



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.08.2019

PRONOUNCED ON : 29.11.2019

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P(MD)No.849 of 2019 (PD)

and

C.M.P. (MD) .No.5055 of 2019

1.S.C.Rathinavelu

2.R.Saravanasekar

3.Gnana Sundaram .. Petitioners /Petitioners/Defendants

Vs.

1.S.Sobila Kanmani

2.S.Sindhulakshmi

3.S.Indunila .. Respondents/ Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.01.2019 passed in I.A.No.1372 of 2018 in O.S.No.201 of 2016 by the District Munsif Court, Karur.

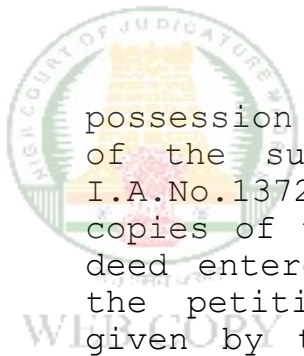
For petitioners : Mr.B.Saravanan

For respondents : Mr.R.Ramanlal

ORDER

This petition has been filed by the petitioners / defendants against the order dated 09.01.2019 passed in I.A.No.1372 of 2018 in O.S.No.201 of 2016, whereby and whereunder the Court below has dismissed the petition filed by the petitioners/defendants seeking permission to produce and exhibit the Xerox copies of the documents.

2. The respondents herein as plaintiffs have filed the suit in O.S.No.201 of 2016 for declaration that the respondents/plaintiffs and the 4th defendant in the suit alone are the absolute title holders of the suit property and for restraining the petitioners/defendants 1 to 3 from interfering with their peaceful



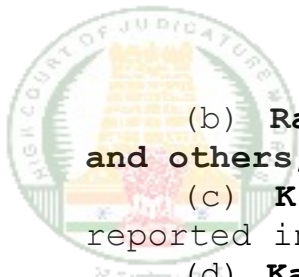
possession and enjoyment of the suit property. During the pendency of the suit for trial, the petitioners/ defendants have filed I.A.No.1372 of 2018 seeking permission of the Court to mark Xerox copies of the documents ie., (a) unregistered partition/arrangement deed entered between the father of the respondents/plaintiffs and the petitioners/defendants dated 23.02.1988 and the application given by the father of the respondents/plaintiffs for change of patta. After hearing both sides, the trial Court has dismissed the said petition holding that the Xerox copy of the partition deed, which sought to be marked, is an unregistered one and the petitioners/defendants have not specifically averred about the collateral purpose in the affidavit filed in support of the petition for marking the said documents. Challenging the said order, the petitioners/defendants are before this Court.

3. The learned counsel appearing for the petitioners/defendants submitted that one S.C.Chandrasekaran Pillai had two sons by name S.C.Rathinavelu (1st defendant) and S.C.Selvakumar (father of the respondents/plaintiffs). By way of partition deed dated 04.03.1964, they partitioned their joint family properties. Later on, by way of family partition/arrangement deed dated 23.02.1988, some of the properties which were originally allotted to the father of the respondents/plaintiffs by name S.C.Selvakumar, were re-allotted to S.C.Rathinavelu and vice versa, some of the properties, which were originally allotted to S.C.Rathinavelu, were re-allotted to S.C.Selvakumar. Based on the said family arrangement deed dated 23.02.1988, the mother of the respondents/plaintiffs had sold some of the properties to some third parties. But, the petitioners/defendants disputed the execution of Partition Deed dated 23.02.1988. In order to prove the said factum, the petitioners/defendants wanted to produce the family arrangement deed dated 23.02.1988. He would further submit that the original copy of the said deed is not available with the petitioners/defendants and the same has been misplaced and hence, they filed a Xerox copy of the said document. As per Section 65 of the Indian Evidence Act, the documents in question can be marked as secondary evidence. Further, it is settled proposition of law that the family arrangement deeds does not require registration. Without considering the above aspects, the Court below has dismissed the petition. He would further submit that though the petitioners/defendants have clearly explained the reasons for marking the documents for collateral purpose, the Court below has erroneously dismissed the petition holding that the petitioners have not specifically averred about collateral purpose. Thus, he prayed to allow the revision petition.

4. The learned counsel for the petitioners/defendants relied upon the following decision in support of his contention:

(a) **Syndicate Bank Vs. Estate Officer and Manager, APIIC Ltd., and others**, reported in (2007) 8 SCC 361;

<https://hcservices.ecourts.gov.in/hcservices/>



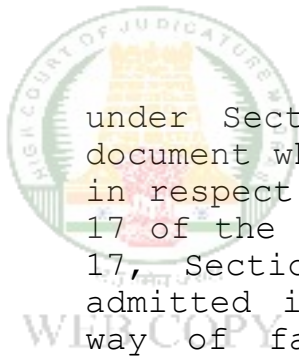
- (b) **Ranganayakamma and another Vs. K.S.Prakash (dead) by LRs. and others**, reported in (2008) 15 SCC 673;
- (c) **K.Subramani and others Vs. P.Rajesh Khanna and another**, reported in (2009) 3 MLJ 602; and
- (d) **Kasim Beevi and others Vs. Sowr Beevi and others**, reported in (2007) 5 MLJ 203.

5. The learned counsel appearing for the respondents/plaintiffs submitted that the documents sought to be marked by the petitioners/defendants are not admissible in evidence. The Family partition/arrangement deed dated 23.02.1988 is an unregistered document and under Section 17 of the Registration Act, the partition deed is a document required to be registered. As per Section 49(a) and (c) of the Registration Act, if a document, which requires to be registered under Section 17 of the Registration Act, is not registered, the same shall not be used as evidence of any transaction. He would further submit that though the petitioners/defendants obtained batta to the disputed land by producing the original partition/arrangement deed dated 23.02.1988, the petitioners / defendants have stated on the one hand that they missed the family arrangement deed, but on the other hand, in order to create confusion, they said that it is withheld by the respondents/plaintiffs. The petitioners / defendants did not produce the original family arrangement deed, in view of the fact that that will be proved to be a fraudulently created document. He would further submit that based on the family arrangement deed, the mother of the respondents/plaintiffs did not execute any sale deed. The Court below, after considering these aspects, has dismissed the petition and the same need not be interfered with. Thus, he prayed to dismiss this revision petition.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Admittedly, in this case, the joint family properties have already been partitioned among the parties by way of partition deed dated 04.03.1964. According to the petitioners/defendants, by way of family partition/arrangement deed dated 23.02.1988, re-allotment was made in respect of some of the properties and the father of the respondents/plaintiffs has also given an application to the Tahsildar requesting to issue patta as per the family arrangement deed dated 23.02.1988. According to the respondents/plaintiffs, they are created one.

8. It is a well settled proposition of law that a family settlement/arrangement does not require registration. It is also well settled law that 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



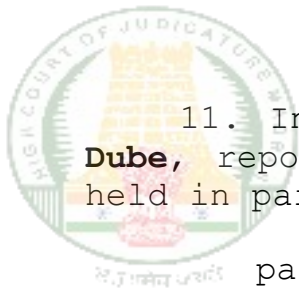
under Section 17 of the Registration Act. In other words, any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered under Section 17 of the Registration Act. If it not be registered as per Section 17, Section 49 of the Registration Act will prevent its being admitted in evidence. According to the petitioners/defendants, by way of family arrangement/partition deed dated 23.02.1988, the ownership of some of the properties were reallocated and based on which, they derived title to the suit property. But, admittedly, the said document has not been registered. Therefore, as per Section 49 of the Registration Act, the family arrangement/partition deed dated 23.02.1988 is not admissible in evidence. More over, as per section 35 of the Indian Stamp Act, no instrument chargeable with duty shall be admitted in evidence for any purpose.

9. The petitioners/defendants wanted to mark a Xerox of the family arrangement deed dated 23.02.1988 stating that the original of the same has been misplaced. In the decision in **Harion Agrawal Vs. Prakash Chand malviya**, reported in **(2007) 8 SCC 541**, the Hon'ble Supreme Court, after referring to various decisions and the relevant provisions of the Indian Stamp Act, has held in paragraph No.10 as follows:

"10.It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Stamp Act, 1899."

10. The Hon'ble Supreme Court in the decision in **J.Yashoda Vs. K.Shobha Rani**, reported in **(2007) 5 SCC 730** has held in paragraph No.7 as follows:

"Secondary evidence, as a general rule, is admissible in evidence only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents."



11. In yet another decision in **Ashok Dulichand Vs. Madahavlal Dube**, reported in (1975) 4 SCC 664, the Hon'ble Supreme Court has held in paragraph No.7 as follows:

"7. After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (1) of Section 56 of the Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on 04.07.1973, before respondent 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case respondent 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of respondent 1. There was also no other material on the record to indicate that the original document was in the possession of respondent 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent 1 in his affidavit denied being in possession of or having anything to do with such a document. The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the



appellant for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court."

12. From the above decisions, it is clear that the documents being inadmissible, both on the ground that a certified copy is not admissible unless the original is proved to have been lost or destroyed or is otherwise not available and also on the ground that the original being unstamped, secondary evidence thereof is inadmissible in evidence even on payment of penalty.

13. In this case, it is not in dispute that the partition/arrangement deed is an unregistered and unstamped one and the petitioners/defendants themselves admitted that the original has been misplaced. The petitioners/defendants have failed to explain as to what was the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Therefore, the partition/arrangement deed dated 23.02.1988 cannot be accepted even as secondary evidence.

14. Now, the next question to be decided is as to whether the partition/arrangement deed dated 23.02.1988 can be considered for collateral purpose. Section 49 of the Registration Act deals with "effect of non-registration of documents required to be registered". Section 49 of the Registration Act reads as follows:

"49.Effect of non-registration of documents required to be registered:

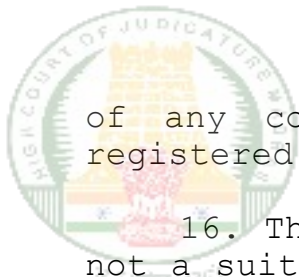
No document required by Section 17 to be registered shall (a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument."

15. The above proviso makes it clear that documents required to be registered under Section 17, if not registered shall not be used as evidence of any transaction affecting such a property. Only two exceptions are given in proviso to Section 49 that (i) an unregistered document can be received in evidence of a contract in a suit for specific performance (ii) or can be received in evidence



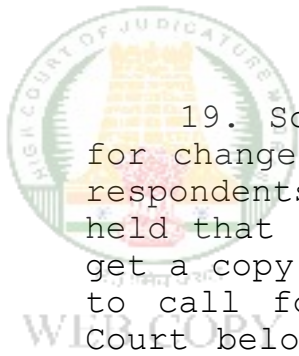
of any collateral transaction, not required to be effected by registered instrument.

16. The first exception is not applicable to this case as it is not a suit for specific performance. The second exception says that if a document, which is compulsorily registrable, has not been registered, it can be admissible in evidence only for a collateral transaction. If the document is unregistered and unstamped, then it could not be used for showing that is created, declared, assigned, limited or extinguished a right to immovable property. The term "collateral purpose" would not permit the party to establish any of the above acts from the deed.

17. A learned Single Judge of this Court in a recent decision in **Narayana Naicker and others Vs. Kannusamy Naicker (died) and others**, reported in **2019 (3) L.W. 19** has, after referring to various decisions, held in paragraph No.28 as follows:

"From the above judgment, it is clear that the proviso to Section 49 of the Registration Act makes the document admissible in evidence only in respect of collateral transaction, which is not required to be registered. The collateral transaction is not a transaction affecting the immovable property, but it is independent from the main transaction. Therefore, merely the payment of deficit stamp duty, in respect of unregistered be used for any collateral purpose. The above unregistered document sought to be used in respect of immovable property is inadmissible, in view of the clear bar under Section 49 of the Registration Act."

18. Here, in this case, as stated earlier, the original of the partition/arrangement deed dated 23.02.1988 itself is not available with the petitioners/defendants. According to the petitioners/defendants, through the oral partition deed dated 23.02.1988 the suit property was allotted to them. The Xerox copy of unregistered and unstamped partition/arrangement deed dated 23.02.1988 cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguished a right to immovable property and it cannot also be used for showing that the property was partitioned or that particular properties were given to the father of the respondents/plaintiffs in partition. The Court below has rightly refused to accept the oral partition/arrangement deed dated 23.02.1988. The decisions relied upon by the petitioners/defendants does not speak about admissibility of Xerox copy of the document and they are not applicable to the facts and circumstances of this case and hence, they cannot be relied upon.



19. So far as the production of Xerox copy of the application for change of patta stated to have been given by the father of the respondents/plaintiffs are concerned, the Court below has rightly held that the petitioners/defendants have not stated as to how they get a copy of the said document and further, they did not take steps to call for the said document from the Revenue Department. The Court below has rightly negatived to mark the said document also. This Court does not find any reason to interfere with the order passed by the Court below.

20. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

gcb

To

1.The District Munsif,
Karur.

2.The Record Keeper, (2 COPIES)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.R.RAMANLAL, Advocate (SR-102558[F] dated 29/11/2019)

order made in
C.R.P (MD) No.849 of 2019 (PD)
29 .11.2019

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