

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 59 of 2003

1. Narayan Prasad (Dead) Through LRs. as Per Honble Court Order Dated 15-02-2019.
1(A). Ram Kumar Patel S/o Late Shri Narayan Prasad Aged About 45 Years R/o Lendhra, Tehsil Baramkela, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
2. Shyam Lal S/o Bhola Ram Aghariya Aged About 50 Years R/o Village Lendhra, Tehsil Sarangarh, District Raigarh., District : Raigarh, Chhattisgarh

---- Appellants

Versus

1. Hemanand S/o Gajanand Nai Aged About 37 Years Occupation Cultivation, R/o Village Lendhra, Tehsil Sarangarh District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
2. (Deleted) Bhola Ram (Dead) As Per Court Order Dt. 12-03-2019., District : Raigarh, Chhattisgarh
3. The State Of Chhattisgarh Through The Collector, Raigarh District Raigarh Chhattisgarh. (Defendants), District : Raigarh, Chhattisgarh

---- Respondents

For Appellants/Plaintiffs	:	Shri B.D. Guru with Shri Anuroop Panda, Advocates
For Respondent- Defendant	:	Shri Abhijit Mishra, Advocate

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment

11/12/2019

Heard on admission.

1. This appeal is directed against the impugned judgment and decree dated 05.12.2002 passed by learned Fourth Additional District Judge (FTC), Raigarh, whereby the learned lower appellate Court reversed the judgment and decree of the learned trial Court and dismissed the appeal.
2. Appellant – plaintiffs, sons of Bholaram, filed suit seeking a declaration that sale deed dated 27.3.1998 executed by their father- Bholaram in favour defendant -Hemanand be declared null and void on the pleadings that property described in Schedule -"A" of the plaint was held by their father Bholaram. Later on, a family partition had taken place amongst the joint holders on 5.6.1988 and property shown in Schedule -"B" and Schedule-"C" fell to the share of plaintiffs- Narayan Prasad and Shyamlal. However, their father sold vide sale deed dated 27.3.1998 (Ex.P-3), land which, upon partition, were allotted to respective share of the plaintiffs.

Defendant-purchaser Hemanand resisted the plaintiffs' claim by pleading that the property was sold for a valid consideration to him by Bholaram, father of the plaintiffs. There are many other shareholders who have not been impleaded as party. There was no partition.

Bholaram, father of the plaintiff supported the case of purchaser Hemananad by stating that the property remained joint and no partition had taken place.

3. Learned trial Court after framing issue and allowing the parties to lead oral and documentary evidence came to the conclusion that a partition had taken place vide partition deed dated 5.6.1988 (Ex.P-7) and therefore, the sale deed by which Bholaram sold allotted share of his

sons- Narayan & Shyamlal, was void and not binding on them.

However, in appeal, learned lower appellate Court reversed the judgment and decree holding that the plaintiff's suit was liable to be dismissed as the plaintiffs failed to prove partition. The partition deed dated 5.6.1988 (Ex.P-7) was held inadmissible for want of registration.

4. The sole substantial question of law framed in this appeal is whether partition deed (Ex.P-7) is inadmissible in evidence ?
5. Learned counsel for the appellant would argue that learned lower appellate Court committed patent illegality in holding partition deed (Ex.P-7) as inadmissible on the basis that it was required to be registered whereas the deed was not, by itself, an instrument of partition but it only records that a partition had taken place amongst shareholders. His next submission is that in any case, as no objection was taken to the admission of the document at the time when it was tendered in evidence before the trial Court, it was not open for the defendant- purchaser to challenge the finding of learned trial Court on the ground that the partition deed dated 5.6.1988 (Ex.P-7) was inadmissible in evidence.
6. On the other hand, learned counsel for the respondent-defendant supported the judgment and decree of learned lower appellate Court and submits that the deed dated 5.6.1988 is not a memorandum but this is the document by which, the partition was effected. He further submits that even if no objection was taken before the trial Court, as unregistered partition deed itself is not admissible in evidence in view of the provision contained in Section 17 of the Registration Act, objection to admissibility of a document on the ground that it was not registered

though, it was compulsorily registrable under the law, could always be raised.

7. We have heard learned counsel for the parties and perused the records of the case.
8. Learned lower appellate Court has held the deed dated 5.6.1988 (Ex.P-7) inadmissible holding that this being a deed of partition, it required registration under Section 17 of the Registration Act, being compulsorily registrable in view of provision contained in Section 17 of the Registration Act.
9. What is to be seen is as to what is the nature of document. Whether it is merely a memorandum of partition to record that any partition had already taken place in the past or the document itself effects partition so as to say that is an instrument of partition. A careful perusal of document (Ex.P-7) leaves no manner of doubt that it is not memorandum of partition but this is the document by which partition has been effected. Therefore, it is quite clear that the document is an instrument of partition and not memorandum of partition. Therefore, it required registration under the law.
10. The next question which arises for consideration is whether there being no objection raised to the admissibility of the said document dated 5.6.1988 (Ex.P-1), when tendered in evidence, objection to admissibility could be raised at the appellate stage. This question is also no longer res integra. It is well settled legal position that where admission of a document is barred by law on account of it being unregistered, such objection can always be raised at any stage of proceedings. Present is not a case where only mode of proof of a document is being questioned.

Had that been so, the legal position would have been entirely different. Present is a case where admissibility of an instrument is being raised on the ground that though it is compulsorily registrable under the law, it has not been registered. Therefore, such objection is permissible under the law even at the stage of appeal and the appellate Court was well within its jurisdiction to examine the issue of admissibility of partition deed dated 5.6.1988 (Ex.P-7)

It is not a case where the partition deed is being used in evidence for any collateral purpose like proving factum of possession. The entire case of the plaintiff was based on partition. The deed dated 5.6.1988 has been led in evidence to prove partition. Therefore, it was clearly not admissible in evidence.

11. In the result, the question of law framed is answered in the manner that the learned lower appellate Court was fully justified in law in holding that partition deed dated 5.6.1988 (Ex.P7) was not admissible in evidence as it was not registered, as required under Section 17 of the Registration Act.
12. In the result, appeal fails and is hereby dismissed. Let an appellate decree be drawn.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge