IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. PD No.4694 of 2014
and M.P.No.1 of 2014

Ponnusamy ... Petitioner

Vs

Nataraj ... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.10.2014 made in I.A.No.369 of 2014 in O.S.No.31 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.J.Hariharan for
Mr.V.Nicholas

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O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated 29.10.2014 made in I.A.No.369 of 2014 in O.S.No.31 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri.

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2. The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.31 of 2009 on the file of Sub Court, Krishnagiri. The respondent filed the suit for partition and separate possession of half share in the suit property. The petitioner filed written statement in the month of September 2009 and is contesting the said suit. Trial commenced, respondent let in evidence and evidence on his side was closed. When the suit was posted for evidence on the side of the petitioner, the petitioner filed I.A.No.568 of 2012 to condone the delay in filing the additional documents and permission to mark the same as exhibits. The said application was allowed. According to the petitioner, when he produced the documents for marking, the respondent objected to the same. Hence, the petitioner filed I.A.No.104 of 2013 for permission to mark the documents subject to the objection of the respondent, mentioned in I.A.No.568 of 2012, as exhibits on his side. The said I.A. was dismissed by order dated 09.04.2013. Against the said order of dismissal dated 09.04.2013 made in I.A.No.104 of 2013, the petitioner filed CRP No.2531 of 2013 before this Court. However, the same was dismissed by this Court on 10.06.2014 as not pressed by the petitioner.

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3. The petitioner filed I.A.No.369 of 2014 seeking permission to pay necessary stamp duty at concerned Registrar Office to the said unregistered documents to enable him mark the same as exhibits on his side. The respondent filed counter and opposed the said application on the ground that the said documents are partition deeds which requires registration and cannot be validated by paying stamp duty penalty and only certain documents which are permitted in Section 35 of Indian Stamp Act can be validated by paying stamp duty penalty. The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application by order dated 29.10.2014.

4. Against the said order of dismissal dated 29.10.2014 made in I.A.No.369 of 2014 in O.S.No.31 of 2009, the present Civil Revision Petition is filed.

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5. The learned counsel for the petitioner submitted that -

(a) there is no bar for filing application to receive stamp duty with penalty for registration of document which was duly executed.

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(b) Section 17 of Registration Act requires a document to be registered compulsorily but there is no time limit to register such document.

(c) As per Section 49 of Registration Act, a partition between a co-parcener or co-owner can be made orally and it is not required to be in writing. A document which acknowledges or makes an admission as to prior partition is not compulsorily registrable.

(d) As per Section 34 of Indian Stamp Act 1899, an unstamped document can be registered by paying stamp duty with penalty on presentation.

(e) A partition deed can be validated by payment of stamp duty penalty

(f) Trial Court erred in dismissing the application for marking the document.

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(g) The learned Judge ought to have permitted the petitioner to pay stamp duty penalty and mark the document subject to the objection of the respondent. The admissibility of the document can be decided after conclusion of the trial.

6. The learned counsel for the petitioner relied on the judgment reported in ***2008 (4) LW 165 [M.Periyakaruppan & another v. Nachiyappan and another]*** in support of his contention wherein it has been held as follows -

> *3. The Hon'ble Apex Court in the aforesaid decision looked askance at the procedures adopted by the lower Courts in passing final orders adjudicating the admissibility of documents at the time of marking itself and thereby leaving the parties to litigate upto the Hon'ble Apex Court regarding the admissibility. The Hon'ble Apex Court also made it clear that the admissibility or otherwise of the document should not be adjudicated finally. But it should be marked subject to objection and the final adjudication on that aspect should be undertaken along with the main matter. There should not be any peaceful adjudication except relating to stamp duty. In this case, the lower Court was not justified in giving a finding to the effect that for collateral purpose the document could be relied on. Hence, interference of this Court is warranted and such a finding by the lower Court is hereby set aside.*

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7. Per contra, the learned counsel appearing for the respondent submitted that -

(a) the document sought to be marked is unregistered partition deeds and petitioner is seeking to mark the documents to prove his main claim that partition had already been effected and to deny the claim of the respondent.

(b) An unregistered partition deed cannot be relied on for any purpose.

(c) The petitioner has not mentioned the partition deeds now sought to be marked in the written statement and the said documents are fabricated and forged documents. An unregistered document cannot be marked and relied on for main purpose.

(d) The stamp duty and penalty cannot be paid and document cannot be registered when the propounder is not alive. The partition deed is compulsorily registrable and now it cannot be registered by payment of stamp duty penalty.

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(e) As per Section 17 of the Registration Act, the unregistered partition deed cannot be looked into to prove the partition and it is inadmissible in evidence.

8. The learned counsel for the respondent relied on the following judgments in support of his contention -

(1) 2001 (1) MLJ 1 (DB) [A.C.Lakshmipathy and another v.A.M.Chakrapani Reddiar and others]

> *23. It is now fairly well settled that the co-owners can partition the immovable properties orally. But, however where a document is employed to effectuate a partition or any of the transactions specified in Section 17 of the Registration Act such document must be registered, notwithstanding with the transaction is one which the law does not require to be put into writing. Such unregistered document cannot be looked into to prove the terms of the partition. But, however the same if inadmissible in evidence for the purpose of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The expression "collateral purposes" is no doubt a very vague one and the Court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple devise of calling it "collateral purpose", a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if it registered.*

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(2) 1999 (2) CTC 555 [D.Agastin and another v. Devasagayan and another]

6. In the light of the law laid down by the Honourable Judges of this Court in the judgment referred to above, I have no hesitation to hold that the plaintiff had based his claim for the relief asked for in the plaint only on the document dated 5.6.1981 and the said document is not a mere memorandum evidencing the partition already taken place. All the parties to the document have signed in it. There are witnesses to the document and they have also signed. The intention of the parties to the document is very clear that the document itself should constitute the sole repository and only appropriate evidence of the partition and to serve as a document of title. No other contra intention leading to the inference that it is not a partition deed is available. In view of my decision on the construction of the document that it is only a partition deed, under Section 17-B of the Registration Act, it is compulsorily registrable. Consequently the bar created under Section 49(c) of the said Act will operate resulting in the document being inadmissible in evidence. The materials on record do hot disclose that the plaintiff wants to rely upon this document for a collateral purpose. The proviso to Section 49of the Registration Act provides for admission of certain documents which requires compulsory registration for circumstances stated therein. Since no collateral purpose for which the plaintiff wants to rely upon this document, is shown to exist, the question of considering the admissibility of the document in question under the proviso to Section 49 of the Registration Act does not arise. Accordingly this revision is allowed. No costs. The order dated 8.7.1998 in O.S.No. 229 of 1997 on the file of the District Munsif, Nagapattinam, is set aside and consequently the document dated 5.8.1981 is declared to be inadmissible in evidence. Consequently C.M.P.No. 12058 of 1998 is dismissed.

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(3) 2009 (1) CTC 628 [Manoharan v. Rangabashyam and 4 others]

> *9. Under section 17 read with Section 49 of the Registration Act, the document is seen to be a release and Section 17 Clause (1) Sub Clause (c) requires the instrument to be registered and the consequence of non-registration is to bar a person from receiving the document as evidence of any transaction relating to immovable property, except the three exceptions carved out under section 49 of the Registration Act.*

(4) 2009 (3) MLJ 44 [K.Vaithiyanathan v . K.Thirunavukarasu]

> *15. A perusal of the order passed by the trial court on 29.10.2007 will show that the documents come under the category of family arrangement as it is mentioning about the actual partition between the parties and they are not merely a record of the earlier partition between the parties. In such circumstances, the trial court has correctly concluded that it requires registration and stamp duty and therefore, the trial court is right in dismissing the I.A.No.716 of 2007.*

9. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record. The learned counsel for the petitioners as well as respondent elaborately argued the matter and extensively referred to documents filed in the typedset of papers as well as the judgments relied on by them.

10. The issue to be decided in this Civil Revision Petition is

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whether an insufficiently stamped and unregistered document can be marked and relied on by a party after payment of stamp duty penalty.

11. The issue raised in this Civil Revision Petition is no longer res integra. A Division Bench of this Court in the judgment reported in **2001 (1) MLJ 1 (DB)** *cited supra* has considered the scope of Section 17 and 35 of the Registration Act and held that unstamped and unregistered document cannot be looked into for any purpose. The Division Bench has held that family arrangement can be made orally and a subsequent memorandum in writing recording oral family arrangement need not be stamped or registered. If a family arrangement is reduced in writing and if it creates or extinguishes any right, title or interest in any immovable property, it must be properly stamped and duly registered as per Indian Stamp Act and Indian Registration Act. The said document would be a document of title declaring the rights of the parties in specific properties. A family arrangement which is not stamped and registered cannot be relied on for any purpose. The Division Bench of this Court in the judgment reported in **2001 (1) MLJ 1 (DB)** *cited supra,* in Para 41 & 42 has held as follows -

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41. We hold that the document in question is being an unstamped and unregistered, the same cannot be looked into for any purpose. Similarly, oral evidence cannot be let in about the contents of the said document.

42. To sum up the legal position -

(I) A family arrangement can be made orally.

(II) If made orally, there being no document, no question of registration arises.

(III) If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

(IV) 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 of phraseology of the writing and the circumstances in which and the purpose with which it was written.

(V) However, 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.

(VI) 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.

(VII) If the family arrangement is stamped but not registered, it can be looked into for collateral purposes.

(VIII) Whether the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person can not claim a right or title to a property under the said document, which is being looked into only for collateral purposes.

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(IX) A 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.

12. In the decision reported in **2009 (1) CTC 628** ***cited supra,*** this Court, in para 9 has held that as per Section 17 & 49 of the Registration Act, the document which requires to be registered cannot be received in evidence if it is not registered.

13. In the present case, the petitioner is seeking to mark insufficiently stamped and unregistered two partition deeds after payment of stamp duty penalty. The petitioner is seeking to rely on these documents to prove that partition had been effected earlier by father of the petitioner and respondent and specific properties have been allotted to the petitioner and respondent. The respondent has filed the suit for partition. According to the respondent, the suit properties are undivided properties. According to the petitioner, already partition had been effected and petitioner and respondent are allotted specific properties and they are in possession and enjoyment of the respective properties. The purpose for which the petitioner seeks to mark the documents is not for collateral purpose but for main purpose of an earlier partition. A Division Bench of this Court in the judgment referred to above already held that unstamped and

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unregistered document cannot be relied on for any purpose. Further, by payment of stamp duty penalty, the two documents cannot be registered. The contention of the learned counsel for the petitioner that there is no time limit to register a duly executed document is not correct. In view of the Division Bench judgment of this Court referred to above, decision relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. The learned Judge has properly appreciated the facts and law and dismissed the application by giving cogent and valid reasons. There is no circumstances warranting interference by this Court in the order impugned in this revision.

14. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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V.M.VELUMANI, J.

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To

The Subordinate Judge,
Krishnagiri.

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