



S.A. No.1255 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.1255 of 2009

and

M.P.No.1 of 20009 & C.M.P.No. 4297 of 2020

R.C.Gnanasundaram (died)

1. Shanthi,
W/o. Lakshmanan
2. Ananthanayagi,
W/o. Kesavan
3. Deivanayagi,
W/o. Dhanraj
4. Sakila,
W/o. Kesavan
5. Shanmugavelu,
S/o. Late R.C.Gnanasundaram
6. Gopinathan,
S/o. Late R.C.Gnanasundaram
7. Tamilselvi,
W/o. Kesavan



S.A. No.1255 of 2009

8. Ravathi,
W/o. Parthiban

9. D.Jothilingam,
S/o. Devaraj & H/o. Parimala

10. J.Logeshwari,
D/o. Parimala

11. J.Annamalai,
S/o.Parimala

(Appellants 1 to 11 are bring on
record as legal heirs of deceased
sole appellant R.C.Gnanasundaram
vide court order dated 22.09.2021
made in C.M.P.No. 12583 of 2021)

... Appellants

Vs.

1. R.C. Rajagopal Chettiar,
S/o. Chengalvaraya Chettiar

2. Amsaveni,
W/o. R.C.Devasenapathy

3. Idayarani,
W/o. Manoharan

4. Sukumaran,
S/o. R.C.Devasenapathy

5. Bakkiyalakshmi,
W/o. Mohanraj

.. Respondents



S.A. No.1255 of 2009

WEB COPY

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 06.07.2009 in A.S.No. 23 of 2008 on the file of Principal District Court, Tiruvannamalai reversing the judgment and decree dated 31.10.2007 in O.S.No.37 of 2006 on the file of Subordinate Court, Arni, Tiruvannamalai.

For Appellants : Mr. T.R.Rajaraman

For Respondents : Mr.A.Gowthaman for
Mr.M.Suresh for R1 to R5

JUDGMENT

The appellant herein is the defendant in the suit in O.S. No. 37 of 2006 on the file of Subordinate Court, Arni, Tiruvannamalai, against whom the respondent/plaintiff herein filed a suit for the relief of partition and other consequential relief. Before the trial court, the suit was dismissed on contest. Against which, an appeal in A.S.No.23 of 2008 on the file of Principal District Court, Tiruvannamalai was preferred by the respondent/plaintiff and the same was allowed. Challenging the said



S.A. No.1255 of 2009

reversal finding granting the relief in favour of plaintiff, the defendant preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Brief facts of the case is as follows :-

The 1st plaintiff Rajagopal Chettiar, the 2nd plaintiff's husband R.C.Devasenapathy and the defendant R.C.Gnanasundaram are brothers. Devasenapathy died leaving behind the respondents 2 to 5 as his legal heirs. According to plaintiffs, the said three brothers entered into family arrangement on 14.03.1976 in respect of house property at Middle Street and 0.3 cents in Survey No.25/9, thereby it was divided among sharers. Accordingly, 0.3 cents in Survey No.25/9 was allotted to the defendant and the house property was equally divided among the 1st plaintiff and his brother Devasenapathy. The defendant was not given any share in the house, on the other hand, a sum of Rs.750/- was paid to him. The present suit property is an extent of 24 cents in Survey No.8/9 was not offered n



S.A. No.1255 of 2009

the said family arrangement, in which the 1st plaintiff and the legal heirs of Devasenapathy and the defendant are equally entitled 1/3rd share in the ancestral property. The defendant attempted to put up a construction. Hence, the suit was filed.

4. The objections raised by the defendant is that on 11.03.1976, there was a partition by way of Koorchit, wherein the suit property along with 3 cents were allotted to him, but mistakenly Survey No.8/9 was mentioned in the suit, in fact, the correct survey No. is 8/2 and no house was allotted to him, but there was a big house allotted to 1st plaintiff and another one Devasenapathy equally. Thereafter, both brothers got into possession of their respective properties from 1976 onwards. There is another property of 1 acre 39 cents with well and pumpset and life estate was given to their mother and after her demise, all the three sons equally divided the said 1 acre 39 cents. The defendant constructed a terraced house and he settled the property to his wife Alamelu. Therefore, the defendant would content that there is no property for division, more particularly, the suit property, which is absolutely belong to him and by



S.A. No.1255 of 2009

way of the said partition, arrangement was made in the family through Koorchit dated 11.03.1976, wherein life estate was given to their mother Padmavathy ammal. Therefore, he prayed to dismiss the suit.

5. Before the trial court, both parties adduced their evidence and the said Koorchit was also marked as Ex.B2. On considering oral and documentary evidence, the trial court finally held that through Ex.B2 Koorchit, the defendant proved that already division was taken by allotting the properties of the family among two brothers and thereafter they took possession and enjoyed the property even though Ex.B2 is not a registered document. During the trial, he paid penalty. However, it is not an registered instrument, but the same could be accepted as a collateral purpose. Accordingly, for the division as well as possession of property by all the brothers, the suit property of 24 cents was allotted to the share of defendant, in which the plaintiffs have no right and hence, the suit was dismissed as no merit. Challenging the same, first appeal was filed and first appellate judge independently analysed the facts and framed the issues, more particularly, in respect of Koorchit, whether the



S.A. No.1255 of 2009

plaintiffs are entitled for share in the suit property. On considering oral and documentary evidence, the first appellate judge observed that on perusal of Ex.B2 Koorchit, 24 cents in Survey No.8/9 was considered and it is not related to the suit property, since it is mentioned as suit property, which is described as Survey No.8/2 an extent of 24 cents. Therefore, the said Koorchit was not related to the suit property, besides, the execution of Koorchit itself. Even otherwise, Ex.B2 is not a registered document, through which the defendant cannot claim any right. Therefore, Ex.B2 is not a partition deed or a record of past event evidencing partition, thereby right and title claimed by the defendant through Ex.B2 was not accepted and also held that the said document is want of registration under Sec. 17 (b) of Registration Act, thereby the right claimed by the defendant through Ex.B2 in respect of suit property was declined and finally concludes that the suit property is not subject matter of Ex.B2 and also even assuming that Ex.B2 is a valid document, there is an unequal division in sharing the properties. Therefore, the plaintiffs are entitled for partition in respect of suit property. Accordingly, the first appeal was allowed by granting share in the suit property as per



S.A. No.1255 of 2009

the relief claimed by the plaintiffs. Challenging the said findings, the defendant preferred this Second Appeal.

6. The learned counsel for defendant would submit that the learned District Judge at the outset, ought to have seen that the plaintiff having not disputed the factum of partition through the koorchhit and the inclusion of the suit property in the document, the relief of 2nd partition is not maintainable. The learned counsel would submit that the learned District Judge failed to see that the plaintiffs having admitted partition through Ex.B2 had not given any valid reasons for partial partition, i.e. the non-inclusion of suit property under Ex.B2. The learned counsel would also submit that the learned District Judge erred in not relying on Ex.B2 even for the collateral purpose when the stamp duty with penalty for the above document is paid by the defendant. The learned counsel would submit that the learned District Judge ought to have seen that the defendant had settled the property in favour of his wife (Ex.B3) and also a sale deed (Ex.B5). The plaintiffs have kept quiet all these years and cannot question the title and possession of defendant now. The learned



S.A. No.1255 of 2009

counsel would submit that the learned District Judge erred in holding that the suit property is not established to be the subject matter of partition under Ex.B2 when the plaintiffs admit that the Survey number in the Koorchit was wrongly mentioned in his evidence and in his suit notice. The learned counsel would also submit that the learned District Judge failed to see that both P.W. 1 and P.W.2 have categorically admitted the possession of the defendant for more than a statutory period, and therefore, the defendant has perfected title by adverse possession.

7. On considering his submissions, already this Second Appeal was admitted on the following question of law :-

“1) When the Koorchit (Ex.B2) and the factum of partition were admitted by the plaintiff, is the learned District Judge right in granting a decree for a 2nd partition?

2) Is the learned District Judge right in refusing to rely on a document for a collateral purpose on the basis that no collateral purpose was made out by the defendant and simply



S.A. No.1255 of 2009

ignoring the documents to prove division in status and possession without any valid reason?

8. The relationship between parties is an admitted fact. The contention of plaintiffs is that the suit property in Survey No.8/9 an extent of 24 cents is their ancestral property, in which, the 1st plaintiff and defendant, and another brother deceased Devasenapathy equally entitled for 1/3rd share. Accordingly, the plaintiffs are claiming 1/3rd share in the suit property. Further, he would content that on 14.03.1976 in respect of house along with 3 cents, there was a partition arrangement made, wherein, three cents was allotted to the defendant and the house property equally allotted to this plaintiff and another brother deceased Devasenapathy. Therefore, they claimed that the suit property was possessed and enjoyed by all the three brothers. So, the plaintiffs are entitled for partition as claimed in the suit. The defendant, who is one of brother of plaintiff totally denied the claim of partition stating that the house property along with suit property was divided among three brothers and the same was reduced in writing as Koorchit on 11.03.1976

10/23



S.A. No.1255 of 2009

marked as Ex.B2, thereby, the suit property was allotted to the share of this defendant along with three cents of vacant site and Rs.750/- was paid equivalent to the share of house property and a big house was divided among two brothers, thereby he totally claimed absolute right over the suit property, since he was in possession of property from the year of 1976. Though the Koorchit was accepted by the plaintiffs, but they content that 24 cents in Survey No.8/2, they are disputing the validity of Koorchit and also contended that it is invalid one. An extent of 24 cents in survey No.8/9 mentioned in Koorchhit and the suit property in Survey No.8/2, an extent of 24 cents, both are differs and also the said Ex.B2 even not to be accepted for collateral purpose, it is created right over the property for mortgage, thereby it requires compulsory in registration. In support of his contentions, the learned counsel for plaintiffs relied the authorities laid down by this court as follows :-

(A) ***C.R.P.No.2371 of 1998***, in the case of ***D.Agastin and others vs. Devasagayan and others***, wherein in para 3, this court held as follows :-



S.A. No.1255 of 2009

“3. *In the context of the arguments advanced on either side, I perused the pleadings as well as went through the document itself. When the admissibility of a document is raised, it is the duty of the Court to find out what exact the document conveys. Two learned Judges of this Court in the **Panchapagesa vs. Kalyanasundaram, Manu/TN/0210/1957 : AIR1957Mad472** held, as to what should be the approach of the Court in such circumstances.*

“(19) In construing such documents for the purpose of determining whether or not there is creation or declaration of a right or title in the sense contemplated by S.17 of the Act, undue emphasis should not be laid on isolated words and phrases in the document. The Court must read the document as a whole and take a broad view of the circumstances, in which and the purpose for which it was written.

*Looking at the substance of the transaction, the Court must arrive at the conclusion one way or the other whether the parties in fact intended the document to be an instrument of partition and the sole evidence of partition and as actually effecting a division of the property. **Subba Rao vs. Mahalakshmma ILR 54 Mad 27 : Manu/TN/0031/1930 : AIR 1930 Mad 883***



S.A. No.1255 of 2009

(Curgenven J.); Bhangaji vs. Pandurang, 76 Ind Cas 158 : AIR 1924 Nag. 395 ; Rudragowda vs. Basangouda, 40 Bom. LR 202 : Manu/MH/0134/1937 : AIR 1938 Bom257 at”

(B) *S.A.No.997 of 1994*, in the case of *Amutha and others vs. K.Jeyaraman and others*, wherein in paras 19, 21 and 23, this court held as follows :-

“19. Section 35 of the Indian Stamp Act, 1899 reads as follows:-

"35. Instrument not duly stamped inadmissible in evidence, etc.-- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

21. The ratio of the decision rendered by a Division Bench of this Court in R. DEIVANAI AMMAL AND ANOTHER v. G. MEENAKSHI AMMAL AND OTHERS (2005-1-L.W. 343) squarely applies to the facts of this case



S.A. No.1255 of 2009

WEB COPY

for the reason that in that case also, an unstamped and unregistered document came up for consideration regarding admissibility. It was held in this context as follows:-

"A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in Section 35 of the Indian Stamp Act.

Ex.B-28 is not only a document of family arrangement reduced to writing, but it purports to create, declare/extinguish right, title or interest of the properties of G. In such a circumstance, we hold that it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act respectively."

In this case also, Ex.A-9 is similar to Ex.B-28 in the case referred to above.

23. Further, it is relevant to mention that subsequent revalidation of the document by paying stamp duty and penalty as contemplated under Sections 33 and 40 of the Indian Stamp Act, 1899 during the proceedings before the lower Appellate Court cannot at any stretch of imagination cure the defects as pointed out above and



S.A. No.1255 of 2009

therefore this Court is of the considered view that the finding rendered by the lower appellate Court on this aspect of the matter has to be upheld.”

(C) **C.R.P.No.3555 of 1998**, in the case of **Mathuram** vs.

Alagu, wherein this court held as follows :-

“Civil – Payment of registration charges – Order permitting respondent/defendant to pay the registration charges on an unregistered instrument, which was in the nature of a sale deed under challenge in present petition – Held, Court was in perfect agreement with the proposition that by the simple device of calling it as collateral purpose, party could not be permitted to use the unregistered instrument, particularly when it was a sale deed, which should have been registered within the parameters of law, and therefore, it could not be permitted to be used in any legal proceeding to bring about indirectly the effect, which it would have had, if it had been registered – Thus, the order passed by the court of Principal District Munsif, Sivaganga, was not the one falling in line within the expectations of law and in all respects, order becomes liable only to be set aside – Petition allowed.”



S.A. No.1255 of 2009

WEB COPY

By relying the aforesaid propositions, the learned counsel for plaintiffs would submit that the alleged Koorchit even cannot be taken into consideration as collateral purpose for the division of property and it is also inadmissible in evidence for want of registration and the same was rightly upheld by the first appellate judge, which needs no interference. Hence, he prayed to dismiss this Second Appeal as no merit.

9. By way of reply, the learned counsel for appellant/defendant would submit that already Ex.B2 Koorchit was acted upon and based on that, the plaintiffs were in possession of the property. For that, he relied the evidence of plaintiffs and they have admitted Koorchit only in respect of house property and 3 cents alone and not with the suit property. P.W.2 in his evidence has stated that as per Koorchit, the house was divided and 24 cents was given to the defendant. So, the plaintiffs themselves admitted that the Koorchit was acted upon and as per Koorchit, they took possession of house property. But, strangely, they are not accepting the Koorchit in respect of 24 cents. According to plaintiffs, in Survey No.8/2,

16/23



S.A. No.1255 of 2009

there is 24 cents, in which the suit property survey number was mentioned as 8/9 with 24 cents. So, they took a defence that the said survey No.8/9 is not related to the suit property, thereby, the suit property is not found in Koorchit. But, admittedly, the family owned only 24 cents, however, Survey number was wrongly mentioned as 8/9 instead of 8/2. Though the survey number is wrongly mentioned, the extent of property owned by the family was accepted by all the three brothers. The plaintiffs took advantage mentioning of wrong survey number in Koorchit and they came forward with the suit as it totally differs from the property mentioned in Koorchit. When there is no evidence on the side of plaintiffs that there is a property in Survey No.8/9, which clearly implies the suit property an extent of 24 cents in the Koorchit allotted to the defendant's share, though there is wrong mentioning of survey number. Moreover, the evidence as well as records clearly proves that Koorchit was acted upon, based on that, all the three brothers are enjoying the property. But, strangely they took the defence that Koorchit is an invalid document for want of registration as well as it cannot be used as collateral purpose. For that, they referred ratio laid down in the aforesaid



S.A. No.1255 of 2009

authorities is acceptable one, but not applicable to the facts of the instant case for the reason that already based on the Koorchit Ex.B2, the plaintiffs took possession of house property and enjoyed the same as on date. Submitting all the points, the learned counsel for appellant relied the ratio laid down in the authorities as follows :-

(A) Reported in **2022 (15) SCC 475** in the case of ***Korukonda Chalapathi Rao and another vs. Korukonda Annapurna Sampath Kumar***, wherein in para 22, the Apex Court held as follows :-

“22. Thereafter, we may notice the view of this Court in paragraph-13 as under:

“13. There is only one aspect of the matter which needs consideration i.e. whether the document dated 9-9-1994, which was inadmissible in evidence, could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds...”



S.A. No.1255 of 2009

23. No doubt in the said case, the court has followed the Judgment in *Yellapu Uma Maheswari and Another* (supra). It found that the unregistered memorandum could be used for collateral purpose within the meaning of *Section 49* of the Registration Act subject to payment of penalty and stamp duty.

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



S.A. No.1255 of 2009

looked into to prove the conduct of the parties and the nature of the possession which was enjoyed by the parties.

28. In *N. Varada Pillai v. Jeevarathnammal*¹⁰, the Privy Council Court took the view that though unregistered, the document could be used to explain the nature of the possession of a person. In the said case, in fact, two widows, who were in possession of the property in equal shares applied to the Collector that they had given away the property as Stridhan to a lady and that the orders may be issued for transferring the property to her. The property was so transferred on the basis of the petition. On the question whether the transferee had obtained title by adverse possession while finding the unregistered petition before the Collector could not be admitted to prove a gift, the fact that transferee was continuing as a donee and owner was gleaned from the said petition to support the case of adverse possession.”

(B) Reported in **1978 (91) L.W. 156** in the case of **Booraswami vs. Rajakannu and others**, wherein the Apex Court held as follows :-

“Registration Act, Sections 17 and 49, Stamp Act, S.35 and Evidence Act, Secs. 27 and 91 – Unstamped and unregistered deed of partition – Subsequent payment of stamp



WEB COPY



S.A. No.1255 of 2009

and penalty – Removal of the bar under Sec.35, Stamp Act- Admissibility of unregistered deed for collateral purpose – What is collateral purpose – Receiving of document in evidence to prove the factum of partition and division in status – Admissibility of oral evidence under Sec.91 – Admission made by a party in a suit during evidence – Court's power to act upon – Scope.”

By relying the aforesaid propositions, the learned appellants counsel argues that the Koorchit to be used for collateral purpose pertaining to division of property as well as possession of property. But, coming to the facts of the instant case, based on Ex.B2 Koorchit, already the plaintiffs took possession of the property, but they have denied the Koorchit only in respect of 24 cents, as discussed above, 24 cents of suit property was already allotted to the share of defendant though the survey number was wrongly mentioned. So, considering the nature of possession of property Ex.B2 can be used as collateral purpose, but the first appellate judge concludes that Ex.B2 is inadmissible in evidence even for collateral purpose as such is totally erroneous one, since because they have enjoyed the property as per Koorchit and it was already acted upon. Therefore,



S.A. No.1255 of 2009

the findings rendered by the first appellate court as such is erroneous one and liable to be set aside. Accordingly, question of law (1) and (2) are answered.

10. With the aforesaid observation, this Second Appeal is allowed and the findings of the 1st appellate judge is set aside and the findings of trial judge is confirmed and consequently, the Suit is dismissed as no merit. No costs. Consequently, the connected Miscellaneous Petitions are closed.

29.08.2024

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To
The Principal District Judge, Tiruvannamalai.



WEB COPY



S.A. No.1255 of 2009

T.V.THAMILSELVI, J.

rpp

Pre-delivery judgment in
S.A. No.1255 of 2009

29.08.2024