

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****Dated : 14.07.2022****CORAM:****THE HONOURABLE MRS. JUSTICE S.KANNAMMAL**C.R.P.(PD).No.2284 of 2020andC.M.P.No.14316 of 2020

1.R. Devadass
2.Ms. D. Girija

...Petitioners

Versus

1.R. Govindarajan
2.R. Ruckmani
3. Amirtham
4. R. Neelaveni

...Respondents

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order of the learned Trial Judge dated 17.03.2020 passed in I.A. No.4 of 2019 in O.S. No.726 of 2011 in dismissing the petition in the said suit passed by the learned 1st Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr. R. Meenakshisundaram

For Respondents: :Mr. M. Jaurudeen for R1
: Mr. P. Srinivasan for R2 & R3

**ORDER**

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This Civil Revision Petition has been filed to set aside the order dated 17.03.2020 in I.A. No.4 of 2019 in O.S. No.726 of 2011 for dismissing the application in the said suit passed by the learned 1st Additional District and Sessions Judge, Coimbatore.

2.The petitioners 1 and 2 herein are the defendants 2 and 5 respectively while the 1st respondent is the plaintiff in the suit who has sought for relief to direct for division of the suit properties into 5 equal shares and allot one such share to the plaintiff/1st respondent herein by metes and bounds and to declare the settlement deed dated 07.09.2011, registered as Doc. No.5526 of 2011 at SRO, Ganapathy as null and void and binding the plaintiff by means of Declaratory Decree.

3.During the trial of the suit, the defendants/petitioners herein have filed I.A. No.4 of 2020 seeking the Court below to receive the Panchayat Muchalika dated 27.05.2008 listed as Document No.4 in the petition filed in I.A. No.3 of 2019 and to mark as an exhibit tentatively and the admissibility may be deferred at the stage of final disposal of the case. The Trial Court



dismissed the aforesaid application holding that as Panchayat Muchalika dated 27.05.2008 being unregistered document cannot be taken into account even as collateral purpose. Being aggrieved by the aforesaid dismissal order, the present Civil Revision Petition has been filed by the petitioners.

4.The learned counsel for the petitioners would submit that the defendants/petitioners herein have filed totally 25 documents before the Court below to prove that there was an arrangement between the family members to the suit and thereby division of properties have taken place and by virtue of an Panchayat Muchalika dated 27.05.2008, the said arrangement was confirmed. However, the 24 documents have been marked as exhibits Ex.B1 to Ex.B24 except the said Panchayat Muchalika dated 27.05.2008 listed as Sl. No.4 since it has been returned for want of registration.

5. It has been further submitted that the Panchayat Muchalika is very important document to prove the case of the defendants in which the 1st respondent/plaintiff had signed in the presence of the witnesses after



allotting their respective shares between the family members as per family arrangements. Unless the said document is marked and placed on records, the rights of the defendants will be jeopardized.

6. The learned counsel for the petitioners would further submit that the Panchayat Muchalika will prove the factum of possession and enjoyment of the properties by the parties to the suit specifically the plaintiff/1st respondent herein who has filed the suit seeking for his 1/5th share in the suit property.

7. It has been further submitted that the law is well settled that even unregistered document can be marked and looked into for collateral purpose. Therefore, it is just and necessary that the said document has to be marked tentatively with objection being raised by the opposite parties and admissibility can be deferred at the stage of final disposal of the case. Hence, the Court below cannot reject the document at the time when the document sought to be marked. Without considering the aforesaid aspects, the Court below dismissed the said application mechanically holding that Panchayat Muchalika cannot be taken into account as it is unregistered one.



Hence, the learned counsel for the petitioners prays this Court to allow the present petition by setting aside the order dated 17.03.2020 passed in I.A. No.4 of 2019 in O.S. No.726 of 2011.

8. In support his arguments, the learned counsel for the petitioners has relied on the Judgment passed by the Supreme Court in **Bipin Shantilal Panchal Vs. State of Gujarat** another reported in (2001) 3 Supreme Court Cases 1 wherein it has been observed as under:

"13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for



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recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)



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15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

9. Further, in support of the arguments of the learned counsel for the petitioners, he has placed reliance upon the Judgment passed by the Supreme Court in **Korukonda Chalapathi Rao & Anr. Vs. Korukonda**



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Annapurna Sampath Kumar wherein it has been observed as under:

"14. 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 Consolidation³. 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 3 AIR 1976 SC 807 the terms of the



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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 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;



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(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.” (Emphasis supplied)

36. No doubt, when there has been a partition, then, there may be no scope for invoking the concept of antecedent right as such, which is inapposite after a disruption in the joint family status and what is more an outright partition by metes and bounds. In this regard, it is to be noticed that the appellants and the respondents, admittedly, partitioned their joint family properties. This is clear from the Khararunama 15 AIR 2001 Madras 135 wherein it is stated that they have divided the joint family properties. The properties, which are mentioned in the Khararunama, became the separate properties of the respondent.

10. The learned counsel for the petitioners has further placed reliance upon the Judgment dated 09.03.2012 passed by the Division Bench of this Court in **Venkatasubramaniya Chettiar (died) Vs.Perumal Chettiar reported in 2012(3) CTC 160** wherein it has been observed as under:



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"19. In the light of the above principles let us consider the admissibility/evidentiary value to be attached to Ex.B1. Ex.B1-Partition Deed though not registered can be looked into for collateral purpose of division in status and also for considering the nature and character of possession. While the Trial Court erred in declining to look into the contents in Ex.B1-unregistered Partition Deed, in our considerable view, the contents of Ex.B1 could be looked into for "Collateral Purpose" of proving division in status and the subsequent separate enjoyment of the parties. To that extent, the finding of the Trial Court as to the value to be attached to Ex. B1-unregistered document is liable to be set aside."

11. Further, the learned counsel for the petitioners has relied upon the Judgment in ***Solai Vs. Periakaruppan & others reported in 2015-1-L.W.134*** , passed by this Court, wherein it has been observed as follows:

"10.From the various Judgments relied on by the parties, an unregistered, unstamped document can be marked and relied on by the party for collateral purpose. It is also well settled that the Courts must mark an unregistered, unstamped document subject to the objection by the opposite party. The Courts should not shut down the evidence at the threshold itself. At the time of final decision only, the Courts must consider the evidence based on the document and



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objections by the opposite party. If the Courts come to the conclusion that the objection with regard to document is sustainable, then the said document and evidence based on the said document must be rejected. The learned Judge committed irregularity by rejecting the marking of documents at the threshold itself. The learned Judge ought to have marked the documents subject to the objections as per well settled law. Therefore, the order of the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, dated 18.09.2013, passed in I.A.No.511 of 2013 in O.S.No.149 of 1995, is liable to be set aside. Accordingly, the impugned order is set aside."

In view of the aforesaid observations made in these Judgments, the learned counsel for the petitioners submitted that it need not be stamped or registered for the family arrangement document which had been prepared as a record of what had been agreed upon between the family members.

12. Per contra, the learned counsel for the 1st respondent vehemently argued that Originally the suit schedule property was purchased by the father of the plaintiff and defendants 2 to 4 in the suit. After the death of their father, his legal heirs namely the plaintiff/1st respondent herein and the



defendants 1 to 4 have succeeded the said property and are in possession and enjoyment of the same. There is no cordial relationship with the 2nd defendant and the suit schedule property was said to have leased out to third party. Hence, the plaintiff has made many efforts for division of suit schedule property, but it went in vain. Hence, the plaintiff/1st respondent has filed the suit in O.S. No.726 of 2011 on the file of the Additional District and Sessions Judge, FTC, Coimbatore, seeking for division of the share of the plaintiff in the suit schedule property.

13. It has been further submitted by the learned counsel for the 1st respondent that the alleged Panchayat Muchalika dated 27.05.2008 is nothing, but false and might have been fabricated for the purpose of case. The plaintiff/1st respondent herein at no point of time executed the said Panchayat Muchalika dated 27.05.2008. Thus, the claim of the 2nd defendant that he is absolute owner of the suit property as per Panchayat Muchalika dated 27.05.2008 and thereby he settled the suit property to his wife namely 5th defendant in the suit is nothing, but sham and nominal which is not binding on plaintiff/1st respondent herein. Under such circumstances, the defendants have filed I.A. No.4 of 2019 in O.S.No.726 of



2011 with the intention to drag on the suit proceedings seeking for to mark the alleged Panchayat Muchalika dated 27.05.2008 which is unregistered one stating that the suit schedule property has been divided among the family members which is fabricated for the purpose of the case. Further, while the said Muchalika has not been registered with the Registering Office concerned, it cannot be sought to be marked as Exhibits to rely even for collateral purpose. Hence, the Court below has rightly dismissed the application in I.A. No.5 of 2019 in O.S. No.726 of 2011.

14. In support of his contentions, the learned counsel for the 1st respondent has relied on the Judgment in ***Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others passed by the Apex Court reported in 2016-2-L.W.656*** wherein it has been observed as follows:

17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in



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that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under [Section 49](#) of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of [section 17](#) (i) (b) of the [Registration Act](#) and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

..... An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.



15. The learned counsel for the 1st respondent has further relied on the Judgment **in A. Raja Bhoopathi(Died) and others Vs. A. Vivekanandan reported in 2017(2)MWN(Civil)654** passed by this Court, wherein it has been observed as follows:

“12.The Trial Court after perusing the recital of the said document, has found that it is a document creating right over the immovable properties. Further, it is an arrangement between the family members to be effected in future. Being a secondary document with inadequate stamp and unregistered, the Trial Court has rejected the request to admit the document.

13.The first contention of the revision petitioner is that if the document is not sufficiently stamped, it ought to have been impounded by the Court and proceeded under [Section 38](#) of the Indian Stamp Act, instead of rejecting the request for admitting it as evidence. This submission cannot be countenanced, for the simple reason that the document which has been produced is not the original document, but only a photocopy. Impounding of a document under [Section 38](#) of the Indian Stamp Act is applicable only in case of original document which is not stamped or inadequately stamped. The procedure of impounding cannot be exercised in case of photocopies.



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20. In the present suit for partition, the document which is sought to be relied upon cannot be considered as a document relied for collateral purpose, since the document speaks about present and future division of property among the sharers, but not the past division. The revision petitioners have innocuously attempted to introduce the document during trial. The Trial Court has consciously found the illegality in admitting this document and therefore, refused to admit the document. Only thereafter, the revision petitioners have issued notice to the respondent to produce the original. Whereas, the very existence of the document itself is denied by the respondent.

21. Under these circumstances, photocopy of the inadequately stamped and unregistered document purported to have been executed under the caption of 'family arrangement' and rechristened by the revision petitioners as "memorandum of understanding" in respect of family property, is totally inadmissible in evidence in the light of Section 17 of the Indian Registration Act and [Section 35](#) of the Indian Stamp Act. Hence, there is no illegality in the impugned order of the Trial Court."

16. The learned counsel for the 1st respondent has further relied on



the Judgment in ***L. Keerthika & Others Vs. The State of Tamil Nadu, & Others reported in 2018-1-L.W.965*** passed by this Court wherein it has been observed as follows:

As per the decision of the Apex Court above stated, it is found that Ex.A1 not being properly stamped, it is found that the same cannot be received in evidence under the Stamp Act, even for a collateral purpose and such being the position, it is found that Ex.A1 cannot be pressed into service for holding the plea of oral partition in any manner.

17. The learned counsel for the 1st respondent has further relied on the Judgment in ***A. Ramamoorthy & another Vs. G.Kumaresan & another reported in 2020-5-L.W.265*** passed by this Court, wherein it has been observed as follows:

"5.On a careful consideration of the rival submissions, this Court considers that the trial Court ought to have gone slow in allowing I.A.No.934 of 2018. The ideal course that was available to the trial Court is to impound Ex.A1 as per the ratio of the Hon'ble Supreme Court in AIR 1961 SC 1655 and AIR (2009) 3 MLJ 409 SC and impose stamp penalty on that Secondly, the trial Court ought to have refrained from making any observation or statement as to the evidentiary



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value of certain document during middle of the trial. Thirdly, if the stamp penalty leviable on Ex.A10 is collected, then the document can be used for collateral purposes, even if it is not registered.

In view of the aforesaid Judgments, the learned counsel for the 1st respondent submitted that unregistered, unstamped usufructuary documents cannot be marked and relied on even for collateral purpose.

18.Heard, the learned counsel for the petitioners and the learned counsel for the respondents as well as perused the material placed on records.

19. On a perusal of the records, it is seen that admittedly the document which is sought to be marked on the side of the defendant, is a Muchalika dated 27.05.2008 pertaining to the partition of the suit properties between the family members including the defendants/petitioners herein and the plaintiff. The alleged Muchalika, is said to have been signed by all the Family members including the plaintiff accepting the respective shares as per the family arrangements between the family members whereas the



plaintiff refused to have signed the same. Under such circumstances, it has to be proved whether the plaintiff has put his signature in the alleged Muchalika by way of Trial. However, from the various Judgments relied on by the parties, it is clear that the Courts must mark an unregistered, unstamped document subject to objection by the opposite party. The Courts should not refuse the evidence at the threshold itself. At the time of final decision only, the objection with regard to the document, would be considered whether it is admissible to the case or not and liable to be rejected based on the oral and documentary evidence and objections raised by the opposite party. Hence, this Court is of the view that the Trial Court ought to have marked the alleged Muchalika dated 27.05.2008 subject to objections as per settled Law. Therefore, the order of the Additional District and Sessions Judge, FTC, Coimbatore, passed in I.A. No.4 of 2019 in O.S. No.726 of 2011 is liable to be set aside. Accordingly, the impugned order is set aside.

20. Resultantly, this Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes/ No

Speaking Order / Non-Speaking Order

To:

The 1st Additional District
and Sessions Judge, Coimbatore.



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S.KANNAMMAL, J.,

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