

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.222 of 2006

Raghunath, S/o Jodhi, aged about 64 years, caste Bargah, R/o Village Dwarikapur, Thana Ramanujnagar, Tahsil Surajpur, District Sarguja (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Phulbasia, D/o Moti, aged about 64 years, caste Bargah, Occupation Labourer, R/o Village Pampapur, Tahsil & Thana Surajpur, District Sarguja (C.G.)
2. Gendhi, D/o Moti, aged about 59 years, caste Bargah, Occupation Labourer, R/o Village Akshypur, Tahsil & Thana Surajpur, District Sarguja (C.G.)
3. State of Chhattisgarh, Through District Collector, Sarguja (C.G.)
(Defendants)
---- Respondents

For Appellant / Plaintiff: -

Mr. Ratan Pusty and Mr. Pallav Mishra, Advocates.

For Respondent No.1 / Defendant No.1: -

Mr. D.N. Prajapati, Advocate.

For Respondent No.2 / Defendant No.2: -

None present.

For Respondent No.3 / State: -

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

13/09/2019

1. This second appeal preferred by the plaintiff was admitted for hearing by formulating the following substantial question of law: -

“Whether the finding recorded by the First Appellate Court that execution of the document Ex.P.6 through which family arrangement was arrived at between the parties was not established according to law, is perverse?

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the suit

before the trial Court.)

2. The suit property was originally held by one Moti. He had two daughters namely, Phulbasiya and Gendi – defendants No.1 and 2 herein respectively. The plaintiff is husband of Gendi, though at the time of filing of suit Gendi had separated from the plaintiff and has entered into marriage with someone else. It is the case of the plaintiff that he being the *gharjamai damaad* (son-in-law) of Moti was staying with his father-in-law (Moti) and after death of his father-in-law Moti, the suit property was involved in a litigation being subject matter of Civil Suit No.21-A/1973 (Smt. Phulbasiya and another v. Ghansai and others) in which he was contesting the suit on behalf of defendants No.1 & 2 herein (plaintiffs therein) and the suit resulted in favour of defendants No.1 & 2 herein and thereafter, Ex.P-6 was executed by the plaintiff and defendants No.1 & 2 jointly on 3-5-1980 after having agreed that each of them would take one share in the suit property and on the basis of arrangement between the plaintiff and defendants No.1 & 2 that each of the family members including the plaintiff would get one share in the suit property, he is entitled for declaration of title, partition and permanent injunction in respect of the suit land in which defendant No.1 by filing her written statement denied the execution of Ex.P-6 and set-up the plea of forgery in respect of the said document and claimed dismissal of the suit stating that the plaintiff is not entitled for any decree in the suit. Defendant No.2, however, admitted execution of Ex.P-6 – panchnama in favour of the plaintiff.
3. The trial Court upon consideration of oral and documentary evidence on record, decreed the suit of the plaintiff holding that the

execution of document Ex.P-6 between the plaintiff and defendants No.1 & 2 is established, as defendant No.1 Phulbasiya has admitted the fact of partition / arrangement between the parties in the Panchayat, though she disputed the execution of Ex.P-6 among the parties.

4. On appeal being preferred by defendant No.1, the first appellate Court did not agree with the findings recorded by the trial Court particularly with regard to execution of Ex.P-6 and reversed the decree of the trial Court thereby dismissed the suit of the plaintiff necessitating the filing of second appeal by the plaintiff in which the substantial question of law has been framed and set-out in the opening paragraph of this judgment.
5. Mr. Ratan Pusty, learned counsel appearing for the plaintiff / appellant herein, would submit that Ex.P-6 is admitted and acted upon by defendant No.1 herself, as she has in her deposition clearly admitted that the plaintiff was the *gharjamai damaad* of her father Moti and he defended the suit filed by her and her sister defendant No.2 and further, meeting of the Panchayat was convened on 2-5-1980 and allotment of share over the suit property to the plaintiff and defendants No.1 & 2 was agreed upon and Ex.P-6 was entered into and executed, therefore, the first appellate Court is absolutely unjustified in reversing the finding of the trial Court. He would further submit that Ex.P-6 only acknowledges the fact of mutual arrangement of giving $\frac{1}{3}$ share in the suit property also to the plaintiff and therefore it is not a deed of partition and as such, it is not hit by Section 17(1)(b) of the Registration Act, 1908. Therefore, the impugned judgment of the first appellate Court

deserves to be set aside and that of the trial Court deserves to be restored.

6. Mr. D.N. Prajapati, learned counsel appearing for defendant No.1 / respondent No.1 herein, would vehemently submit that the first appellate Court has rightly held that Ex.P-6 is not proved in accordance with law, it requires registration, as the plaintiff is not at all related with the family of defendants No.1 & 2. Therefore, the second appeal deserves to be dismissed by affirming the judgment & decree of the first appellate Court.
7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.
8. As noticed in paragraph 2 of this judgment, it is the case of the plaintiff that Moti, who was the original holder of the suit property, had no male issue and had kept the plaintiff as *gharjamai damaad* (son-in-law), as the plaintiff has married with the daughter of Moti (defendant No.2 Gendi) and in that capacity, he was staying with his father-in-law / father of defendants No.1 & 2 and was cultivating the suit land. It was also pleaded that Civil Suit No.21-A/1973 was filed by defendants No.1 & 2 herein against Ghansai for protecting the property in which on behalf of defendants No.1 & 2 herein, the plaintiff herein was contesting the suit and when the said suit was ultimately decided in favour of defendants No.1 & 2 herein, a meeting of the Panchayat was convened in which in presence of the plaintiff and defendants No.1 & 2 and in presence of Panchas, it was agreed on 2-5-1980 that each of the three persons namely, the plaintiff herein and defendants No.1 & 2 herein would take $\frac{1}{3}$ share

in the suit property and accordingly, a deed evidencing the arrangement made on 2-5-1980 was recorded on 3-5-1980 and on that basis, the plaintiff claimed for partition and possession. Though defendant No.1 denied the execution of Ex.P-6 – arrangement between them, but during the course of evidence as DW-1 – Phulbasiya in paragraph 3 of her statement, she has clearly admitted that in Bargaah caste to which they belong, if the family has no male issue, then there is a system of keeping the daughter's husband as *gharjamai damaad* and the plaintiff being the husband of Gendi was kept as *gharjamai damaad* and he is treated like son and also given share in the property like son. In paragraph 8, she has further admitted that in respect of the case filed by defendants No.1 & 2, the plaintiff also used to attend Court to support them. In paragraph 10 of her statement, she has also admitted that after the decision of suit in their favour, meeting of Panchayat was convened and in paragraph 11, she has further admitted that it was decided in the Panchayat that the plaintiff will also have share in the suit property along with them (two sisters i.e. defendants No.1 & 2), but she refused her signature on the decision of the Panchayat. Ex.P-6 is a document which states as under: -

पंचनामा कागज

मन के हम नामे फुल बसिया पिता-मोती राम, गेंदी पिता-मोती व रघुनाथ राम धर्म पिता मोती वरगाह ग्राम द्वारिकापुर थाना रामानुजनगर तहसील सूरजपुर जिला सरगुजा (म०प्र०) के निवासी हैं हम उक्त लिखे तीनों आदमी अपनी व पौती जमीन के लिए १२ वर्ष तक केस लड़ने के बाद विजयी हुए और उस जमीन को हम उक्त लिखे तीनों आदमी में आपसी बंटवारा हेतु दिनांक २-५-७० को एक पंचायत बैठाए और पंचायत में हम जमीन को तीनों आदमी आपस में बाँट लेंगे यह तय किया अब हम लोगों में आपस में कोई झगड़ा झंझट नहीं हैं न रहेगा हम तीनों आदमी आज के आए पंचों से प्रार्थना करते हैं कि कल दिनांक ३-५-७० को हम

अपनी जमीन का आपसी बंटवारा करेंगे जिसकी देख-रेख के लिए आप सब आयेंगे । यदि हम तीनों आपस में जमीन का हिस्सा करेंगे और यदि हिस्सा करने में न बने तो वहाँ पर आप आए पंच बटवारा कर देंगे यह हम तीनों पंच को पूर्ण अधिकार देकर अपने साथ खेत ले जाते हैं ताकि कोई लड़ाई झगड़ा आपस में न हो । यदि शायद हम खेत पर किसी प्रकार भी लड़ाई झगड़ा होकर पंच का बात न माने तो पंच को १ 00=00 सौ रुपये और यदि थाना अदालत जाएँ तो इसके पूर्व सरकार को 200/- दो सौ दण्ड देन दार होंगे । यह कागज उपस्थित पंचों के सामने लिखा कर हस्ताक्षर किये कि समय पर काम आये ।

उपस्थित पंच			
१	मोता राम पंचा	१ – फुलबसिया	सही/-
२	चमरूराम		
४	रेन साय	२ – गेदी	सही/-
५	सुखदेव राम		
६	बनारसी प्रसाद	३ – रघुनाथ	सही/-
७	भगतराम		
८	पुरुषोत्तम	धीर साय	सही/-
९	मोहन सिंह		
१०	रामधन		
११	रामचरन		
१२	अमर साय	सही/-	
१३	पीला राम	सही/-	
१४	मोहन साहू	सही/-	

9. A careful perusal of the aforesaid document would show that it bears the signature of Phulbasiya, Gendi and Raghunath and it was signed by 13 witnesses / Panchas out of whom Mohan Singh has been examined as PW-2. He has proved Ex.P-6 stating that in that Panchayat meeting on 2-5-1980 it was decided to give $\frac{1}{3}$ share to the plaintiff and it was signed by him and by Raghunath and defendants No.1 & 2. He was subjected to lengthy cross-examination on behalf of the defendants and he was also confronted to the statement that the document was not signed in presence of Phulbasiya and Phulbasiya had not put her thumb impression which he has refused. Thus, from the aforesaid statements of Phulbasiya (DW-1) and Mohan Singh (PW-2), it is

established that the plaintiff was kept as *gharjamai* son-in-law by father of defendants No.1 & 2 – Moti and in that family, son-in-law *gharjamai* is treated like son. Thereafter, the suit property was subject matter of litigation in Civil Suit No.21-A/1973 which was admittedly contested by the plaintiff on behalf of defendants No.1 & 2 and after result of that civil litigation, Ex.P-6 was executed among the Panchas in presence of the plaintiff and defendants No.1 & 2. Ex.P-6 is admitted to be executed by the plaintiff and defendants No.1 & 2 which is apparent from the statement of defendant No.1 – Phulbasiya (DW-1) and allotment of share to the plaintiff is also admitted except the signature of Phulbasiya (DW-1) in the said document which is proved by Mohan Singh (PW-2). Therefore, the execution of document Ex.P-6 before the Panchas by the plaintiff and defendants No.1 & 2 stands established.

10. Now, the question would be, whether that document (Ex.P-6) requires registration under Section 17(1)(b) of the Registration Act, 1908 or it is a family arrangement which requires no registration?

11. Section 17(1)(b) of the Registration Act, 1908 states as under: -

“17. Documents of which registration is compulsory.

—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) xxx xxx xxx

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;”

12. The above-stated clause lays down the need of compulsory registration of certain non-testamentary instruments of the nature specified in this clause. The instruments in question must purport or operate to, (a) create, declare, assign, limit or extinguish (whether in present or in future); (b) any right, title or interest (whether vested or contingent); (c) of the value of one hundred rupees (and upwards); and (d) to or in immovable property, situate in any district in which the Act is in force. It is only those documents which on their face show that they have come within the terms of Section 17(1)(b) of the Registration Act, 1908 and require registration.

13. The Supreme Court in the matter of Kalyani (dead) by L.Rs. v. Narayanan and others¹ at paragraph 10 has defined the word “partition” by holding that an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and observed as under: -

“10. ... Partition is a word of technical import in Hindu law. Partition in one sense is a severance of joint status and coparcener of a coparcenary is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of share of such members. It goes to his heirs displacing survivorship. ...”

1 AIR 1980 SC 1173

14. Thereafter, in the matter of **Shub Karan Bubna alias Shub Karan Prasad Bubna v. Sita Saran Bubna and others**², R.V.

Raveendran, J. speaking for the Supreme Court, defined the word “partition” in following terms:-

“5. “Partition” is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. “Separation of share” is a species of “partition”. When all co-owners get separated, it is a partition. Separation of share(s) refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.”

15. It is well settled law that when a deed is reduced in writing evidencing partition, it would have the effect of declaring exclusive title to whom the property is allotted, it is required to be registered under Section 17(1)(b) of the Registration Act, 1908, but if the terms of the family arrangement are only reduced in writing, it would be outside the purview of Section 17(1)(b) of the Registration Act, 1908. The law in this regard is well settled by Their Lordships of the Supreme Court in the matter of **Kale and others v. Deputy Director of Consolidation and others**³. Paragraph 10(4) of the report states as under: -

² (2009) 9 SCC 689

³ AIR 1976 SC 807

“10. xxx xxx xxx

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(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 immoveable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Sec. 17(1) (b)?) of the Registration Act and is, therefore, not compulsorily registrable;”

16. Thereafter, the Supreme Court in the matter of K.G. Shivalingappa (D) by L.Rs. and others v. G.S. Eswarappa and others⁴ noticing its earlier decision in Kale (supra), reiterated the principle in this regard and held as under: -

“13. In *Nani Bai v. Gita Bai Kom Rama Gunge* (AIR 1958 SC 706), it has been held by this Court that though partition amongst the Hindus may be effected orally but if the parties reduce it in writing to a formal document which is intended to be evidence of partition, it would have the effect of declaring the exclusive title of the coparcener to whom a particular property was allotted in partition and thus the document would be required to be compulsorily registered under S. 17(1)(b) of the Registration Act. However, if the document did not evidence any partition by metes and bounds, it would be outside the purview of Section 17(1)(b) of the Indian Registration Act. This decision was followed in *Shiromani and others v. Hem Kumar and others*, AIR 1968 SC 1299 and *Roshan Singh v. Zile Singh*, AIR 1988 SC 881. In *Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Ambadas Bukate*, 1996 (6) SCC 373, after analysing the judgments, referred to above, this Court observed:

"Partition, specially among the coparceners, would be a "Transfer" for purposes of Registration Act, 1908 or not has been considered in *Nani Bai v.*

4 AIR 2004 SC 4130

Gita Bai Kom Rama Gunge (AIR 1958 SC 706) and it has been held that though a partition may be effected orally, if the parties reduce the transaction to a formal document which was intended to be evidence of partition, it would have the effect of declaring the exclusive title of the coparcener to whom a particular property was allotted (by partition) and thus the document would fall within the mischief of S. 17(1)(b) of the Registration Act under which the document is compulsorily registrable. If, however, that document did not evidence any partition by metes and bounds, it would be outside the purview of that section. ...”

17. In the matter of Roshan Singh and others v. Zile Singh and others⁵, the Supreme Court laid down the principles of law qua registration of memorandum of family arrangement qua properties over which parties set up competing claims by holding as under: -

“9. It is well settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under Section 17(1) (b) of the Act, a writing which merely recites that there has *in time past* been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1) (b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of Section 91 of the

5 (2018) 14 SCC 814

Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: see *Mulla's Registration Act*, 8th Edn., pp. 54-57.

10. The tests for determining whether a document is an instrument of partition or a mere list of properties, have been laid down in a long catena of decisions of the Privy Council, this Court and the High Courts. The question was dealt with by Vivian Bose, J. in *Narayan Sakharam Patil v. Coop. Central Bank*⁶. Speaking for himself and Puranik, J. the learned Judge relied upon the decisions of the Privy Council in *Bageshwari Charan Singh v. Jagarnath Kuari*⁷ and *Subramonian v. Lutchman*⁸ and expressed as follows: (*Narayan Sakharam case*, SCC OnLine MP para 10)

"10. It can be accepted at once that mere lists of property do not form an instrument of partition and so would not require registration, but what we have to determine here is whether these documents are mere lists or in themselves purport to "create, declare, assign, limit or extinguish ... any right, title or interest" in the property which is admittedly over Rs 100 in value. The question is whether these lists merely contain the recital of past events or in themselves embody the expression of will necessary to effect the change in the legal relation contemplated."

Sir Gilbert Stone, C.J. speaking for himself and Vivian Bose, J. in *Ganpat Gangaji Patil v. Namdeo Bhagwanji Patil*⁹ reiterated the same principle. See also: order cases in *Mulla's Registration Act* at pp. 56-57.

11. Even otherwise, the document, Ext. P-12 can be looked into under the proviso to Section 49 which allows documents which would otherwise be excluded, to be used as evidence of "any collateral transaction not required to be effected by a registered instrument". In *Varatha Pillai v. Jeevarathnammal*¹⁰ the Judicial Committee of the Privy Council allowed an unregistered deed of gift which required registration, to be used not to prove a gift "because no legal title passed" but to prove that the donee thereafter held in her own right. We find no reason why the same rule should not be made applicable to a case like the present.

12. Partition, unlike the sale or transfer which consists in its essence of a single act, is a continuing state of

6 1937 SCC OnLine MP 103 : ILR 1938 Nag 604

7 1931 SCC OnLine PC 86 : (1931-32) 59 IA 130

8 1922 SCC OnLine PC 76 : (1922-23) 50 IA 77

9 1940 SCC OnLine MP 64 : ILR 1942 Nag 73

10 1918 SCC OnLine PC 50 : (1918-19) 46 IA 285

facts. It does not require any formality, and therefore if parties actually divide their estate and agree to hold in severalty, there is an end of the matter.”

18. Very recently, in the matter of Thulasidhara and another v. Narayanappa and others¹¹, Their Lordships of the Supreme Court following the principles of law laid down in Kale (supra) held that family arrangement, though not required to be registered, would operate as a complete estoppel against the parties to such a family arrangement. It was observed as under: -

“9.4. It is required to be noted that the deed dated 23-4-1971, under which the suit property had gone/devolved in favour of the Krishnappa, was reduced in writing before the panchayat and panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Ext. D4, on considering the entire evidence on record and even the deposition of the plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tallies with the document dated 23-4-1971 (Ext. D-4). Execution of the document/partition deed/Palupatta dated 23-4-1971 has been established and proved by examining different witnesses. The High Court has refused to look into the said document and/or consider document dated 23-4-1971 (Ext. D-4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in *Kale* (supra) that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in the case of *S. Shanmugam Pillai v. K. Shanmugam Pillai*¹² in which it was observed as under: (*S. Shanmugam Pillai* case, SCC pp. 319 & 321, paras 13 & 22)

“13. Equitable, principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We

¹¹ (2019) 6 SCC 409

¹² (1973) 2 SCC 312

would hesitate to narrow down their scope.

* * *

22. As observed by this Court in *T.V.R. Subbu Chetty's Family Charities case*¹³, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

9.5. As held by this Court in *Subraya M.N.*¹⁴ even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Ext. D-4 dated 23-4-1971."

19. Reverting to the facts of the present case in light of the principles of law laid down in the above-stated judgments (supra), it would be appropriate to notice the Panchnama Ex.P-6 which is a document by which the plaintiff has claimed that $\frac{1}{3}$ share has been given to him. A careful perusal of the aforesaid document would show that meeting of the Panchayat in presence of the plaintiff and defendants No.1 & 2 was convened on 2-5-1980 in which it was agreed before the Panchas present that since the suit which defendants No.1 & 2 had filed against Ghansai being Civil Suit

¹³ T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar, AIR 1961 SC 797

¹⁴ Subraya M.N. v. Vittala M.N., (2016) 8 SCC 705 : (2016) 4 SCC (Civ) 163

No.21-A/1973 was decreed in their favour and they have won the case, they will divide and share the suit property among them and fixed the date of 3-5-1980 for dividing the property and in case if any dispute arise, Panchas are invited for partition. Thus, it is a clear case in which only on 2-5-1980 they (plaintiff and defendants No.1 & 2) agreed for sharing the property as they won the property in litigation and there is no semblance of partition having been made by the Panchnama (Ex.P-6) dated 3-5-1980. It is the case of the plaintiff that the family arrangement already made on 2-5-1980 was reduced in writing on 3-5-1980. The judgment of the Supreme Court in Nani Bai (supra) clearly states that in order to give an instrument the shape of “partition”, the document must evidence partition by “metes and bounds”. The Supreme Court in the matter of Balkrishna Somnath v. Sadu Devram Koli¹⁵ held that ordinarily “metes and bounds” are appropriate to real property, meaning, as the phrase does, “the boundary lines of land, with their terminal points and angles”. It was further held that the thrust of the expression, is that the division must be more than notional, but actual, concrete, clearly demarcated.

20. In the document Ex.P-6, partition was not effected at all by metes and bounds as referred in Nani Bai (supra) in which the Supreme Court has clearly held that if the document does not evidence any partition by metes and bounds, it would be outside the purview of Section 17(1)(b) of the Registration Act, 1908 which has been relied upon by the Supreme Court in K.G. Shivalingappa (supra). Since in the document in question Ex.P-6, only the plaintiff and

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defendants No.1 & 2 have agreed to take $\frac{1}{3}$ share each in the suit property or divide the suit property equally, it cannot be held to be a partition for the purpose of Section 17(1)(b) of the Registration Act, 1908, as it cannot be termed as partition by metes and bounds, it is only a sort of their willingness expressed by the parties to get the property partitioned in future which will not fall within the definition of partition as defined by Their Lordships of the Supreme Court in Kalyani (supra) and Shub Karan Bubna (supra) and therefore it will not require registration and it is admissible in evidence and it was rightly relied upon by the trial Court to hold that the plaintiff will be entitled for $\frac{1}{3}$ share in the suit property which has been reversed by the first appellate Court perversely and arbitrarily as well. In view of the aforesaid analysis, the finding recorded by the first appellate Court is perverse and contrary to the record and it is liable to set aside. In the result, the second appeal is allowed and judgment & decree of the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered accordingly. No order as to cost(s).

21. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge