

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.487 of 2005

Premalal, S/o Mohanlal Chandranahu, aged about 49 years, R/o Village Reda, Tahsil Sarangarh, Distt. Raigarh (C.G.)

(Defendant No.1)
---- Appellant

Versus

1. Smt. Ganga Bai, since deceased & represented through LRs: -
(Plaintiff)

1.1) Chhotelal, S/o Deenbandhu, aged about 35 years, Caste Chandranahu,

1.2) Bharat Lal, S/o Deenbandhu, aged about 33 years, Caste Chandranahu,

NOTE: No.1&2 above are R/o Vill. Bade Gantuli, P.O. Bade Gantuli, Tah. Sarangarh, Distt. Raigarh.

1.3) Smt. Veena, D/o Deenbandhu, W/o Ghanshyam, aged about 30 years, R/o Suatal Post Hardi, Tahsil Sarangarh, Distt. Raigarh (C.G.)

2. Harihar Prasad, S/o Meghnath, aged about 20 years, R/o Uchchbhiti, Tahsil Sarangarh, Distt. Raigarh (C.G.)
3. Hemlal, S/o Manu Sahu, aged about 43 years, R/o Village Reda, Tahsil Sarangarh, Distt. Raigarh (C.G.)
4. Parmeshawar, S/o Jhadu Satnami
5. Ramkumar, S/o Punamchand Mehar,
6. Nilambar Kumar, S/o Punamchand Mehar,
7. Manoj Kumar, S/o Punamchand Mehar,
8. Bodhin, W/o Tikaram Satnami (since dead/deleted)
9. Masram, S/o Tikaram Satnami, aged about 45 years,
10. Trilok Kumar, S/o Tikaram Satnami,
11. Dhaniram, S/o Tikaram Satnami, aged about 42 years,
12. Mani Ram, S/o Tikarama Satnami, aged about 45 years,
13. Chhabilal, S/o Punamchand, aged about 22 years,
14. Mitrabhan, S/o Suklal Mehar, aged about 75 years,
15. Ghasiprasad, S/o Shankar Dhobi, aged about 45 years,

16. Vijay Kumar Chandra, S/o Premlal Chandra, aged about 35 years,

17. Sanjay Kumar Chandra, S/o Premlal Chandra, aged about 30 years,

Srl.No.4 to 17 all R/o Village Reda, Tahsil Sarangarh, Distt. Raigarh
(C.G.)

18. State of Chhattisgarh, through Collector, Distt. Raigarh

(Defendants)

---- Respondents

For Appellant: Mr. R.N. Pusty and Mr. Pallav Mishra, Advocates.

For Respondents No.1.1 to 1.3: -

Mr. Rajkumar Pali, Advocate.

For Respondent No.18 / State: -

Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

11/09/2018

1. Heard on admission.
2. The suit filed by the plaintiff for partition of her $\frac{1}{3}$ share in the suit property against her brother Premlal was decreed by the trial Court holding that she is entitled for $\frac{1}{3}$ share in the suit property of her father Mohanlal and further that the document alleged to have been executed by the plaintiff in favour of defendant No.1 vide Ex.D-1 – ikrarnama / relinquishment deed being compulsory registrable is not registered under the Registration Act and it is of inconsequential and granted the decree. In appeal preferred by the appellant, the judgment and decree of the trial Court has been affirmed by the first appellate Court.
3. Learned counsel for the appellant / defendant No.1 submits that both the Courts below have perversely held that the document Ex.D-1 relinquishment deed / ikrarnama executed by the plaintiff in favour of defendant No.1, is inadmissible in evidence and it does not confer any right or title in favour of defendant No.1 that involves the substantial

question of law.

4. The question for consideration would be, whether the relinquishment deed of share in favour of defendant No.1 is inadmissible in evidence for want of registration as it is compulsorily registrable as held by the two Courts below concurrently?
5. In the matter of Sita Ram Bhamu v. Ramvatar Bhamu¹, the Supreme Court relied upon its earlier decision in the matter of Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others² in which it has been held as under: -

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under [Section 49](#) of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of [Section 17\(1\)\(b\)](#) of the [Registration Act](#) and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.

16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in *Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy*³ has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and

1 AIR 2018 SC 3057

2 (2015) 16 SCC 787

3 1967 SCC OnLine AP 4 : AIR 1969 AP 242

bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.”

6. In the instant case, though the document has been allowed to be marked as Ex.D-1, but it is inadmissible in evidence even for collateral purpose until same is impounded and the plaintiff did not take any steps during the pendency of suit for getting that document (Ex.D-1) impounded. Even otherwise, execution of document Ex.D-1 by the plaintiff in favour of defendant No.1 is also not found established by the trial Court as well as the first appellate Court.
7. In view of the above, I do not find any substantial question of law for the decision of this appeal. The second appeal deserves to be and is accordingly dismissed, *in limine*. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge