can be applied only where the defect in the document is in the nature of formal defect or legal *lacunae*. AIR 1976 SC 807. Say for instance, a case where the document is stamped but not registered. But, however in a case where the document is not even stamped as required under the Indian Stamp Act, the defect cannot be said to be the formal legal defect or merely a *lacuna*, as otherwise, it would go against the very provisions of the Indian Stamp Act."

18. While deciding the above case, the judgment passed by the Hon'ble Division Bench of this Court clearly stated that a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered. The Hon'ble Division Bench of this Court further stated that 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 said 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. If the family arrangement is stamped but not registered, it can be looked into for collateral purposes. Whether the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person cannot claim a right or title to a property under the said document, which is being looked into only for collateral purposes. Therefore, the Hon'ble Division Bench clearly held that the family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in Section-35 of the Indian Stamp Act. Therefore, Section 35 of the Indian Stamp Act stated as follows:-

"Effect of - Unstamped documents -
Documents if required to be stamped but
not so stamped cannot be looked into for
any purpose including collateral purpose"

19. In the above case, the Hon'ble Division Bench of this Court has clearly held that the family arrangement namely the document

dated 10.12.1992, which is not stamped and not registered cannot be looked into for any purpose since it is a specific bar as per Section-35 of the Indian Stamp Act.

20.The document dated 10.12.1992 is a document arranged by the family produced by the plaintiff and the defendants 1 to 3 and pursuant to the defendants 1 to 3 the document executed in favour of the other defendants. Thus being, such family arrangement should be stamped and it should be registered. But, it was not registered and it is also unstamped. Therefore, the order passed by the learned Judge that the said unregistered and unstamped document is not admissibility in evidence and it cannot be marked is correct and there is no necessity arosed for interference by this Court. Accordingly, the same is accepted by this Court and the civil revision petition has to be dismissed.

21.In my considered opinion, the family arrangement can be arrived at orally. The terms in the family arrangement may be recorded in writing as a memorandum of what has been agreed 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 has been agreed upon so that there be no hazy notions about it in the near future. It is only when the parties reduce the family arrangement in writing with an object of using that writing as proof of what they have arranged and, where the arrangement has been brought about by the document as such, that the document would require registration as it is then that it will be a document of title declaring for future what rights in what properties the parties possess. The case in hand though it is stated that it is the document dated 10.12.1992 is a family arrangement, but the other family arrangement may be recorded in writing as a memorandum of what has been agreed between the parties and the same need not be prepared for the purpose of being used as a document on which future title of the parties be founded. Accordingly, pursuant to the above document dated 10.12.1992, the 10th defendant has sold he property based on the other document as a registered document. Therefore, the document dated 10.12.1992 is required for registration only, which is unstamped and unregistered and the said document should not be marked in this case. Therefore, very rejection of the above document by the trial Court is valid and the Civil Revision Petition is liable to be dismissed.

22.In the result, the civil revision petition is dismissed.
Consequently, connected miscellaneous petition is closed. No costs.

21.11.2016

vs

Index:Yes

Internet:Yes

To

The VIII Assistant Judge,
City Civil Court, Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery Order made in
CRP(PD).No.439 of 2012
and
M.P.No.1 of 2012**

21.11.2016

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