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C.R.P.(MD)Nos.1933 and 1935 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :02.12.2019

DELIVERED ON: 08.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)Nos.1933 and 1935 of 2019
and
C.M.P. (MD)No.9851 of 2019

N.V.Subramanian .. Petitioner in both C.R.Ps/Respondent/
Petitioner/Plaintiff

Vs.

Lakshmanan @ Rasu .. Respondent in both C.R.Ps./Petitioner/
Respondent/Defendants

Common Prayer: These Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order in I.A.Nos.334 and 340 of 2017 dated 21.06.2019 in O.S.No.25 of 2015 passed by the learned District Munsif cum Judicial Magistrate Court, Natham, Dindigul District.

For Petitioner
(in both C.R.Ps.) : Mr.P.Vairavasundaram
For Respondent
(in both C.R.Ps.) : Mr.C.Jeyaprakash

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the orders passed in I.A.Nos.334 and 340 of 2017 in O.S.No.25 of 2015 dated 21.06.2019 passed by the learned District Munsif cum Judicial Magistrate Court, Natham, Dindigul District.

3.The revision petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The petitioner filed a suit in O.S.No.25 of 2015 against the respondent for a prayer of bare injunction. During the pendency of the suit, the petitioner herein has filed an application I.A.No.340 of 2017 to sent the partition deed for determination of stamp duty penalty. The respondent herein filed a petition in I.A.Nos.334 of 2017 for

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



rejecting the unregistered and unstamped partition document filed by the plaintiff. The trial Court dismissed the petition filed by the revision petitioner herein and allowed the counter claim filed by the respondent. Against which, the revision petitioner has filed these revision petitions.

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4. On the side of the revision petitioner, it is stated that there was an oral partition between the plaintiff and the defendant and the same was reduced into writing and the defendant admitted his signature in the document. The petitioner is ready to pay the stamp duty penalty and the petition filed by the revision petitioner is to be allowed and that the document should be allowed to be marked as evidence atleast for collateral purpose.

5. The learned counsel for the petitioner relied on the judgment passed by this Court in the case of **C.S.Kumaraswami Goundar v. Aravagiri Goundar and another** reported in (1974) 87 L.W. 215, wherein it is stated as follows:

"Unregistered document not admissible in evidence - only admissible for collateral purpose."

6. On the side of the respondent, it is stated that all the document of title should be registered and the claim of the petitioner in the plaint itself is for declaration based on the partition and the document to be marked is against Section 17 of the Indian Registration Act. The petitioner claim title through the document and the document to be marked is only as a proof of title not for collateral purpose.

7. The learned counsel for the respondent relied on the judgment passed by this Court in the case of **Arumugam @ Babu v. A. Durairaj and others** in **C.R.P. (PD) (MD) No. 944 of 2017**, wherein this Court has held that an unstamped instrument is not admissible as a registered partition deed until the same is impounded even for collateral purpose.

8. On the side of the respondent, it is stated that an unregistered document cannot be looked into, for proving the title and this document cannot be marked even for collateral purpose. In support of his contention, the judgment passed by this Court in the case of **A.C.Lakshmipathy v. A.M.Chakrapani Reddiar and 5 others** reported in **2001 - 1 - L.W. 257** is cited, wherein it is stated as follows:

"Wherein the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person cannot claim a right or title to a property under the said document, which is being looked into only for collateral



9. On the side of the respondent, it is stated that an unstamped and unregistered family arrangement is insignificant for consideration. In support of his contention, the judgment passed by this Court in the case of **R.Deivanai Ammal (Died) and others v. G.Meenakshi Ammal** reported in **2005 - 1 - 1.w. 343** is cited, which reads as follows:

"Document of family arrangement is reduced to writing; it purports to create, declare/extinguish right, title or interest of the properties of G - In such a circumstance, it must be properly stamped and duly registered as per the Stamp Act and Registration Act."

10. The learned counsel for the respondent relied upon the judgment passed by this Court in the case of **Amudha and others v. K.Jeyaraman and others** reported in **2005 - 3 - 1.w. 283**, wherein Section 17(1)(b) of the Indian Registration Act, 1908 is clearly discussed as follows:

"20. Similarly, it is relevant to note Section 17 of the Indian Registration Act, 1908 which reads 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) ...

(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;"

11. It is held that Section 17(1)(b) of the Registration Act, 1908 would indicate that unstamped and unregistered document is inadmissible. Subsequently the validity of the document by paying the stamp duty penalty is contemplated under Sections 33 and 43 of Indian Stamp Act, 1899 during the proceedings before the lower Appellate Court cannot at any stretch of imagination cure the defect as pointed out before.



12.The learned counsel for the respondent cited the judgment passed by the Hon'ble Supreme Court in the case of **K.B.Saha & Sons Pvt. Ltd., v. Development Consultant Ltd.**, reported in **(2009) 2 MLJ 526 (SC)**, wherein it is stated as follows:

"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."

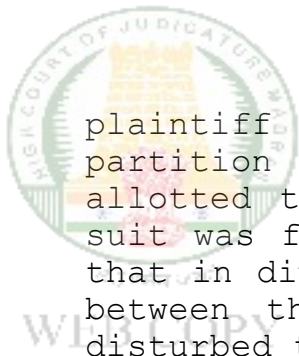
13.On the side of the respondent, it is stated that admissibility of the document is to be decided at the stage of admission itself. In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Shalimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and others** reported in **(2010) 8 Supreme Court Cases 423** is cited.

14.On the side of the respondent, it is stated that the plaintiff claim title through an unregistered document and subsequent registration and payment of penalty will not rectify the defect and the document is not intended to be marked for collateral purpose. In support of his contention, the judgment passed by this Court in the case of **The Canara Bank Premises and Estate Section Circle Office v. G.Meerabai** reported in **2019 - 1 - 1.w. 555** is cited.

15.On the side of the revision petitioner, it is stated that in the written statement itself, the respondent had admitted that the defendant is in possession of the property without dividing it into metes and bounds. The word "கண்டேதம்" denotes that there was an oral partition.

16.On the side of the petitioner, it is stated that the defendant did not mention anything regarding the particulars of the properties enjoyed by him whereas the plaintiff has clearly stated that the properties named as schedule 'B' in the partition deed were purchased in the name of the defendant and they were allotted to the share of the plaintiff and the revenue records were mutated to the name of the plaintiff. It is further stated that the properties mentioned as 'C' schedule purchased in the name of the plaintiff were allotted to the share of the defendant and patta was transferred to the name of the defendant and that the defendant is enjoying the 'C' schedule properties.

17.On the side of the revision petitioner, it is stated that the defendant purchased a property allotted to the share of the plaintiff on 10.02.1981 and that all these documents clearly reveals that there was an oral family partition. It is stated that the



plaintiff and the defendant are more than 70 years old and the partition was during the lifetime of their mother and the share allotted to the mother, is available for partition and a separate suit was filed for partition regarding the share of the mother and that in dividing the property of the mother, there was some dispute between the plaintiff and the defendant and that the defendant disturbed the possession of the plaintiff in the suit properties.

18.It is alleged that the oral partition was reduced into writing on 04.07.1996. On the side of the revision petitioner, it is stated that on the basis of that partition, the name of the owner in the revenue records are transferred in accordance with the document and for a family settlement, there was no mandatory registration during that period and prayed that he may be permitted to pay the penalty and registration charges and to receive the document for collateral purpose.

19.A perusal of records reveals that the plaintiff claim oral partition and the stand of the plaintiff is that the properties were already divided and some of the properties purchased in the name of the plaintiff were allotted to the share of the defendant and vice versa. It is stated that a property allotted to the share of the plaintiff was sold to the defendant.

20.At this juncture, this Court would like to rely on the judgment recently passed by the Hon'ble Supreme Court in the case of **Thulasidhara vs Narayanappa** reported in **2019 SCC Online SC 645**. The Hon'ble Supreme Court has held that an unregistered family arrangement can be marked for collateral purpose. The petitioner is ready to pay the penalty and the registration charges and hence, an opportunity for the petitioner to putforth his case is to be given. Subject to the payment of penalty and registration charges, the document can be received as evidence for collateral purpose.

21.With the above observations, this Civil Revision Petitions are allowed and the order passed in I.A.Nos.334 and 340 of 2017 in O.S.No.25 of 2015 dated 21.06.2019 passed by the learned District Munsif cum Judicial Magistrate Court, Natham, Dindigul District is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)



To மனோகந்திரம்

The District Munsif cum Judicial Magistrate,
Natham, Dindigul District.

+1 CC to Mr.P.VAIRAVA SUNDARAM, Advocate (SR-651[F] dated
08/01/2020)

+1 CC to Mr.C.JEYAPRAKASH, Advocate (SR-1185[F] dated 09/01/2020)

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