



S.A.No.788 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2025

PRONOUNCED ON : 15.12.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No.788 of 2014
and MP No.1 of 2014

1. P.Yuvaraj
Son of Periyasamy
@ Periyasamy Gounder
Deivapuram
R.N.Pudur Post
Erode – 5
Erode Taluk,
Erode District.

2. Santhi @ Vijaya Nirmala Devi
Wife of Sami @ Murugesan
Daughter of Periyasamy @ Periyasamy Gounder
Valkkalpalayam
Thottipalayam Post
Bhavani Taluk
Erode District.

3. Sundarambal @ Soundarammal (died)
wife of Late.Periyasamy @ Periyasamy Gounder
Deivapuram
R.N.Pudur Post
Erode – 5
Erode Taluk
Erode District.

...Appellants

Versus



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Ramasamy @ Ramasamy Gounder (died)
Son of Palanisamy Gounder
Indhirapuram
R.N.Pudur Post
Erode – 5
Erode Taluk,
Erode district.

1. Gopalakrishnamurthi
Son of Ramasamy @ Ramasamy Gounder
100, Indhirapuram
R.N.Pudur Post
Erode – 5
Erode Taluk,
Erode District.

2. Thamilselvi
wife of Ganesamurthi
30, Killampatti
T.Mettupalayam Post
Erode Taluk
Erode District.

3. Saraswathi
wife of Ramasamy @ Ramasamy Gounder
100, Indhirapuram
R.N.Pudur Post
Erode – 5
Erode Taluk
Erode District.

4. Revenue Divisional Officer
(Land Acquisition Officer)
Having office at
Brough Road,
Erode – 1
Respondents

...

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure

2/10



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Code against the judgment and decree dated 06.07.2013 made in A.S.No.75 of 2011 on the file of the II Additional District Court, Erode reversing the finding of the judgment and decree dated 29.03.2011 made in O.S.No.659 of 2003 on the file of the Principal Sub Court, Erode.

PRAYER in MP.No.1 of 2014:

To stay the judgment and decree dated 06.07.2013 made in A.S.No.75 of 2011 on the file of the II Additional District Court, Erode reversing the judgment and decree dated 29.03.2011 made in O.S.No.659 of 2003 on the file of the Principal Sub Court, Erode.

APPEARANCE OF PARTIES:

For Appellant	: Mr.T.P.Manoharan Senior Counsel for Mr.M.Guruprasad
For Respondents	: Mr. N.Manoharan for R1 to R3 Mr.V.Venkata Seshaiya Government Advocate for R4

JUDGMENT

Heard.

2. This Second Appeal is filed against the judgment and decree dated 06.07.2013 passed by the II Additional District Judge, Erode, in A.S. No.75 of 2011, reversing the judgment and decree dated 29.03.2011



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passed in O.S. No.659 of 2003 by the Principal Subordinate Judge,
Erode.

3. The appellants herein are the defendants in the suit. For the sake of convenience, the parties are referred to as they are arrayed in the suit.

4. The brief facts necessary for disposal of this Second Appeal are as follows: The plaintiffs filed the suit for partition of the suit schedule properties and for allotment of half share to them. The suit properties consist of both ancestral and joint family properties. The defendants resisted the suit contending that the suit properties had already been partitioned between the first plaintiff and his brother late Periyasamy under Ex. B1 dated 12.07.1979, and that the parties have been enjoying the properties in accordance with the said document. The plaintiffs, on the other hand, contended that Ex. B1 is an unstamped and unregistered document, and hence inadmissible in evidence, and therefore the suit deserves to be decreed.

5. The Trial Court held that Ex. B1 merely records a past partition and therefore does not require registration, and consequently dismissed the suit. The First Appellate Court, however, held that the



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alleged partition under Ex. B1 was not a past transaction but a present arrangement, and therefore required compulsory registration; being unregistered, Ex. B1 could not be relied upon as a document of partition. The appellate court further held that Ex. B1 is at best an agreement and not a completed partition, and accordingly reversed the Trial Court's findings and decreed the suit.

6. In this Second Appeal, at the time of admission, the following substantial questions of law are framed:

1. Whether the first appellate Court is right in rejecting the partition deed, dated 12.07.1979 (Exhibit B1) when it has been proved by the defendants / appellants by way of impeccable oral and documentary evidence?

2. When the first plaintiff, who had accepted the factum of the partition deed, dated 12.07.1979 in Exhibit B26, had not entered witness box to substantiate his claim, whereby, the appellate Court has failed to draw an adverse inference under Section 114 of Evidence Act?

7. The crux of this Second Appeal revolves around the admissibility of Ex. B1—an unstamped and unregistered document claimed to be a partition deed. The entire defence of the appellants rests



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on Ex. B1. If Ex. B1 is held admissible in evidence, the suit necessarily fails; conversely, if it is held inadmissible, the Second Appeal is liable to be dismissed. Both sides placed reliance on the celebrated decision of the Apex Court in **Kale & Others v. Deputy Director of Consolidation, AIR 1976 SC 807.**

8. The principal contention of the defendants is that Ex. B1 is merely a record of a past transaction, and therefore, according to them, it neither requires registration nor stamp duty. However, a careful reading of Ex. B1, together with the extracts reproduced by the first appellate court, clearly establishes that the document operates to effect a division *in presenti*.

9. There is no recital indicating that the division was recorded in pursuance of an earlier oral arrangement. The trial court observed that the recitals were in the past tense, but that finding is factually incorrect. The entirety of Ex. B1 speaks in the present and future tense, and it also stipulates that a formal partition deed on stamp paper should be executed and registered, failing which a sum of Rs.20,000/- must be paid by the defaulting party. At no place does the document record or refer to any past transaction. Thus, Ex. B1 is conclusively a document intended to



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effect a present partition.

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10. Once a document purports to effect a division of immovable property of value exceeding Rs.100/-, registration becomes compulsory under Section 17 of the Registration Act, 1908. Further, under Article 45 of the Indian Stamp Act, 1899, stamp duty is also attracted. Here, Ex. B1 is both unstamped and unregistered. Even if such a document is somehow marked, Section 35 of the Indian Stamp Act expressly prohibits its use for any purpose when it is unstamped. This position has been authoritatively reiterated by the Division Bench of the Madras High Court in **A.C. Lakshmipathy v. A. Chakrapani Reddiar, (2001) 1 MLJ 1.**

11. The first appellate court also held that Ex. B1 is in the nature of an agreement to partition and does not constitute a concluded partition deed, in view of the explicit recitals obligating the parties to execute a formal registered partition deed within one year, failing which compensation would be payable. Such a clause clearly indicates that Ex. B1 did not itself create, declare, assign, limit, or extinguish any right in immovable property, but merely contemplated the execution of another document which alone would have such effect. Documents of this nature fall within Section 17(2)(v) of the Registration Act and are not



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compulsorily registrable. However, even assuming Ex. B1 to be only an agreement to partition, the defendants cannot derive any benefit regarding division or enjoyment of the properties based on this document, as it was never followed by a duly executed and registered partition deed as contemplated.

12. With respect to the second substantial question of law, the issue of drawing adverse inference does not arise. The execution of Ex. B1 is not in question in this appeal, the statutory bar under Section 35 of the Indian Stamp Act remains absolute, and an unstamped instrument cannot be acted upon for any purpose. The prohibition is mandatory, and therefore the substantial questions of law stand answered against the appellants.

13. Both sides cited several authorities dealing with admissibility and inadmissibility of unregistered partition deeds. Since the legal principle laid down by the Supreme Court in *Kale* (supra) still governs the field and has already been referred to, detailed discussion of other judgments is unnecessary.

14. In the result, the Second Appeal fails and is dismissed. The judgment and decree dated 06.07.2013 passed by the learned II



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Additional District Judge, Erode in A.S.No.75 of 2011, reversing the judgment and decree dated 29.03.2011 made in O.S.No.659 of 2003 by the learned Principal Subordinate Judge, Erode, are hereby confirmed. Considering the close relationship between the parties, there shall be no order as to costs.

15.12.2025

dpq

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

To

1.The II Additional District Court,
Erode

2. The Principal Sub Court,
Erode.

3. The Section Officer,
V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

dpq

Pre-Delivery Judgment in
S.A. No.788 of 2014
and MP No.1 of 2014

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