



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2017
(Reserved on 11.04.2017)

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CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 2338 of 2016
and
CMP (MD) No. 10779 of 2016

1) Emanuvel Joseph Martin
2) William George

... Petitioners/Petitioners/
Defendants 2 & 4

vs.

1) Philominal
2) Roselin Daisy Rani
3) Johnsi Rani

... Respondents/Respondents/
Plaintiffs

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.03.2016 passed in I.A.No.107 of 2016 in O.S.No.135 of 2013 on the file of the III Additional District Judge, Tiruchirappalli.

For Petitioner : Ms.J.Anandhavalli
For R1 : Mr.S.Manikandan

ORDER

The revision petitioners are the 2nd and 4th defendants in the suit filed against them for partition. In the course of the trial, I.A.No.107/2013 was filed by the revision petitioners to receive 24 documents relating to the suit property. The Trial Court partly allowed the application except one document, which is an unregistered partition deed alleged to have been executed pursuant to the oral partition held earlier. Aggrieved by the said order, this revision petition is filed against the disallowed portion.

2.The case of the plaintiff in the suit is that the property belongs to one Edward who got it from his father through a Will. On 16.07.2000, the said Edward died intestate leaving behind the plaintiffs and defendants as his legal heirs. The plaintiffs being the wife and daughters of Edward are entitled for share in the property along with the defendants who are the sons of Edward. In spite of request, the defendants are not ready for amicable partition, hence the suit for partition.



3. In the written statement, the 2nd and 4th defendants have specifically pleaded that after the death of Edward, there was oral partition among the family members and the same has been acted upon by making improvement in their respective shares.

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4. Pending trial, the defendants have filed the application to receive 24 documents to prove their claim which includes the unregistered partition deed, which is the subject matter of this revision petition. The plaintiffs contested the application.

5. After consideration of the rival claim, the Trial Court allowed the application in respect of all other documents like, registered sale deed, tax receipts, photographs and CD of the suit properties, except the unregistered partition agreement dated 12.09.2007, on the ground that it is inadmissible in evidence, in view of the judgment of the High Court **Ramalingam and others -vs- Ramachandran** reported in **2015 (1) LW 137**, which has held that unregistered partition deed cannot be permitted to mark, if it creates and extinguishes the right, title and interest over the immovable properties on the parties to the document on the date of its execution.

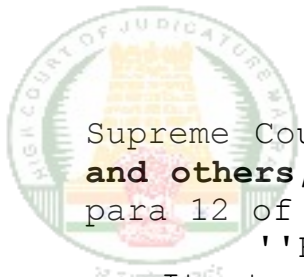
6. Aggrieved by the said order, the present revision petition is filed on the ground that the impugned order is vitiated by material irregularities. The document sought to be marked by the petitioner does not transfer any right in the immovable property on the date of its execution. It is sought to be marked for collateral purpose, such as, severancy of title and possession.

7. In support of the said submission, the learned counsel for the revision petitioner relied upon the judgment of the Hon'ble Supreme Court rendered in **Yellapu Uma Maheswari and another -vs- Buddha Jagadheswara Rao and others** reported in **2016 (2) LW 656**, wherein, the Apex Court has held that, in a suit for partition, an unregistered document can be relied upon for collateral purpose such as severancy of title, nature of possession of various sharers, but not for the primary purpose i.e. division of joint properties by metes and bounds.

8. Further, the learned counsel for the revision petitioner relying upon the judgment cited supra submitted that, the nomenclature given to the document is not a decisive factor, but the nature and substance of the transaction has to be determined with reference to the terms of the document and the admissibility or otherwise depends upon the recitals contain in the document. Therefore, though the subject document titled as "'Deed of Partition Agreement'", it is the outcome of oral partition held earlier and it is only a memorandum of recording the earlier division of property.

<https://hcservices.ecourts.gov.in/hcservices/>

9. To buttress the said submission, the learned counsel for the revision petitioner would rely upon the judgment of the Hon'ble



Supreme Court rendered in **Tek Bahadur Bhujil -vs- Debi Singh Bhujil and others**, reported in **AIR 1966 SC 292**, wherein, the Apex Court in para 12 of its judgment has held as follows:-

"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."

10. Per contra, the learned counsel for the 1st respondent contented that, the document described as 'partition agreement' and sought to be marked, is inadmissible in evidence since 2nd and 3rd plaintiffs who are the daughters of Edward were not parties to the said deed. The recital of the document speaks about the agreement arrived in respect of division of property among the defendants and the first plaintiff. By depriving share in their father's property, the right of 2nd and 3rd plaintiffs is extinguished through this document. Therefore, the document sought to be marked which extinguishes right of the property requires registration under Section 17(1)(b) of the Registration Act. Non registration renders the document inadmissible in evidence under Section 49 of the said Act.

11. Pointing out that the subject document not only unregistered but also not adequately stamped, the learned counsel for the 1st respondent submitted that for the said reason also, the document is inadmissible in evidence even for collateral purpose as per Section 35 of the Indian Stamp Act.

12. The issue regarding admissibility of family arrangement and under what circumstances an unregistered partition deed could be admitted in evidence has been settled by the Hon'ble Supreme Court in **Kale -vs- Deputy Director of Consolidation** reported in **1976 (3) SCC 119**, following the earlier judgment of four Judges Bench of the Supreme Court in **Tek Bahadur Bhujil's** case(cited supra).

13. The propositions put forth by the Supreme Court regarding the binding effect and the essential of family arrangement are as below:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a



document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

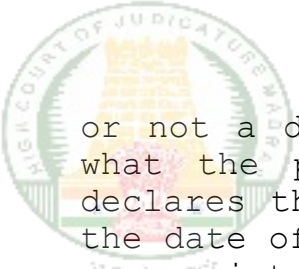
(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.''

14.The above said proposition guides the courts in this country, whether the document called as ''family arrangement'' or ''settlement'' or by whatever the nomenclature which recites division of property among family members requires registration or not, to admit into evidence for collateral purpose.

15.The latest judgment of the supreme court on this subject is **Yellapu Uma Maheswari's** case(cited supra), wherein, the Apex Court has referred the judgment of Andhra Pradesh High Court and has held that unregistered document can be relied upon for collateral purpose but not for primary purpose. An unstamped instrument is not admissible in evidence even for collateral purpose, until same is impounded.

16.In view of the above precedent, when the recital of the subject document is tested, this Court finds that the nomenclature given to the document is ''Partition Agreement Deed''. The recital speaks about the division of property in presenti. Nothing is mentioned in the recital about the earlier division between the parties. Further, not all the members of the family who are otherwise entitled for share in the property, are signatories to the deed. Above all, the first plaintiff who is shown as 5th party in the deed, has not affixed her signature in the last page of the deed.

17.The subject document as it reads is definitely not a memorandum of what had been agreed upon between the parties earlier



or not a document written for the purpose of using it as proof of what the parties arranged. Contrarily, it is a document which declares the respective right of the parties over the property from the date of the document. Such a document requires registration and non-registration renders it inadmissible in evidence.

18. Therefore this Court holds that there is no merit in this Civil Revision Petition, hence it is dismissed. In the result, the order of the Trial Court passed in I.A.No.107/2016 dated 04.03.2016 is confirmed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The III Additional District Judge,
Tiruchirappalli.

+ 1 CC TO M/s.J.ANANTHAVALLI, ADVOCATE IN SR No. 52345

NBI

TE/MR/SAR-II : 25/04/2017 : 5P/3C

Pre-Delivery order made in
CRP(PD) (MD) No.2338 of 2016 and
CMP(MD) No.10779 of 2016
17.04.2017