



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.06.2018

Pronounced on : 30.07.2018

CORAM

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

C.R.P. (MD) (PD) No. 2196 of 2017

and

CMP (MD) No. 10775 of 2017

1.V.Radha
2.Raji
3.Manju
4.A.Murugananthan .. Petitioners/Petitioners/ Defendants 4 to 7

vs.

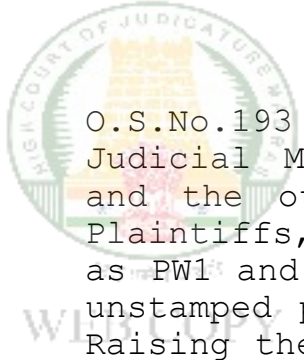
1.T.Rajeswari
2.M.Padmavathy
3.A.Gurunathan
4.Sivakami Sundari
5.S.Seethalakshmi
6.Agastiyaraj ... Respondents 1 to 6/Respondents 1 to 6
/Plaintiffs
7.Pitchaiya Thever
8.Arunachalam
9.Iyyappan
10.A.Pattamuthu .. Respondents 7 to 10/Respondents 7 to 10
Defendants 1 to 3 & 8

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.43 of 2017 in O.S.No.193 of 2012, on the file of the District Munsif-cum-Chief Judicial Magistrate Court, Cheranmahadevi, dated 08.09.2017.

For Petitioners : Mr.M.Thirunavukkarasu

For Respondents : Mr.J.Parekh Kumar (for R1 to R6)
R7 to R10 - Dismissed

O R D E R



O.S.No.193 of 2012 on the file of the learned District Munsif-cum-Judicial Magistrate Court, Cheranmahadevi. The Petitioners herein and the other defendants are contesting the Suit. On behalf of Plaintiffs, one Mahalingam, the husband of 2nd plaintiff was examined as PW1 and marked several documents, including two unregistered and unstamped photo copy of documents dated 08.01.1944 and 12.02.1955. Raising the plea that those documents are inadmissible in evidence, the Petitioners herein have filed the petition in I.A.No.43 of 2017 to eschew the above documents marked as Exhibits-A7 and A9. The Plaintiffs/Respondents 1 to 6 herein contested the same saying that the documents once marked, with or without objection the same cannot be eschewed, but the validity to be decided only on full trial. The trial Court also accepting the case of plaintiffs dismissed the petition with a finding that the admissibility of document can be decided only after recording the evidence and after trial. The said order is challenged in this revision.

2.The learned counsel for the Petitioner heavily contended that despite their objection with regard to an unstamped and unregistered document, the Court below marked the same. He further submitted that the suit is one for declaration and injunction, based upon the above unstamped and unregistered documents, as such it cannot be treated as the documents were marked for collateral purpose. He relied upon the judgement of the Hon'ble Supreme Court in Avinash Kumar Chauhan -versus- Vijay Krishna Mishra for the proposition that even for collateral purpose the unregistered and unstamped document is not admissible evidence. He also relied upon the judgement of High Court of Andhra Pradesh in Pariti Suryakanthamma and antoher -versus- Saripalli Srinivasa Rao and another for the above proposition.

3.Per contra, the learned counsel for the Respondents 1 to 6 submitted that once the document was marked without any objection, later the objection cannot be made and as such the present petition to eschew the documents is not maintainable and the trial Court has rightly found the same which does not warrant any interference.

4.I heard Mr.M.Thirunavukkarasu, learned counsel appearing for the petitioners and Mr.J.Parekh Kumar, learned counsel appearing for the respondents 1 to 6 and perused the entire materials available on record.

5.Before going into the issue of admissibility of document, this Court has to consider that whether the petition to eschew the document can be maintained when the document was marked without objection.

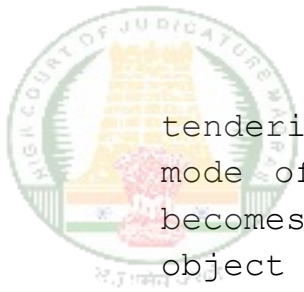
6.In the Present case according to the petitioners, the documents were marked with objection and the counter affidavit filed by Respondent 1 to 6 herein disputes the same, while taking a plea that even if objection is raised, the petition to eschew the document is not maintainable. The Law is well settled by Hon'ble



Supreme Court in (i) R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P.Temple reported in 2003 (8) SCC 752, wherein it is held as follows:-

"19. Order 13 Rule 4 CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialled by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras¹ in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party



tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior Court.

(ii) This Hon'ble Court also in Arulsingamani and another - versus- S.Vaiguntharajan and another case reported 2000 (1) CTC 12, held in Para 19 and 21 as follows :-

"19. From the above decisions it is clear that a document though marked without objection is against any provisions of law, party is not later precluded from contending that the evidence will have to be eschewed from the case.

21. In view of my finding that the document itself is in admissible in evidence, merely because it is not objected while marking will not preclude petitioner subsequently to contend that Ex.A.1 is liable to be eschewed from evidence, and the same shall not be looked into for any purpose."

Therefore, applying the above position of law, there is no doubt that if a document, which is inadmissible in evidence was marked without any objection, when the marking of document is against the provision of law, the parties are not precluded from filing the petition to eschew the documents. Hence the contention of Learned Counsel for respondent is not having any force and not approved by law. Therefore this Court confirms that the petition final to eschew the documents is maintainable.

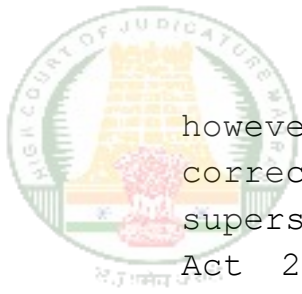


7. That apart, the contention of petitioner herein that the documents are unstamped and unregistered and are not admissible in evidence is to be considered on the reading of the recitals of documents and the purpose for which it was produced and marked also to be considered.

8. The Plaintiff has categorically made a plea that under the partition deed in Exhibit-A7 dated 02.01.1941 the properties were partitioned between the co-owners and later on under Exhibit-A9, the partition document dated 12.02.1955, another partition was effected, within the family members and there after the plaintiffs are enjoying the properties as absolute owner and prayed for declaration and injunction. The above pleadings and the prayer makes it very clear that those documents are relied upon for proving absolute right and title after partition between co-owners. This Court had the benefit of perusing those documents also, which are produced in the type set of papers. The Recitals of above documents clearly conveys the meaning that partition was affected through that document and the division of properties also effected only from that document. Therefore it cannot be considered as documents recording the past transaction of partition in a later point of time. Thus, this Court concludes that the purpose for which documents are marked is only for main purpose of getting the relief of declaration and injunction. Admittedly those documents are unstamped and unregistered and as such they are not admissible in evidence.

9. The Hon'ble Supreme Court has also held in the case Raghunath and others -versus- Kedarnath reported in 1969 (1) SCC 497 as follows :-

"The inclusion of the words "by any provision of the Transfer of Property Act, 1882", by the Amending Act, 1929, settled a doubt entertained as to whether the documents of which the registration was compulsory under the Transfer of Property Act, but not under Section 17 of the Registration Act, were affected by Section 49 of the Registration Act. Section 4 of the Transfer of Property Act enacts that "Section 54, paras 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908". It was previously supposed that the affect of this section was merely to add to the list of documents of which the registration was compulsory and not to include them in Section 17 so as to bring them within the scope of Section 49. This was the view taken by the Full Bench of the Allahabad High Court in Sohan Lal case. The same view was expressed in a Madras case Rama Sahu v. Gowro Rathan² and by MacLeod, C.J., in a Bombay case Dawal v. Dharma³. We are



however absolved in the present case from examining the correctness of these decisions. For these decisions have been superseded by subsequent legislation i.e. by the enactment of Act 21 of 1929, which by inserting in Section 49 of the Registration Act the words "or by any provision of the Transfer of Property Act, 1882", has made it clear that the documents in the supplemental list, i.e. the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act fall within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. We are accordingly of the opinion that Ex. A-26 being unregistered is not admissible in evidence. In our opinion, Mr Sinha, is unable to make good his argument on this aspect of the case.

10. Therefore, it is very clear that when the document is inadmissible in evidence the same cannot be marked for any purpose as held by Hon'ble Supreme Court in Avinash Kumar Chauhan -versus- Vijay Krishna Mishra, reported in 2009 (2) SCC 532.

11. In view of above this Court is of the view that the documents referred above are inadmissible evidence for any purpose and the marking of document by the trial Court is without considering the provision of law and against law declared by the Hon'ble Supreme Court. Hence, the documents marked are liable to be eschewed. Accordingly, the Civil Revision Petition is liable to be allowed by setting aside the impugned order.

12. In the result, the Civil Revision Petition is allowed by setting aside the fair and decretal order passed in I.A.No.43 of 2017 in O.S.No.193 of 2012, dated 08.09.2017, on the file of the learned District Munsif-cum-Judicial Magistrate Court, Cheranmahadevi. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)



To

The District Munsif-cum- Chief Judicial Magistrate,
Cheranmahadevi.

+1CC to Mr.J.Parekhkumar, Advocate in Sr.No.75850.

+1CC to Mr.M.Thiruvunavukkarasu Advocate in Sr.No.75815.

VSV

DS/RSK/SAR-3 :23.08.2018: 7P/4C

Pre-delivery order made in
C.R.P. (MD) (PD) No.2196 of 2017
and
CMP (MD) No.10775 of 2017
30.07.2018