



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD) .No.2882 of 2013

and

W.M.P(MD) .Nos.1 and 2 of 2013

- 1.P.J.Ganesan (Deceased)
- 2.G.Rajam
- 3.D.Nandhini
- 4.R.Hemalatha
- 5.S.Geethapriya
- 6.T.Gayathri

... Petitioners

(P2 to P6 are substituted as legal heirs of the deceased P1 vide order dated 20.08.2019 in W.M.P(MD) .No.14514 of 2019)

Vs .

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Rural Development and Local Administration,
Fort St.George,
Chennai-600 009.
- 2.Tiruchirapalli City Municipal Corporation,
Represented by its Commissioner,
Tiruchirapalli.
- 3.The Assistant Commissioner (Revenue)
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.
- 4.The Assistant Commissioner,
Ariamangalam Division,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.



5.P.J.Thangaraj
6.Pushpam Ammal
7.P.J.Gopal
8.P.J.Thigarajan
9.P.J.Sreenivasan
10.S.Radha
11.Mekala
12.Jambulingam
13.Prasad

14.The Tahsildar,
Lalgudi Taluk,
Thiruchirapalli District.

15.T.Susila
16.T.Santhosh
17.S.Subashini

...Respondents

(R14 is impleaded vide Court order dated 06.07.2015 in M.P (MD).No.1 of 2015 and R15 to R17 are substituted vide Court order dated 01.04.2022 in W.M.P(MD). No.12067 of 2020)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 09.02.2013 vide Na.Ka.No.A6/06592/2012/Ariya issued by the second respondent pending disposal of the above writ petition and quash the same.

For Petitioner : Mr.P.Thiagarajan

For R1 & R14 : Mr.K.S.Selva Ganesan
Additional Government Pleader

For R2 to R4 : Mr.R.Baskaran
Standing Counsel

For R5, R11 to R13
and R15 to R17 : Mrs.J.Maria Roseline

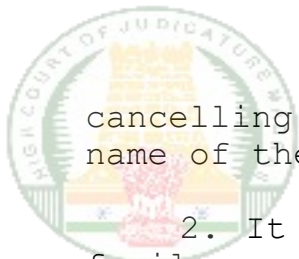
For R7 to R10 & R12 : No Appearance

For R6 : Died

ORDER

1. The petitioners have challenged the impugned order passed by the second respondent/Commissioner, Trichy Municipal Corporation

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cancelling the notice intimating property assessment tax in the name of the petitioner.

2. It is the specific case of the petitioners that there was a family arrangement between the members of the petitioners' family consisting of the deceased petitioner, his mother late Pushpam and his siblings and that the family arrangement was reduced in the form of writing on 24.08.1996. It is the further case of the petitioner that several alienations of the properties were made pursuant to the aforesaid family arrangement. In this connection, a reference was made to the sale deed executed by the sixth respondent herein namely the petitioner's late mother and the private respondents' mother-in-law who died pending disposal of the present writ petition. That apart, a reference was made to the affairs of the family arrangement on 24.08.1996 wherein, other legal heirs of late V.V.L.P.Jambulingam Chettiar are shown as witnesses. It is submitted that on the strength of the family arrangement which stood recorded in the deed dated 28.04.1996, the deceased petitioner had also borrowed money and put up construction and therefore, the impugned order passed by the second respondent at the behest of the fifth respondent, namely, P.J.Thangaraj dated 27.12.2010 was unwarranted.

3. The learned counsel for the petitioners submits that the family arrangement dated 28.04.1996 merely records that the decision was taken among the family members as to which the properties are in the possession and control of each of the legal heirs of late V.V.L.P.Jambulingam Chettiar. That apart, it is submitted that as per the aforesaid family arrangement, which recognised that the deceased petitioner was entitled for Schedule B while the sixth respondent was entitled for Schedule A and the fifth respondent was entitled for Schedule C who has now woken up and given a complaint. Therefore, it is submitted that the impugned order that the deceased petitioner has not produced the original copy of the aforesaid family arrangement, dated 28.04.1996 and on account of fact that the same is not registered and duly stamped is liable to be set aside.

4. The learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Roshan Singh and others Vs Zile Singh and others** reported in **AIR 1988 SC 881**. The specific reference was made to Paragraphs 9, 10 and 16, which reads as under:

"9. It is well-settled that while 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 s. 17 (1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed



is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well-settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Sec. 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, s. 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of s. 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: See Mulla's Registration Act, 8th edn., pp. 54-57.

10. The tests for determining whether a document is an instrument of partition or a mere list of properties, have been laid down in a long catena of decisions of the Privy Council, this Court and the High Courts. The question was dealt with by Vivian Bose, J. in Narayan Sakharam Patil v. Cooperative Central Bank, Malkapur & Ors., ILR (1938) Nag. 604. Speaking for himself and Sir Gilbert Stone, CJ. the learned Judge relied upon the decisions of the Privy Council in Bageshwari Charan Singh v. Jagarnath Kuari LR (1932) 59 IA 130 and Subramanian v. Lutchman LR (1923) 15 IA 77 and expressed as follows:

"It can be accepted at once that mere lists of property do not form an instrument of partition and so would not require registration, but what we have to determine here is whether these documents are mere lists or in themselves purport to 'create, declare, assign, limit or extinguish any right, title or interest' in the property which is admittedly over Rs. 100 in value. The question is whether these lists merely contain the recital of past events or in themselves embody the expression of will necessary to effect the change in the legal relation contemplated.



16. In the present case, admittedly there was a partition by metes and bounds of the agricultural lands effected in the year 1955 and the shares allotted to the two branches were separately mutated in the revenue records. There was thus a disruption of joint status. All that remained was the partition of the ancestral residential house called rihaishi, the smaller house called baithak and ghers/ghetwars. The document Exh. P-12 does not effect a partition but merely records the nature of the arrangement arrived at as regards the division of the remaining property. A mere agreement to divide does not require registration. But if the writing itself effects a division, it must be registered. See: Rajangam Ayyar v. Rajangam Ayyar, LR (1923) 69 IA 123 and Nani Bai v. Gita Bai, AIR (1958) SC 706. It is well-settled that the document though unregistered can however be looked into for the limited purpose of establishing a severance in status, though that severance would ultimately affect the nature of the possession held by the members of the separated family as co-tenants. The document Exh. P-12 can be used for the limited and collateral purpose of showing that the subsequent division of the properties allotted was in pursuance of the original intention to divide. In any view, the document Exh. P-12 was a mere list of properties allotted to the shares of the parties."

5. The learned counsel for the petitioner has also drawn attention to the decision of this Court in the case of **A.C.Lakshmipathy and others Vs A.M.Chakrapani Reddiar and others** reported in **2001 (1) CTC 112**. A Specific reference was made to paragraph 41, which reads as under:

"41. We hold that the document in question is being an unstamped and unregistered, the same cannot be looked into for any purpose. Similarly, oral evidence cannot be let in about the contents of the said document."

6. Opposing the prayer, the learned counsel for the fifth respondent submits that not only the fifth respondent but also the respondents 11 to 13 who represents the family of the deceased petitioner's other brother late P.J.Mohan disputed the alleged family arrangement recorded on 28.04.1996. That apart, it is submitted that all along the properties even before the family arrangement the deceased petitioner has managed to ensure several properties were assessed in his name on the sly and that there is no truth in the said family arrangement. It is specifically stated that there is a partition suit filed on behalf of the fifth respondent against the petitioner in O.S.No.3 of 2017 on the file of the District Court, Trichy wherein, the deceased petitioner has also filed a written statement. The learned counsel for the fifth respondent further submits that the original copy of the alleged family arrangement, dated 28.04.1996 has also not been produced.



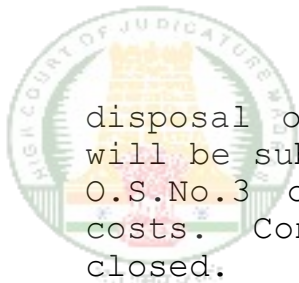
7. The learned counsel for the fifth respondent has placed reliance on the decision of this Court in CRP.PD.No.305 of 2019, dated 29.11.2021, wherein, a reference was made to the decision of this Court in the case of **S.Thirumalai Vs.S.Govindarajan** reported in **2016 (5) LW 834**.

8. As far as the official respondents are concerned, it is submitted that the notice was issued to the petitioner on 02.11.2012 asking the petitioner to respond to the complaint of the fifth respondent and that the petitioner also replied on 05.11.2012 and stated that the original copy of the family arrangement dated 28.04.1996 had been lost and that the affidavit was filed by the petitioner dated 27.03.1998 which was also attested by the other siblings of the petitioner. The learned counsel for the official respondent submits that yet another notice was issued on 02.11.2012. However, the petitioner made it seem as if he required further time to produce the documents.

9. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents 1 and 14, the learned standing counsel for the respondents 2 to 4 and the learned counsel for the respondents 7 to 13 and 15 to 17. I have also perused the response of the petitioner, dated 05.11.2012 preceding the impugned order passed by the second respondent.

10. In the petitioner's response, dated 05.11.2012, the petitioner has given a date of the family arrangement as 26.08.1996, whereas, the copy of the family arrangement which has been filed before this Court and the averments filed in support of the present writ petition seems to indicate that the family arrangement was signed on 24.08.1996. The petitioner has also not produced any other documents to substantiate that indeed there was collateral evidence to substantiate that there was indeed a family arrangement which was acted upon not only to the petitioner but also the other members of the family baring sixth respondent who was mother of the petitioner and mother-in-law of the 11th respondent and paternal grand mother of the respondents 12 and 13. The suit filed by the fifth respondent before the District Court in O.S.No.3 of 2017 which was filed on 02.12.2016 is still pending.

11. Considering the above, I am inclined to dispose this writ petition by directing the District Court, Trichy to decide the partition suit in O.S.No.3 of 2017 filed by the fifth respondent as expeditiously as possible preferably within a period of nine months from the date of receipt of copy of this order. The impugned proceedings dated 09.02.2013 shall be kept in abeyance till the



disposal of the said suit. All further rights of the petitioners will be subject to the final outcome of the aforesaid proceedings in O.S.No.3 of 2017 pending before the District Court, Trichy. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS.II)

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Sub Assistant Registrar(CS)

To

- 1.The Secretary,
The Government of Tamil Nadu,
Rural Development and Local Administration,
Fort St.George, Chennai-600 009.
- 2.The Commissioner,
Tiruchirapalli City Municipal Corporation, Tiruchirapalli.
- 3.The Assistant Commissioner (Revenue)
Tiruchirapalli City Municipal Corporation, Tiruchirapalli.
- 4.The Assistant Commissioner,
Ariamangalam Division,
Tiruchirapalli City Municipal Corporation, Tiruchirapalli.
- 5.The Tahsildar,
Lalgudi Taluk, Thiruchirapalli District.
- 6.The District Judge, Trichy.

Copy To:

The Registrar (Judicial)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.THIYAGARAJAN, Advocate(SR-22241[F] dated 28/04/2022)

+1 CC to M/s.SPL.GP. (SR-22530[F] dated 29/04/2022)

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-22794[F] dated 29/04/2022)

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