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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2018

Delivered on:
30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
And
THE HONOURABLE MR.JUSTICE C.SARAVANAN

A.S.No.278 of 2012

N.Govindarajulu

... Appellant/Defendant

Vs.

N.Mahendran

... Respondent/Plaintiff

PRAYER: Appeal is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 28.10.2011 made in O.S.No.4 of 2011 on the file of the District Court, Nagapattinam in so far as granting a preliminary decree declaring that the respondent/plaintiff is entitled to $\frac{1}{2}$ share in item 4 of suit "A" Schedule and suit "B" and "C" Schedule properties by dismissing the suit to that extent.

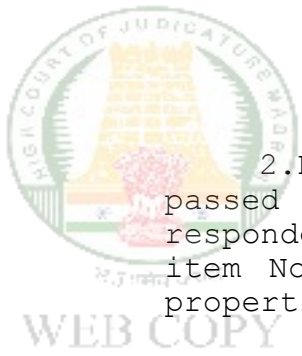
For Appellant : Mr.G.Masilamani, senior counsel for
Mr.T.Sathiyamoorthy

For Respondent : Mr.K.Srinivasan, senior counsel for
Mr.Antony Jesus

JUDGMENT

C.SARAVANAN, J.

The present appeal is directed against the impugned judgement and decree dated 28.10.2011 made in O.S.No.4 /2011 passed by the District Court, Nagapattinam, (hereinafter referred to as the lower Court), partly decreeing the suit by allowing the partition of the suit property in Schedule A, B and C as prayed for by the respondent in the above suit.



2.By the impugned judgement and decree, the lower court has passed preliminary decree of partition holding that the respondent was entitled for a preliminary decree of partition of item Nos.1 and 4-10 of 'A' Schedule and "B" and "C" schedule properties equally with the appellant.

3.The respondent filed O.S.No.4 of 2011 to partition Schedule A, B and C properties against the appellant.

4.The appellant is the elder brother of the respondent. The sisters of the respondent and appellant executed a release deed by Ex.A.2 on 07.06.1970. The respondent and the appellant lived together as a joint family after the demise of their father and mother and after their sisters were married.

5. For the sake of clarity, the parties shall be referred to as respondent and the appellant.

6.Schedule "A" property consists of 10 properties in respect of which there is no dispute and the appellant has not questioned the judgement and decree of the District Court in this appeal except to the extent that item Nos.2 and 3 which have already been sold jointly by the respondent and appellant while the property in serial number 4 does not exist in the portion of the common property for partition.

7.Schedule B property is an agricultural land measuring to an extent of 1.18 acres of land which was leased to their father late Shri.G.Narayanaswamy during his life time by the Subramanya Swamy Temple, Dharmapuram, Adhinium.

8.Schedule "C" property consists of land and houses. The land was settled in favour of the appellant and respondent's father late Shri.G.Narayanaswamy Naidu by his brother-in-law R.Ramanuja Naidu by a registered Settlement Deed dated 03.06.1979. The said property consist of two storey building on 10265 sq.ft + 625 sq.ft. of land in T.S.No 48/1 in T.S. No. 49 respectively.

9.The respondent has accepted the appellant's submission as far as Schedule-A property is concerned and therefore, the



judgment and decree of the lower court to that extent it allows the partition between the parties thereto by metes and grounds to the extent of 50% of all the properties in schedule 'A' except properties in Sl.Nos.2, 3 and 4 are upheld.

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10.The dispute in the present appeal is therefore confined to Schedule B and Schedule C properties.

11.In this appeal, the appellant has questioned the preliminary decree ordering partition of the Schedule B and C property.

12.By Ex.A3-legal notice dated 28.01.2011, the respondent demanded the appellant to partition the Schedule 'A' property.

13.By reply vide Ex.A.10/Ex.B.22 dated 22.02.2011 to Ex.A.3 legal notice dated 28.1.2011, the Appellant did not agree for partition.

14.In Ex.A.10/Ex.D.22, reply legal notice dated 22.02.2011, the appellant alluded to existence of Schedule B and C properties which gave rise to the above suit though the notice was issued for partition of Schedule A property alone.

15.The respondent proceeded to file O.S.No.41 of 2011 on 01.03.2011 for partition of the Schedule A, B and C properties without adverting to Ex.A10/Ex.D22, reply legal notice dated 22.02.2011.

16.It was pleaded and accepted by the parties hereto that the respective families lived together as a joint family with the common kitchen.

17.This has been specifically, admitted in Ex.A.10/Ex.D.22 reply legal notice dated 22.02.2011 of the appellant in response to Ex.A3-legal notice dated 28.01.2011 issued by the respondent.



18. In Ex.A.10/Ex.D.22 reply legal notice dated 22.02.2011, the appellant stated that the respondent had executed a document relinquishing his rights over the Schedule B and C property in return for the favours extended by the appellant to celebrate the respondent's daughter Sowindira Priya's wedding in the year 1999.

19. Ex.A.10/Ex.D.22 reply dated 22.02.2011 stated that the appellant had raised a sum of Rs.8 lakhs from his wife's relative and by pledging jewels for conducting the respondent's daughter Sowindira Priya's marriage and therefore to settle the loan taken, the appellant was forced to sell the 6 acres of land held in his wife's name situated at a Adyamangalam and that as a gesture of gratitude the respondent not agreed only to give up rights over the Schedule B property but also schedule 'C' property in favour of appellant and his sons.

20. However, reply notice vide Ex.A.10/Ex.B.22 did not give the date of the Ex.B-21 dated 29.10.2000 though it gave the particulars and stated as follows:-

"for which your client executed a document"

21. According to the appellant, the respondent executed as unregistered release deed dated 29.10.2000 vide Ex.D.21 and therefore, the Lower Court committed error in decreeing the suit for partition Schedule B and C property despite the respondent relinquishing his rights over them.

22. Ex.A.10/Ex.B.22- reply legal notice dated 22.02.2011 issued on behalf of the appellant also highlighted the relationship between the parties. It is extracted as under:-

"It is not true that our client has developed animosity with your client. Your client never demanded any division of property and hence no occasion was arisen for the refusal of division of the property of our client. Since the properties belong to the family are in common enjoyment and possession, demanding division of property would not at all arise. Property is detailed in notice under reply are not correct. 4th item is only 283 5 ft² and not 28358 sq.fts. The first, second and fifth item and also property in T.S.No.32 of the properties described in the notice under reply were already sold by your our client and our client to 3rd parties through registered sale deed. Other items of properties are in joint possession of your client as well as our client.



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Both your client as well as our client have been residing in a joint family having one kitchen till 2008. Your clients wife left the family and went to her daughter's house at Thanjavur in the year 2008. Thereafter, your client continued to reside with our client till Pongal 2011. Our client stated that your client being our clients brother never because the notice to our client. Our client understands that outsiders are responsible for the notice under reply. Your client always obeys the words of our client. Our client also consults everything regarding the family affairs with your client. "

23. In the above background, the Court framed the following issues:-

(i) Whether the respondent is entitled for partition as prayed for?

(ii) Whether the items 2 and 3 in the schedule properties were already sold by the Respondent and not available for partition?

(iii) Whether the 'B' and 'C' schedule properties were not given to the appellant towards the loan obtained for the marriage of respondent's daughter?

(iv) To what relief?

24. Of the 4 issues framed by the lower court, the surviving issue for consideration in this appeal is issue No. (i), (iii) and the consequential issue No. (iv) quash Schedule B and C property which the lower court has allowed in favour of the respondent in the impugned judgment and decree, which has been questioned in this appeal by the appellant.

25. The lower court has found fault with the evidence adduced by the appellant in the form of Exhibit B-21 dated 29.10.2000. The lower court has concluded that the aforesaid document allegedly signed by the respondent, purporting to relinquish the rights over Schedule B and Schedule C is neither a registered document nor forms part of the reply in Ex.A-10/B-22 nor the written statement except for an oblique reference without any particulars and appears to be an after thought.

26. The lower Court has observed that where the execution of a document is not pleaded in the written statement, no oral



evidence can be looked into with regard to the same. The lower court further held as follows:

"Even assuming that the above documents came into existence, on careful perusal of Ex.B.21, the recitals in the document clearly shows the immediate transfer of the right in favour of the defendant. The interest in the immovable property stated to have been relinquished by the plaintiff in the presenti. Therefore, this document affecting the right of the immoveable property in the presenti cannot be looked into for any other purpose without registration as in contemplated under Section 17 of the Indian Registration Act. This document is not registered one. Further, perusal of the document, the recital in the documents have been written to accommodate the writings before the signature of the plaintiff. "

27.The lower court has observed that the recitals in the documents have been written to accommodate the writing before the signature of the respondent.

28.Heard Mr.G.Masilamani, learned senior counsel for the appellant and Mr. K.Srinivasan, learned senior counsel on behalf of the Respondent.

29.Learned senior counsel for the appellant relied on the following cases:-

- i) Senthathikalai Pandiy Chinnthambiar V s Varaguna Rama Pandidiya Chinnthambi 1953 SCC Online Mad 171: (1953) 66 LW 671 : (1953) 2 Mad LJ 387
- ii) Kale and Others vs. Deputy Director of Consolidation and Others). (1976) 3 SCC 119

30.Learned senior counsel Mr.G.Masilamani submits that the basis on which the impugned preliminary judgement and decree has been passed is incorrect in as much as in Para- 6 of the written statement filed by the appellant refers to Ex.B.21 dated 29.10.2000 wherein it is specifically averred that the respondent had given up his right over the Schedule "B" and Schedule "C" properties in favour of the appellant and appellant's sons Gopalakrishnan and Saravanan. Para-6 of the written statement reads as under:-



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" 6. Since the Plaintiff has already given his right over the "B" and "C" schedule properties to the Defendant and the Defendant's son on 29.10.2000, the Plaintiff has no right over the "B" and "C" schedule properties and hence the Plaintiff claim for partition over the "B" and "C" schedule properties is not sustainable."

31.Learned Senior counsel for the appellant would therefore submit that lower court committed a grave error in not considering Ex.B.21 by holding that the merely because the appellant's sons were residing in the property itself cannot be a ground to conclude that the house itself was put up by them out of their income.

32.According to him, the recital in Ex.A 21 shows that the statement was made by the respondent recording the family arrangement where under respondent returned the favour to the appellant by relinquishing his rights over the "B" and "C" schedule properties for the expenses incurred in connection with the marriage of respondent's daughter in 1999.

33.It was further submitted that Ex.B.21 is a release deed recording the family arrangement and does not involve transfer of property and therefore was not required to be registered.

34.In this connection, reliance was placed on the decision of the Division Bench of this Court in Senthathkalai Pandiya Chinnathambiar and others versus Varunga Rama Pandia Chinnathambiar and another 1953 SCC Online Mad 171: (1953) 66 LW 671 wherein it was held that where one member of the family walked out of the property renouncing relinquishing his interest, the only effect is to reduce the number of coparceners which entitled the other coparceners an increase in the share in coparcenary property.

35.It was submitted that in law, renunciation/ relinquishment in such a case does not transfer any right by one co-parcener to the others but is a mere extinguishment of his interest. The other co-parceners does not by this process acquire a new title by virtue of a transfer.



36.It was further submitted that Ex.B.21 does not require registration as it is the family arrangement as per the decision of the Honourable Supreme Court in Kale Vs Deputy Director of Consolidation (1976) 3 SCC 119.

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37.Learned senior counsel for the appellant further submitted that at the time of cross examination the respondent himself admitted that the appellant conducted the marriage for respondent respondent's daughter and therefore assets in Exs.B13 to 16 had to be sold for the debt incurred for the marriage of the respondent-appellant's daughter.

38.Learned senior counsel for the appellant further submitted that the respondent has admitted during the cross examination that the house property in schedule-C was constructed by appellant and his sons and that the planning permission was also obtained only in the name of the appellant in the year 1986 and therefore, there is no question of it being partitioned even otherwise.

39.It was further submitted that the respondent did not have money to construct the house and it is only the appellant and his sons who earned money who were in a position to construct the dwelling house on the schedule-C property to the plaint.

40.In Kanhailal v. Brij Lal and Anr AIR 1918 PC 70 , the privy Council observed that the High Court further erred in not considering the fact that even if the family arrangement was not registered it could be used for a collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement and for the purpose of applying the rule of estoppel which followed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement.

41.In Shyam Sunder and others v. Siya Ram and another it was clearly held by the Allahabad High Court that the compromise could have been taken into consideration as a piece of evidence even if it was not registered or for that matter as an evidence of an antecedent title. The High Court observed as follows:

"a.The decision in Ram Gopal v. TulshiRam,-



AIR 1928 All. 641 (FB)-is clear that such a recital can be relied upon as a piece of evidence.

b.It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence."

42.Therefore, it was submitted though family arrangements are not required to be registered, relinquishment of title/rights over the property need not be mandatorily registered.

43.Per contra, the learned senior counsel for the respondent submitted that the execution of release deed vide Ex.B.21 dated 29.10.2000 was never in contemplation and the fact that only sketchy details came to be mentioned in Ex.A10/Ex.B.22 and the written statement clearly shows it has been fabricated.

44.Learned senior counsel for the respondent relied on the following cases:-

(i)Yellapu Uma Maheswari and another vs. Buddha Jagadheeswara Rao and Others(2015) 16 SCC 787;

(ii)Thulasi and 9 Others vs. Jagannathan and 2 Others1998 1 LW 633;

(iii)PeriathambiGoundan vs. The District Revenue Officer Coimbatore and Ors.93 Law Weekly 169.

(iv)Vijayalakshmi and other vs. Pushparani and 4 Others2011 (2) MWN (Civil) 711.

45.Learned counsel further submits that even if Ex.B.21 was signed it is not registered and therefore cannot be relied upon for the purpose of partition except for collateral purpose.

46.The learned Senior counsel Mr.Srinivasan for the respondent referred to the decision of the Honble Supreme Court in Yellapu Uma Maheshware Vs Buddha Jagadheeswara Rao (2015) 16 SCC 787, wherein it was held that such documents required registration.



47.The learned Counsel submitted that jurisdiction of the civil court is not ousted under the provisions of T.N. Agricultural Land Record and Tenancy Rights Act, 1960 as per the decision of the Court in Thulasi and 9 Others vs. Jagannathan and 2 Others 1998 1 LW 633.

48.The decision in Periathambi Goundan vs. The District Revenue Officer Coimbatore and Ors. 93 Law Weekly 169 was relied to state that the jurisdiction of the civil courts were not ousted under the said Act and therefore the suit was within the jurisdiction of the Court.

49.The decision in Vijayalakshmi and other vs. Pushparani and 4 Others 2011 (2) MWN (Civil) 71 was relied upon to state that that the Courts have right to entertain suits for partition of possessory rights over immovable property and therefore the suit was properly entertained and the Schedule B property was property partitioned by the preliminary decree.

50.We have given our anxious consideration to the facts of the case. After going through the evidence on record it is noticed that the entire case hinges on the validity of Ex.B.21 dated 29.10.2000 as per which the respondent is supposed to have relinquished his rights over Schedule B and C properties in favour of the appellant and his son.

51.Ex.B.21 dated 29.10.2000 was not specifically referred to in the reply to legal notice Ex.A.10/ Ex.B.22 dated 22.02.2011 though the content of it has been stated in the same.

52.However, though Ex.B.21 has been referred to in the written statement in an oblique manner and that the respondent had agreed to give up his right over the Schedule Property -B in favour of the appellant and Schedule-C Property in favour of the appellant and his son. However, Ex.B.21 dated 29.10.2000 was also not filed along with the written statement.

53.Ex.B.21 dated 29.10.2000 is said to have witnessed by none other than Appellant's brother-in-law, who is an interested witness. However, he was also not produced as a witness. However, only the scribe who is alleged to have drafted Ex.B.21



Courts which laid down that a document which is in the nature of a memorandum of an earlier family arrangement and which is filed before the court for its information for mutation of names is not compulsorily registrable and therefore can be used in evidence of the family arrangement and is final and binding on the parties.

60. Whereas, in the present case, the alleged family arrangement by way of relinquishment of the rights over the property vide Ex.B.21 is not in a compromise decree but in a document dated 29.10.2000 which has been introduced only at the time of examination in chief of the appellant's (defendant's evidence).

61. Further, the defence of the Appellant is fraught with contradictions and therefore the theory put forward before the lower court has been rightly disbelieved though on the strength of Section 17 and Section 49 of the Registration Act.

62. If there was any intention to sever the common possession way back in 2000, question of both parties exercising common possession till 2008 or till 2011 as admitted during oral evidence did not arise as has been claimed in Ex A.10/B.22 dated 22.02.2011.

63. It has been admitted by the Appellant in Ex.A.10/B.22 dated 22.02.2011 that Your client never demanded any division of property and hence no occasion has arisen for refusal of division of property of our client. Since the properties belong to the family and are in common enjoyment and joint possession, demanding division of property would not arise at all.

64. In the said reply, the Appellant has further stated that both your client as well as our client have been residing in a joint family having one kitchen till 2008. However, only in the penultimate paragraph, it was alleged execution of the document in an oblique manner without any particulars. Towards the end again the Appellant has stated that, "If your client really wants to make a division of the properties, our client is always ready for the same except the properties already sold."



65. We find that on one hand, the appellant has stated that the Respondent and the appellant's family lived together and there was common possession till 2008/2011 with common enjoyment in Ex A.10/B.22 and therefore there was no question of division and at the same time referred to execution of Deed of Relinquishment vide Ex.B.21 dated 29.10.2000 in Ex.A.10/B.22 in the written statement. These positions are diametrically opposite and contradict each other.

66. That apart in Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787, the Court 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."

67. In Chinnappareddigari Pedamutyal Reddy vs. Chinnappareddigari Venkata Reddy, AIR 1969 AP 242, it was held as follows:

"52. In the view we have taken the unregistered partition deed comprised in Exs. B. 18 and B 19 and the other counter part (which was not produced) though inadmissible in evidence for want of registration, can be looked in of or establishing severance in status. The next question for consideration is whether oral evidence is inadmissible by reason of Sec. 91 of the Evidence Act to prove even



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the fact of partition. It was argued on the strength of *Rama Rathnam v. Paramand* (14 AIR 1946 PC 51) that notwithstanding the rejection of the partition deed as inadmissible in evidence, other evidence may be admissible to prove the details of partition. In that case the plaintiff had sued for partition but the defence was that the parties having separated previously, the plaintiff cannot maintain the suit on the basis that the properties were still joint. The two unstamped and unregistered memoranda which were produced were held inadmissible in evidence for any purpose. As such oral evidence was looked into for deciding the most important question whether partition had been effected before the institution of the suit in December 1939. Their Lordships found that a physical division of much of the joint property in February 1939, was established and accordingly, dismissed the suit except as regards the lands which the defendant admitted to be joint. In *Koyatti v. Imbichi Koya* (AIR 1946 Madras 534) in view of the above decision of the Privy Council, a doubt was expressed by Somavva J., as to whether the Full Bench decision in *Rammayya v. Achamma* (Supra) requires reconsideration. This doubt of Somavva, J., was not shared by Patanjali Sastri, J. delivering the Judgment of a Division Bench in *Subbu Naidu v. Varadarajulunaidu* (AIR 1948 Madras 26). It was pointed out by Patanjali Sastry, J., that the Full Bench was dealing with a suit for ejectment and recovery of possession of specific properties where the plaintiff could succeed only by proving her title. The partition deed whereby those properties had been allotted to her deceased husband's share having been held to be inadmissible for want of registration, she sought to prove such allotment by other evidence. In other words she sought to prove the terms of the partition by means of other evidence. This the Full Bench held she should not do, having regard to Sec. 91 of the Evidence Act. Patanjali Sastri, J., pointed out.

"..... the oral evidence considered by their Lordships was in support of the plea that there having been a previous partition the suit in the present form, i.e. framed as one for partition does not lie. In other words their Lordships considered the oral evidence to find out whether the fact of a partition prior to the suit was established. The discussion of the evidence also shows that



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they were considering it only from that point of view. As Section 91 of the Evidence Act excludes oral evidence only in proof of the terms and not of its existence as a fact of a contract, grant or other disposition of property no reference was made to that section in the judgment nor to the Full Bench decision which related to its applicability."

53. The Full Bench of this Court in K. Kanna Reddy's case (Supra) also took the view that oral evidence is admissible to prove the factum of partition, though it was not admissible to prove the terms of the partition. It is however unnecessary to consider this question in the view we have taken that the partition deed itself is admissible to prove the severance in status and in view of the severance in state, the suit for partition on the footing that the property is still joint family property is not maintainable, and will have to be dismissed accordingly. This however does not preclude, if it is open to the plaintiff from filing a fresh suit for partition of the property as a co-owner nor does it prevent the widow viz., the 3rd defendant from filing a suit for her maintenance."

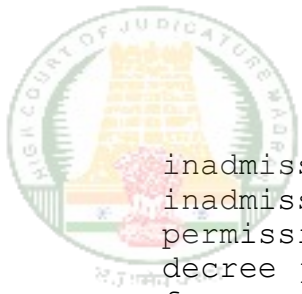
68. It will be useful to refer following the judgments on the subjects:

(i) In A. Manika Mudaliar Vs Murugesu Mudaliar 2012-2 L.W.28, it was held that unregistered documents cannot be relied upon except for collateral purpose. It cannot be used for the purpose of proving passing of consideration which is not a collateral purpose.

(ii) S. Lakshmanan Vs. S. Palani 2012(1) Law Weekly 469 wherein it was held that an unregistered/unstamped document cannot be looked into for any purpose and neither oral evidence can be let in regarding its content.

(iii) In Lakshmi pathi Vs A.M. Chakrapani Reddiar, 2001 (1) LW257 it was held that "By the simple device calling it collateral purpose, a party cannot use the unregistered document to bring about in direct effect.

(iv) In Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806] it was observed that if a document is



inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It was also held if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose. In *Rai Chand Jain v. Chandra Kanta Khosla* [(1991) 1 SCC 422 : AIR 1991 SC 744] the above view was reiterated.

(v) *K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd.*, (2008) 8 SCC 564, the Court summarized the principles laid down in the various decisions of in the context of Section 49 of the Registration Act as follows:-.

- "1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

(vi) *T. Bhaskar Rao v. T. Gabriel* [AIR 1981 AP 175] it was held as follows:

- "5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso (a) to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute



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whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (a) to Section 35 are complied with. It follows that if the requirements of proviso (a) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence."

It was further held as follows:-

"7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

69.The ratio laid down in the above cases applies to the four corners of the facts of the present case. Therefore, neither Ex.B21 dated 29.10.2000 nor its content can be looked into for the purpose of Section 49 of the Registration Act.

70.As far as schedule B property is concerned, it is noticed that entries have been made as early as 1989 before the Tahsildar pursuant to an enquiry.

71.Needless, to say, after the death of their father, changes in the records had to be affected and therefore on 11.7.1989 in the proceeding before the Tahsildar the name of the appellant was entered without any objection and the parties continued to enjoy joint possession.

72.The respondent has merely consented that the appellant's name be entered as he was his brother and therefore he had no objection for substituting the name of his father with that of the appellant.

73.Thus, admittedly, there was no question of them exercising independent right over it when both the parties were living together even as per the admission in Ex.A10/B.22.



74. Therefore, mere consent to allow the name of the elder brother i.e. appellant to be recorded in the revenue records cannot mean that the respondent had given up his rights in 1989.

75. In fact, if there was relinquishment of the rights in the schedule C property, there was no necessity for execution of Ex.B21 on 29.10.2000. Both reply to legal notice dated 20.2.2011 vide Ex.A-10/B-22 and in the written statement it has been clearly mentioned that both the families were living together till 2008 as a joint family with one kitchen and there was no division till then.

76. Ex.B.17 merely records the name of the person cultivating the land for the purpose of the said Act. Rights if any arising out of the tenancy under the aforesaid Act is available to both the parties and therefore any alteration under the records has to be under the provisions of the aforesaid enactment.

77. The fact that both the parties have been cultivating the said land itself shows, both were equally entitled to the rights therein and for the purpose of record alone name of the appellant was entered in the register.

78. During the cross examination also it was admitted that the respondent continued to live with the appellant till 2011 after the respondent's wife left in 2008 and that the respondent always obeyed the appellant. It has also been admitted that agriculture was the source of income for both the parties jointly.

79. Appellant being the elder brother exercised control over the respondent which explains why the signature was possibly obtained for execution of Ex.B.21 purporting to relinquish the rights over Schedule B and C property. However, we cannot look into its content as it is neither registered nor properly stamped.

80. Further, in Ex.A-10/B 22 dated 22.2.2011, it has been clearly mentioned that respondent always obeys with the words of the appellant and that there was no division in 1989.



81. Insofar as, Schedule B property is concerned which is nothing but a leasehold rights in the property under the provisions of the Tamil Nadu Agricultural Land Record Of Tenancy Rights Act, 1960's concerned, the respondent has a right to alter the entries for changing the name of the appellant partially to his name as admittedly both the parties have carried on agricultural activity and have earned their livelihood from the agricultural income partly from the aforesaid property. Respondent may approach the concerned authorities for claiming the rights therein. Therefore, entry made in 1989 cannot be used against the respondent.

82. In Thulasi vs. Jagannathan and Other 1998 1 L.W 633 it was held that joint family can hold leasehold properties also as joint family properties.

83. The decision in Senthathikalai Pandiya Chinnathambiar and another case referred to supra to support in support of the proposition that Schedule B and C property are coparcenary property and therefore where is relinquishment there is no necessity to register relinquishment and the stock other coparcener merely increases with relinquishment is not apposite to the facts of the case as we are not concerned with coparcenary property. A property, according to Hindu Law, are divided into two classes, viz. joint family property and separate property.

84. Joint family property are divided according to the source from which it comes from:-

(i) ancestral property; and

(ii) separate property of coparceners thrown into common coparcenary stock."

85. In this case, it was never pleaded that there was a coparcenary property. In fact, if the property was a coparcenary property, the question of relinquishing the rights of the property by the respondent would not have arisen to the exclusion of the others by the respondent.

86. In Satyaprema Manjunath Gowda v. Controller of Estate Duty, Karnataka [1997 (10) S.C.C. 684], the Hon'ble Supreme Court explained the concepts of coparcenary, survivorship and



Hindu Undivided Family. Their lordships observed as follows:-

"1.The Hindu joint family is purely a creature of law and it cannot be created by act of parties.

2.The joint family status being the result of birth, possession of joint family property is only an adjunct of the joint family and is not necessary for its constitution.

3.The Hon'ble Court held that the co-parcenary is a narrower body than a joint family and consists of only those persons who have taken, by birth, an interest in the property of the holder, for the time being and who can enforce partition whenever they like. It commences with the ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees.

4.Hindu Undivided Family is a concept and coparcenary is not one and the same under Hindu law. But, for the purpose of taxation under the Act, as in other tax measures like the Income Tax Act, they are treated as one and the same. The primary meaning of the word "surviving" is to live beyond the life or extent of or to outlive; but it also has a secondary meaning, viz. to live after."

5.After considering the expression 'survivorship', their lordships held that the word 'survivor' usually applies to the longest life of two or more persons and trustees and has been applied, in some cases, to the longest liver and joint tenants or legatees and to others having a joint interest in the property. It was further held that the shares in a coparcenary property change with the death or birth of other coparceners. However, in the case of survivorship, it is not the same incidence.

87.In Rohit Chauhan v. Surinder Singh, (2013) 9 SCC 419, the Court held as follows:

"In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male



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members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

88. Further, argument that the building in Schedule C property was built with the earning of appellant and his sons appears to improbable as the family lived together even as per the admission of the appellant till 2008/2011.

89. The lower court has rightly held that Ex.B.3 (actually Ex.B.21) came to be created at a later point of time to non-suit the respondent and that the said document cannot be given any importance and cannot be looked into for any other purpose for want of registration payment of stamp duty except for imposing penalty.

90. The lower court has rightly held that it cannot be given any importance for any purpose for want of registration.

91. In our view, the lower Court has correctly held that Ex.B. 21 cannot be looked into for the purpose of ascertaining alleged relinquishment of title over the rights of Schedule B and C property.

92. We are of the opinion that there cannot be any relief on the strength of the alleged relinquishment of property in Schedule-B & C on the strength of Ex.B.21 in favour of either the appellant or his sons by the respondent for want of registration in the light of the decision of the Court in Yellapu Uma Maheswari v. Buddha Jagadheeswararao.

93. Thus, the impugned judgement and decree of the lower court as far as, Schedule "A" property is upheld and therefore the respondent is entitled to 50% of the share in these



properties except to the properties in Serial Nos. 2 and 3 which have already been sold by respective parties and Serial No.4 which does not belong to their family.

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94.The judgement and decree of the lower court as far as, Schedule "B" and "C" are upheld and therefore the preliminary decree of the lower court is upheld to that extent. Consequently, the appeal filed by the appellant is liable to be dismissed.

95.The above appeal is dismissed with the above observation. No cost.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Arul

To

1.The District Judge, Nagapattinam.

2.The Section Officer,
V.R.Section, High Court, Madras. 600 104.

+1 cc to Mr.T.Sathiyamoorthy, Advocate Sr.No.82175

+1 cc to Mr.J.Antony Jesus, Advocate Sr.No.82353

JUDGMENT made in
A.S.No.278 of 2012

EV(CO)
CSL/01.02.2019