



CRP.No.232 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 12.08.2022

Delivered On : 14.10.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.232 of 2020

1. Ramanathan

2. P.Loganathan

.. Petitioners/Respondents/Defendants 1 & 2

Vs.

C.Dhakshinamurthy

.. Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.12.2019 in I.A.No.5 of 2019 in O.S.No.25 of 2018 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam.

For Petitioners : Mr.M.Sivavarthanan

For Respondent : Mr.S.Mukunth

for M/s. Sarvabhauman Associates

ORDER

This Petition has been filed to set aside the fair and decreetal order dated 20.12.2019 in I.A.No.5 of 2019 in O.S.No.25 of 2018 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam.



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2. It is the contention of the learned Counsel for the Petitioners that during the trial proceedings, Ex.B-19 was marked on the side of the Respondent/Defendant. The said document was not marked by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam as it is found unstamped and unregistered.

2.2. The learned Counsel for the Plaintiff vehemently objected to mark the document that it was neither stamped nor registered and it cannot be marked. Accepting the submission of the learned Counsel for the Plaintiff, the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam had allowed the Petition in I.A.No.5 of 2019 in O.S.No.25 of 2018 and Ex.B-19 is rejected.

2.3. Aggrieved by the same, the Petitioner filed this Petition under Article 227 of Constitution of India to set aside the Order passed by the learned III Additional District and Sessions Judge, Erode regarding the rejection of document under Ex.B-19.



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2.4. The learned Counsel for the Petitioner relied on the ruling reported in *MANU/SC/0757/2021* in the case of ***Korukonda Chalapathi Rao and Ors Vs. Korukonda Annapurna Sampath Kumar***. The relevant portion is extracted hereunder:

5. On the other hand, the case of the appellants is that while partition list dated 17.11.1980 was executed recording the fact of partition, which was already effected, there were subsequent developments. The respondent and his wife raised dispute before elders complaining that the portion given to them was not sufficient. At the intervention of the elders, it was settled and agreed between the appellants and the respondent that respondent should give away his portion to the second appellant and respondent should also give away his one-third portion in Nadava margam to the appellants and in consideration for the same the first appellant was to give Rs. 25,000/- and the second appellant was to give Rs. 75,000/- to the respondent. The said amounts were paid. On the advice of the elders the case of the appellants is that Khararunama dated 15.04.1986 was executed recording the facts. On the pleading of respondent and his wife to permit them to stay on, the respondent was permitted to occupy the property. It is the further case of the appellants that in December, 1993, respondent and his wife informed the appellants that they would vacate the portion in the second appellant's house and leave the same but defendants should pay some more money as they intended to vacate the property. The elders settled the matter and it is alleged that Second appellant had to pay Rs. 2,00,000/-. Out of affection towards the respondent and to purchase peace, the second appellant agreed to pay Rs. 2,00,000/- (Rupees Two Lakhs). Accordingly, Rs. 2,00,000/- was paid on 08.12.1993 in the presence of elders and the receipt dated 08.12.1993 was issued by the respondent to the second appellant and on the same day, respondent is alleged to have vacated and left the portion in his occupation in the house of the second appellant and shifted to a rented portion.

6. After completion of the evidence on behalf of the



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respondent, appellants filed the evidence affidavit and sought to mark the Kharurunama and receipt dated 08.12.1993. As already noticed, the trial court allowed the said documents to be marked. By the impugned judgment the High Court has found that in the absence of registration and not being stamped the documents were inadmissible.

15. There is a long line of judgments of this court dealing with the question as to whether a family arrangement is compulsorily registrable. We need only refer to the case of *Kale v. Dy. Director of Consolidation*³. This Court has summed up the essentials of the family settlement in the following proposition:

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(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 immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible



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claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

27. The *proviso* carves out two exceptions. We are only concerned, in this case, with only one of them and that is contained in the last limb of the proviso. The unregistered document can be used as evidence of any collateral transaction. This is however subject to the condition that the said collateral transaction should not itself be one which must be effected by a registered document. It is this expression contained in the proviso which leads us to ask the question as to what would constitute a collateral transaction. If it were collateral transaction, then an unregistered document can indeed be used as evidence to prove the same. Would possession being enjoyed or the nature of the possession on the basis of the unregistered document, be a transaction and further would it be a collateral transaction? We pose this question as the contention of the appellants is that even if the *Khararunama* dated 15.4.1986 cannot be used as evidence to prove the factum of relinquishment of right which took place in the past, the *Khararunama* can be looked into to prove the conduct of the parties and the nature of the possession which was enjoyed by the parties.

35. If we apply the test as to whether the *Khararunama* in this case by itself ‘affects’, *i.e.*, by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create,



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declare, assign, extinguish or limit right in properties. Thus, the *Khararunama* may not attract Section 49(1)(a) of the Registration Act.

36. As far as Section 49(1)(c) of the Registration Act is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used ‘as’ evidence of the transaction, which ‘affects’ immovable property. If the *Khararunama* by itself, does not ‘affect’ immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent [See *Muruga Mudallar* (supra)]. Thus, the transaction or the past transactions cannot be proved by using the *Khararunama* as evidence of the transaction. That is, it is to be noted that, merely admitting the *Khararunama* containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the *Khararunama* and the receipt would produce any legal effect on the immovable properties in question.

37. As far as stamp duty goes, on our finding regarding the nature of the document, viz., *Khararunama*, being record of the alleged transactions, it may not require to be stamped. We notice the following conclusion of the Division Bench of the Madras High Court in *A.C. Lakshmipathy v. A.M. Chakrapani Reddiar* [15](#):

“42. To sum up the legal position

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(V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been



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prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.”

3. The learned Counsel for the Respondent submitted that the document sought to be marked as Ex.B-19 was stamped properly and not registered. It alters the right in favour of Sivakami. Therefore, it is to be stamped and registered. Since it had not been registered, it had not been taken up for consideration.

3.1. The learned Counsel for the Respondent had relied on the ruling reported in **2022 (2) MWN 593** in the case of ***M.Narayana Reddy and others Vs. G.R.Munivenkata Reddy***, the relevant portion is extracted hereunder:

“9. It would depend on the language of the document and the purport of the document, if the document operates in itself to create rights or to release rights or to effect a partition then the document would undoubtedly require registration and stamping. On the other hand, if the document is only a record of a transaction which has happened earlier or a conclusion of the Panchayat which has been accepted by the parties earlier which are loosely called past oral transactions then registration and stamping may not be mandatory and document can be received in evidence as proof of such transaction having taken place earlier in point of time.”



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4. On perusal of Ex.B-19, the recitals in Ex.B-19 creates right in favour of Sivakami and also Sivakami relinquishes her right in other properties in joint family. Therefore, it is neither Koor Chit nor a family arrangement, even though it is stated in the document as “குடும்ப ஒப்பந்தம்”.



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4.1. On careful consideration of the wordings in the document, it is found that it creates and it alters the status of enjoyment of the property in favour of Sivakami and also relinquishes her right in commonly enjoyed in the other properties. Therefore, it is not a “family arrangement”, that had taken place orally between the parties prior to writing it as deed. It had taken place only on the date of writing the deed in Ex.B-19. Therefore, it ought to have been registered and stamped. As per the rulings cited by the learned Counsel for the Petitioners that he relied on Ex.B-19, cannot at all be accepted considering the nature of the recitals in the document.

4.2. The wordings in the document creates right in favour of Sivakami. At the same time, it gives some fair claim for the right of Sivakami in other properties that are to be allotted to other brothers of Sivakami. Therefore, it alters the status of the property that was already enjoyed as common property by the members of the joint family. It is not a Koor Chit even though the family arrangement it alters the status of the enjoyment of the property both in her favour and against Sivakami. It has



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to be registered and stamped since it is neither registered nor stamped.

The Petitioner cannot be insisting and accepting the document for the trial proceedings.

4.3. In continuation of Ex.B-3 also executed and it is a partition deed which is properly registered and stamped.

4.4. In the light of the Order passed by the learned III Additional District Judge, Gobichettipalayam and in the light of the recitals in Ex.B-19, the Order passed by the learned III Additional District and Sessions Judge, Gobichettipalayam is found acceptable in rejecting the document under Ex.B-19 as not properly stamped and not registered.

4.5. The contention of the learned Counsel for the Petitioner herein is rejected in the light of the recitals in the document under Ex.B-19. Therefore, the ruling of the learned Counsel for the Petitioner does not apply to the facts of the case.

In the light of the above discussion, this ***Civil Revision Petition is***



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dismissed as not maintainable.

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The learned III Additional District and Sessions Judge, Erode at Gobichettipalayam is directed to proceed with the trial and dispose of the same. No costs.

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dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned Principal District Munsif,
Alandur.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery Order made in
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