



A.S.No.476 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 24.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 476 of 2024
and C.M.P. No. 14337 of 2024

Rajendran

.. Appellant

Versus

1. R. Malathy
2. R. Aravindkumar
3. R. Dharanidharan

.. Respondents

First Appeal filed under Section 96 of C.P.C against the Judgment and Decree dated 27.02.2024 passed in O.S.No.198 of 2020 on the file of the Additional District-cum-Sessions Court No.3, Dharapuram, insofar as it relates to Item No.4 of the suit schedule property is concerned.

For Appellant : Mr. K. Govi Ganesan
For Respondents : Mr. N. Manoharan

J U D G M E N T

This Appeal Suit is filed by the Plaintiff in O.S.No.198 of 2020 against the judgment of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dismissing the suit in O.S.No.198 of 2020 regarding Item No.4 of the suit property and granting preliminary decree for partition in



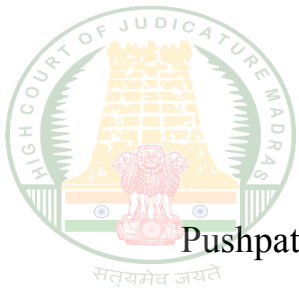
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Items 1, 2, 3 and 5 of the suit property.

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2. **The averments in the Plaint in brief are as follows:**

2.1. The Plaintiff and the deceased Ramachandran are brothers. They are the sons of Duraisamy Chettiar. The brother of Plaintiff Ramachandran died intestate in the year 2016. The Defendants 1 to 3 are the widow and sons of the brother of the Plaintiff Ramachandran. Items 1 and 2 of the properties and other properties were allotted to the shares of Plaintiff and his brother late Ramachandran as per the partition in the family of Duraisamy Chettiar, in which 'C' schedule property was allotted to Duraisamy Chettiar dated 20.09.1984 through the registered partition deed, the father of the Plaintiff and his brother late Ramachandran. Out of the 'C' schedule property in the partition deed dated 20.09.1994, except Item 1 and 2 properties, all other properties were sold. The original partition deed dated 20.09.1994 is in the custody of the Defendants 1 to 3. Item 3 of the suit property was purchased jointly by Plaintiff and his brother late Ramachandran on 27.10.2004 through a registered sale deed. The original sale deed was with the custody of the Defendants. Plaintiff and his brother late Ramachandran were involved jointly in business and out of the income derived from the business, they had purchased Item No.4 of the property in the name of second Defendant, son of late Ramachandran jointly in the name of second Defendant, Arunachalam,



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Pushpathal and Mani through registered sale deed dated 26.07.1995. The original sale deed was under custody of the Defendants. Subsequently, the second Defendant along with other co-owners entered into a partition deed dated 06.10.2008 by which 4th item of the suit property was allotted in the name of the second Defendant. The same was also registered. The original partition deed was with the Defendants. Since the 4th item of the suit property was jointly purchased in the name of second Defendant, the second Defendant had executed an undertaking in favour of the Plaintiff. The said undertaking is filed along with the plaint. Therefore, the 4th item of the property even though purchased in the name of second Defendant, the second Defendant admitting the purchase as a joint family property and the 4th item of the property is to be treated as joint family property in which the Plaintiff also has a share. The Plaintiff along with second Defendant had jointly purchased the property in item 5. Therefore, the Plaintiff has a share in item 5 of the property also. All the schedule Items 1 to 5 of the properties were in joint possession of the Plaintiff and the Defendants. Therefore, the Plaintiff was unable to create encumbrances in his share of property. Therefore, he had requested for amicable partition with the Defendants 1 to 3. In spite of several repeated requests, the Defendants 1 to 3 were not amenable for an amicable settlement. Since the 4th item of the property is in the name of the second Defendant, the



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Defendants 1 to 3 had denied the claim of the partition by the Plaintiff. The Plaintiff is unable to enjoy the properties in which he has share. Therefore, he had filed a suit seeking half share in the suit items 1 to 5.

3. The contents of the written statement filed by the second Defendant are briefly as follows:

3.1. The second Defendant denied the contents of the plaint except those that are admitted. The relationship is admitted. The claim made in the plaint is that 'C' schedule property in the registered partition deed in the family of the late Duraisamy Chettiyar dated 20.09.1984 is admitted. The claim made by the Plaintiff that the original partition deed and original sale deeds are in custody of the Defendants is to be proved by the Plaintiff. The 3rd item of the suit property purchased by the Plaintiff and father of the 2nd and 3rd Defendant Ramachandran as per sale deed dated 27.10.2004 is admitted and in which Plaintiff has a share is also admitted. The claim made by the Plaintiff that the sale deed is with the custody of the Defendant has to be proved by the Plaintiff. The claim made by the Plaintiff that Plaintiff and the Ramachandran were involved in joint business and out of the income derived from the joint business, 4th item of the suit property was purchased in the name of the second Defendant along with the Arunachalam, Pushpathal and Mani in the joint



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names of those persons is to be proved by the Plaintiff purchased on 26.07.1997 is to be proved by the Plaintiff it is denied as false. The claim that

on 06.10.2008, there was a partition in the family in which the 4th item of the suit property was allotted in the name of the second Defendant is admitted.

The claim made by the Plaintiff that the 4th item of the suit property was purchased in the name of the second Defendant from the income derived from the joint family admitting the same the second Defendant had executed an undertaking executed in favour of the Plaintiff is not true. The claim of the Plaintiff that he has a share in the 4th item of the property is denied. The claim made by the Plaintiff that the Plaintiff was unable to enjoy his properties and to develop his properties. Therefore, he sought amicable partition with the Defendants. The Defendants did not heed to his request are denied. Among the suit properties, the 1st item of the suit properties is temporarily divided between the Plaintiff and Defendants by which southern portion of the East-West measurements was allotted and enjoyed by the Defendants. The Northern portion of the 1st item of the property is enjoyed by the Plaintiff in which the Western portion are houses which is also divided as North and South. North portion is allotted to the Plaintiff and the Southern portion is allotted to the Defendants. The same may be treated as a partition arrangement. The 4th item of the property was purchased jointly in the name of the second Defendant and

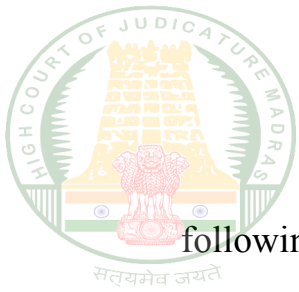


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other persons namely Arunachalam, Pushpathal and Mani. Among the purchasers, there was a partition dated 06.10.2008 which was a registered partition. As per registered document bearing registration No. 7578 of 2008 by which 'A' schedule was allotted to the second Defendant. Therefore the 4th item of the property claimed to be joint family property by the Plaintiff is denied by the Defendants. The claim of the Plaintiff that the Defendant had executed an undertaking in favour of the Plaintiff admitting the Plaintiff's share in item 4 is denied. The Defendant had not executed any undertaking in favour of the Plaintiff. The Plaintiff and the second Defendant had jointly purchased a property on 28.09.2001 through registered sale deed bearing Document No.3056 of 2001 in Poomalur Village, Survey No.121/2002, an extent of 2400 square feet which is not included in the suit filed by the Plaintiff. Therefore, the suit filed by the Plaintiff for partial partition is not maintainable. The suit has to be dismissed for partial partition. The Defendants undertake to pay the necessary Court fees for items 1, 2 and 3 in case of suit being decreed. The suit has to be dismissed regarding the 4th item of the properties.

4. Based on the pleadings of the Plaintiff and the Defendants, the learned III Additional District and Sessions Judge, Tiruppur had framed the



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following issues:

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- i) *Whether after the partition, plaintiff has any share in the 4th item of schedule property?*
- ii) *Whether the undertaking document is executed by the defendants and it binds them?*
- iii) *Whether the plaintiff is entitled to partition and separate possession of all items of suit schedule of property?*
- iv) *Whether the suit is bad for partial partition for non inclusion of S.No.121/2?*
- v) *To what other relief?*

5. The Plaintiff examined himself as P.W-1 and one Vedhagiri was examined as P.W-2. The Plaintiff also marked seven documents as Ex.A-1 to Ex.A-7. The second Defendant examined himself as D.W-1. The photostat copy of the affidavit dated 20.10.2004 was marked as Ex.B-1. Ex.A-1 is the certified copy of the registered partition deed dated 20.09.1984. Ex.A-2 is the certified copy of the sale deed dated 27.10.2004 in the name of Plaintiff and D.Ramachandran by R.Padmavati, D.Srividya and D.M.Kalyani. Ex.A-3 is the certified copy of the sale deed dated 26.07.1995 in the name of the second Defendant Arvind Kumar, Arunachalam, Pushpathal and Mani executed by Deivanai and others. Ex.A-4 is the certified copy of the registered partition deed between the second Defendant Arvind Kumar, A.Mridula, K.Latha,



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P.Deepalakshmi, R.Dina, V.Pushpathal and L.P.Mani. Ex.A-5 is the affidavit dated 20.10.2004 executed by second Defendant. Ex.A-6 is the series of receipts (10 Nos) regarding water tax and property tax for the shops and houses. Ex.A-7 is the Certified copy of the sale deed dated 28.09.2001 in favour of the Plaintiff and the second Defendant, executed by Paneerdas, Power of attorney of Veliangiri and others.

6. After conclusion of the trial, on appreciation of evidence, the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram had dismissed the suit for partition against the 4th item of the property and partially decreed the suit granting preliminary decree of half share in items 1, 2, 3 and 5.

7. Aggrieved by the dismissal of the suit regarding 4th item of the suit property, the Plaintiff had preferred this Appeal seeking to set aside the dismissal regarding 4th item of the property and to grant half share in 4th item of the suit property also.

8. Item 4 of the suit property is a larger extent purchased in the name of the second Defendant along with the names of Arunachalam, Pushpathal



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and Mani through the joint earnings of the Plaintiff and his brother late Ramachandran under Ex.A-3 sale deed dated 26.07.1995. Subsequently, they had partitioned the property under Ex.A-4 dated 06.10.2008 in which item 4 property was allotted in the name of the second Defendant. Since the Plaintiff also has a share in item 4 of the suit property and admitting the same, the second Defendant, had executed an undertaking deed in favour of the Plaintiff dated 20.10.2004 which was marked as Ex.A-5. The attesor of Ex.A-5 Vedhagiri was examined as P.W-2. Therefore, Ex.A-5 was proved. P.W-2 is a close relative of Plaintiff and Defendants. He is none other than the cousin of the Plaintiff and his brother Ramachandran. Duraisami's brother Shanmuga Vadivel's son. Therefore, his evidence is acceptable. Further, the second Defendant as D.W-1 in his evidence deposed that in the year 2004, item 4 was purchased in the joint business of his father with the Plaintiff in existence. Therefore, Ex.A-5 is proved in accordance with law as per Section 68 of the Indian evidence Act. Ex.A-5 is an unregistered one. It shows the existence of past conduct even though it was not registered it can be taken as valid deed as per the reported decision of the Honourable Supreme Court reported in **(2016) 8 SCC 705 [Subraya M.N. v. Vittala M.N]** the relevant portion is extracted as under:

“17. Even though recitals in the Ex.D-22 is to the effect of relinquishment of right in items No.1 and 2, Ex.D-22 could be taken as



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family arrangements/settlements. There is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties. In the present case, Ex.D-22 panchayat resolution reduced into writing, though not registered can be used as a piece of evidence explaining the settlement arrived at and the conduct of the parties in receiving the money from the defendant in lieu of relinquishing their interest in items No.1 and 2.”

9. Based on the said ruling, in the present case, the Panchayat Resolution was reduced into writing, though not registered can be used as a piece of evidence explaining settlement arrived and the conduct of the parties in receiving money from the Defendant in lieu of relinquishing their interest in Item No.1 and 2.

10. Another decision of the Hon'ble Supreme Court reported in **(2019) 6 SCC 409** in the case of ***Thulasidhara and another v. Narayanappa and others*** in paragraph numbers 9.3 and 9.4. it is observed as under:

“9.3. Now so far as the finding recorded by the High Court that as the Partition Deed dated 23.04.1971 (Exhibit D4) was unregistered though required registration under the Provisions of the Registration Act and therefore the same is not admissible in evidence is concerned, it is required to be noted that as such Exhibit D4 can be said to be a Palupatti as has been described as Palupatti. Palupatti means list of properties partitioned. At the most, it can be said to be a family arrangement. Therefore, in the facts and circumstances of the case, the same was not required to be registered.



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9.4. It is required to be noted that the deed dated 23.04.1971, under which the suit property had gone /devolved in favour of the Krishnappa, was reduced in writing before the Panchayat and Panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Exhibit D4, on considering the entire evidence on record and even the deposition of plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tellies with the document dated 23.04.1971 (Exhibit D-4). Execution of the document/ Partition Deed/ Palupatta dated 23.04.1971 has been established and proved by examining different witnesses. The High Court has refused to look into the said document and/or consider document dated 23.04.1971 (Exhibit D4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in the case of [Kale](#) (Supra) that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in the case of [S. Shanmugam Pillai and Others v. K. Shanmugam Pillai and Others](#) (1973) 2 SCC 312 in which it was observed as under:

“13. Equitable, principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

As observed by this Court in T.V.R. Subbu Chetty’s Family Charities case, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open.”

11. The unregistered family arrangement does not require registration and the ultimate aim in the law is to secure justice. In the recent times, to render justice between the parties, Courts had been liberally relying on those principles. The said judgement was pronounced based on the decision of the

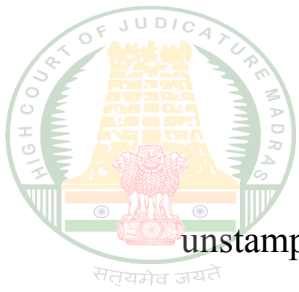


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honourable Supreme Court in (2016) 8 SCC 705 [Subraya M.N. vs. Vittala M.N. and others].

12. As per the above rulings, Ex.A-5 unregistered undertaking deed can be accepted as a piece of evidence between the family members and confer joint title to item 4. In the case on hand, D.W-1 denied his signature in Ex.A-5, but he has not taken any steps to produce the admitted signature of the second Defendant before the trial Court. The person who denied signature must prove the same before the trial Court. The Plaintiff has proved Ex.A-5 by examining that attester to the document, P.W-2. Therefore the Plaintiff proved the same in accordance with law. But the Defendant had not proved his specific defence denying the signature in Ex.A-5. Therefore, the Court ought to have drawn adverse inference against the conduct of the second Defendant regarding his denial to Ex.A-5 and therefore the dismissal of the suit regarding item 4 is an erroneous judgement it has to be set aside and the Plaintiff to be allotted half share in item 4 also.

13. As per the submission of the learned Counsel for the Respondent Thiru. N. Manoharan, Section 17(b) of the Registration Act 1908 r/w.49 as well as section 36 of the Indian Stamp Act 1899 clearly stipulate that an



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unstamped, unregistered document is inadmissible in law for any purpose.

Hence Ex.A-5 being an unstamped and unregistered document is per-se inadmissible in law.

14. It is useful to extract Section 17(1)(b) and Section 49 of Registration Act, 1908 which are extracted as under:

(i) Section 17(1)(b) of Registration Act, 1908

“17. Documents of which registration is compulsory – (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, the Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a) Instruments of gift of immovable property;

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.....,”

(ii) Section 49 of the Registration Act, 1908

49. Effect of non-registration of documents required to be registered-No document required by section 17.1 for by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall

(a) affect any immovable property comprised therein, or

b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or



conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument”

15. The learned Counsel for the Respondent (Defendant before the trial Court) relied on the reported decision in the case of **Avinash Kumar Chauhan v. Vijay Krishna Mishra** reported in **2009(2) SCC 532**, particularly to Paragraphs 14, 17, 22, 23, 25, 26 and 28, which are extracted below:

"14. Section 35 provides that an instrument shall be inadmissible in evidence if the same is not duly stamped in the following terms:

"35. Instruments 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:

Provided that-

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be



deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898); (e) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act."

17. Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not Invoking the aforementioned provisions.

23. The contention of learned counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In Bondar Singh [(2003) 4 SCC 161] this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined: (SCC p. 163, para 5)

"5. The main question, as we have already noted, is the question of continuous possession of the Plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the Defendants in favour of Tola Singh, the predecessor-in-interest of the Plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the Plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the Plaintiffs over the suit land. The sale deed in question at least shows that Initial possession of the Plaintiffs over the suit land was not illegal or unauthorised."

"25, Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes."

26. The view we have taken finds support from the decision of the Privy Council in Ram Rattan v. Parma Nand [(1945-46) 73 IA 28: AIR 1946 PC



51] wherein it was held: (AIR p. 52)

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"[That] the words 'for any purpose in Section 35 of the Stamp Act, should be given their natural meaning and effect and would include a collateral purpose [and that] an unstamped partition deed cannot be used to corroborate the oral evidence for the purposes of determining even the factum of partition as distinct from its terms. The said decision has been followed in a large number of decisions by the said Court.

28. In *SanjeevaReddi v. JohanputraReddi* [AIR 1972 AP 373] it has been held: (AIR p. 375, para 9)

"9. While considering the scope of Section 35 of the Stamp Act we cannot bring in the effect of non-registration of a document under Section 49 of the Registration Act. Section 17 of the Registration Act deals with documents, the registration of which is compulsory and Section 49 is concerned only with the effect of such non-registration of the documents which require to be registered by Section 17 or by any provision of the Transfer of Property Act.

*The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose i.e. for an entirely different and independent matter. There is a total and absolute bar as to the admission of an unstamped instrument whatever be the nature of the purpose or however foreign or independent the purpose may be for which it is sought to be used, unless there is compliance with the requirements of the provisos to Section 35. In other words if an unstamped instrument is admitted for a collateral purpose, it would amount to receiving such a document in evidence for a purpose which Section 35 prohibits. There is nothing in *B. Rangaiah v. B. Rangaswamy* [(1970) 2 AnWR 181] which supports the contention of the petitioner. That was a case as pointed out by Kuppaswami, J., where there were two instruments though contained in one document, one a settlement in favour of the fourth Defendant therein and the other a will. It was therefore held that part of the instrument which constitutes a will did not require any stamp and will be admissible in evidence for proving the bequest contained therein. It was for that reason that the learned Judge said that Section 35 of the Stamp Act has no application to a case where one of the separate instruments relating to one such matter would not at all be chargeable under the Act as in the case before him."*



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16. The learned Counsel for the Respondent further submitted that the case of the Plaintiff in his plaint is that he derived title under the undertaking deed dated 20.10.2004 (Ex.A-5). When the Plaintiff claims that rights in his favour are created under Ex.A-5, and not under any previous document, it has to be necessarily registered, to make it admissible in law as a family arrangement as per the judgment of the Hon'ble Supreme Court in the case of **Kale v. Deputy Director of Consolidation** reported in **1976(3) SCC 119**, in which it is held as-

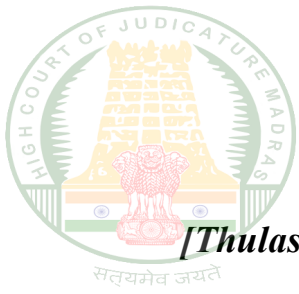
"10. (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(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."

17. The learned Counsel further contended that the judgments relied by the learned Counsel for the Plaintiff/Appellant in **(2019) 6 SCC 409**



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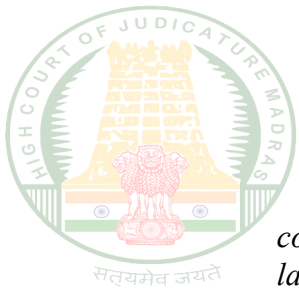
[Thulasidhara and another v. Narayanappa and others] and **(2016) 8 SCC**

705 [Subraya M.N. v. Vcittala M.N] are not applicable to the facts and circumstances of the present case because Ex.A-5 cannot be said to be evidence of a "past transaction", especially, when the Plaintiff himself admits in the plaint that second Defendant has derived independent title to item No.4 vide the registered partition deed 06.10.2008 (Ex.A-4).

18. Moreover, there is not even an iota of pleading in the plaint that the purchase by second Defendant under the sale deed dated 26.07.1995 (Ex.A-3) was for the benefit of the Plaintiff. No pleading to the effect that the Plaintiff had paid for second Defendant's purchase of item No.4 under Ex.A-3.

19. Moreover, when the Plaintiff has abandoned his case in his plaint and projected a completely new case during cross of D.W-1, by imputing a fresh interpretation of the sale deed dated 26.07.1995 (Ex.A-3), as if, the purchase was not by second Defendant for his own benefit, but it was actually for the benefit of the Plaintiff, such an exercise is legally barred under section 92 of the Evidence Act, which prohibits a party from leading evidence contrary to the recitals of a written document. Section 92 of the Evidence Act, reads as under:

"92. Exclusion of evidence of oral agreement. When the terms of any such



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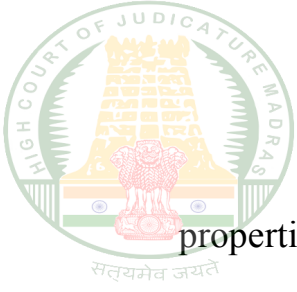
contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms..."

20. Mere examination of P.W-2 (Vedagiri), who is supposed to be an attester to the alleged undertaking deed (Ex.A-5), would not improve the case of the Plaintiff in any way whatsoever. No proof a document can overcome its inadmissibility in law. Moreover, evidence of P.W-2 is not acceptable and does not inspire confidence.

21. The Plaintiff admits that Item 4 of the Suit property devolved upon second Defendant by way of a registered partition deed dated 06.10.2008 (Ex.A-4). Therefore, when the Plaintiff admits second Defendant's independent title to item no.4 of the suit property, he can't claim title under Ex.A-5, which is inadmissible in law and a document which was apparently executed prior to Ex.A-4.

22. Inherent inconsistencies coupled with factual and legal loopholes in the Plaintiff's case, which would shake the very foundation of his case.

23. The case of the Plaintiff in his plaint is that second Defendant along with Arunachalam, Pushpathal and Mani had jointly purchased the



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properties including item No.4 of the suit property under Ex.A-5. Later, second Defendant and the other sharers entered into a registered Partition Deed dated 06.10.2008 (Ex.A-4), wherein suit Item No. 4 was allotted to second Defendant as "A schedule". Thereafter, the Plaintiff claims that the second Defendant executed an unstamped unregistered undertaking deed dated 20.10.2004 (Ex.A-5) in his favour with respect to suit item No.5.

24. The Plaintiff having set up his case based on his alleged title to item no.4 under Ex.A-5, during the course of cross examination of second Defendant as D.W-1, for the first time, raises a benami plea by way of a suggestion to D.W-1, by contending that the properties purchased by second Defendant under Ex.A-3 sale deed dated 26.07.1995 were not for the benefit of second Defendant, instead, it was purchased for the benefit of the Plaintiff, who at that point of time could not purchase the said property in his name. Such a suggestion made by the Plaintiff to D.W-1, is contrary to the case set up by the Plaintiff. The relevant portion is extracted as under:

“தாவா 4வது அயிட்ட சொத்தை 06.10.2008ல் பாகப்பிரிவினை செய்துகொண்டோம் என்றால் சரிதான். அந்த பாகப்பிரிவினையில் தாவா 4வது அயிட்ட சொத்து எனக்கு ஒதுக்கப்பட்டது என்றால் சரிதான். தாவா 4வது அயிட்ட சொத்தை கிரையம் பெற்றபோது வாதி பெயரில் அந்த சொத்தை வாங்க முடியாத சூழ்நிலை இருந்ததால் என் பெயரில் அந்த சொத்து கிரையம் வாங்கப்பட்டது என்றால் சரியல்ல. வா.சா.ஆ 5ல் உள்ள கையெழுத்து என்னுடையது என்றால் சரியல்ல.”



25. The above benami plea raised by the Plaintiff is legally barred u/s

3(1) r/w 4(1) of the Prohibition of Benami Property Transactions Act, 1988. In any case, it is not saved by the exception carved under 2(9)(b)(i) of the Act 1988. Section 3 of the Prohibition of Benami Property Transaction Act, 1988 is extracted as under:

"3. Prohibition of benami transactions.-(1) No person shall enter into any benami transaction"

4. Prohibition of the right to recover property held benami.-(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

26. In any case, the above benami plea raised during the cross-examination of D.W-2 is highly unbelievable considering the evidence of P.W-2 (Vedagiri), who is the attesor to Ex.A-5, who deposed that the Plaintiff was physically present during the execution of Ex.A-3 sale deed dated 26.07.1995. The relevant portion is extracted as under:

“என் அண்ணன் பெயரில் சொத்தை வாங்கும்போது என் அண்ணன், பூப்பாத்தான், ராஜேந்திரன் ஆகியோர்கள் இருந்தார்களா என்றால் ஆமாம். நான் சொல்லும் கிரையம் 26.07.1995ல் வாங்கியது என்றால் ஆமாம். அந்த கிரையப் பத்திரத்தில் ராஜேந்திரன் என்பவர் சாட்சி கையொப்பம் போட்டுள்ளாரா என்றால் தெரியவில்லை. இன்னாரென்று நிரூபித்தவர் என்ற இடத்தில் கையெழுத்து போட்டு இருக்கிறாரா என்றால் தெரியாது. ராமசந்திரன் உடல்நிலை சரியில்லாமல் இருந்தார்.”

27. The second Defendant/Aravind Kumar has signed in the



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registered Partition Deed dated 06.10.2008 (Ex.A-4) as "Ram Arvindhakumar"

but his alleged signature in the disputed undertaking deed (Ex.A-4) reads only as "Aravindhakumar".

28. Therefore, it is the submission of the learned Counsel for the Respondent to dismiss the Appeal by confirming the the judgment and decree dated 27.02.2024 made in O.S.No. 1980 of 2020 passed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram.

Points for determination:

1. Whether the Plaintiff is entitled to share in Item 4 of the suit property?

2. Whether the judgment of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dismissing the suit of the Plaintiff regarding Item 4 of the property is perverse warranting interference by this Court?

29. Heard the learned Counsel for the Appellant Mr. Govi Ganesan and the learned Counsel for the Respondent Thiru. N.Manokaran.

30. Perused the records of the trial Court and the judgment of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram.



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On perusal of the judgment of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, it is found that during the course of the discussion of evidence, the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram had in paragraph 10 of the judgment observed that Ex.A-5 is a document relied by the Plaintiff stating that the second Defendant, the nephew of the Plaintiff namely Arvind Kumar had executed a document undertaking that the Plaintiff as his paternal uncle has half share in the property in Item 4 in the plaint schedule property. The witness to Ex.A-5 was examined as P.W-2 Vedhagiri. Vedhagiri is the cousin of the Plaintiff, who is also a cousin to the second and third Defendants' father Ramachandran. Vedhagiri is the son of Shanmuga Vadivel. Shanmuga Vadivel is the brother of Duraisamy Chettiar, the father of Plaintiff and the paternal grandfather of Defendants 2 and 3. Therefore, the suggestion to P.W-2 in cross examination that P.W-2 is not aware of the facts of Ex.A-5, he was summoned by Plaintiff and tutored by Plaintiff was denied by P.W-2 in his cross examination. The suggestion that P.W-2 is not aware of any of the facts relating to Ex.A-5 was also denied by him. The Defendant-2 was examined as D.W-1. He had in his affidavit, filed as examination in chief of D.W-1 stated the facts stated by him in the written statement. He was cross examined on behalf of the Plaintiff. In the cross examination, he admitted that the Item No.4 of the suit property was



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purchased in the joint name of himself, his uncle Arunachalam and another woman Pushpathal and one Mani. The said Arunachalam is the brother of P.W-2 Vedhagiri. D.W-1 in his cross examination admitted that as per the partition deed executed between the purchasers of the sale deed in the name of the Plaintiff his uncle Arunachalam and one Pushpathal and one Mani by which they forfeited their claim in Item No.4 of the property through a partition deed dated 06.10.2008 was admitted by him. An undertaking was given on 20.10.2004 that the Plaintiff has a share in Item No.4 was denied by him. It is the claim of the second Defendant in the written statement as well as in his affidavit filed as examination in chief that the so-called undertaking letter claimed by the Plaintiff is created by the Plaintiff. The learned III Additional District and Sessions Judge, Tirupur at Dharapuram had in the course of assessment of evidence, analysing the evidence observed that the second Defendant denied the signature in Ex.A-5. He himself had marked as Ex.A-5 as Ex.B-1. If it is disputed, it is the duty of the second Defendant to furnish documents containing admitted signatures. But he had not furnished the documents containing admitted signatures to send Ex.A-5 to a handwriting expert to obtain the opinion of the handwriting expert. The learned III Additional District and Sessions Judge stops at that. Further, he would state that Ex.A-5 is not on stamped paper. Therefore, it has no evidentiary value. It



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is an inadmissible evidence. The said observation of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram is the subject matter of this Appeal. The learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dismissed the suit of the Plaintiff regarding Item No.4 of the property on the ground that the Ex.A-5 is not written on duly stamped paper and not a registered document. Therefore, the same cannot be looked into, as it has no evidentiary value. The same was put in cross examination to P.W-1 in his cross examination and P.W-2, the attesting witness to the cross examination. They had denied it. P.W-2 had stated that he was not aware of such things whether it is to be mandatorily stamped and registered. It is to be noted that the document is stated as *Uruthimozhi aavanam*. It is only an undertaking by the second Defendant admitting a share of the Plaintiff in Item No.4. Therefore, it is to be interpreted as a family arrangement and nothing more. If it is a partition deed, it has to be registered. If it is a Muchalika, there should have been already an oral family arrangement. It is an undertaking admitting a share of the Plaintiff admitting that the name of second Defendant in whose name the property was purchased was the nature of a joint family property. Therefore, it need not be registered. It is a family arrangement regarding the status of the property. It is an undertaking given by the second Defendant in the presence of mediators in the village. The fact that the second



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Defendant denies the execution of Ex.A-5 shows that he has denied share subsequent to this undertaking. It is for him to disprove Ex.A-5. The Plaintiff had claimed it in the plaint as well as in his affidavit filed as examination in chief and he had marked Ex.A-5 also. The original of the Ex.A-5 was with the Plaintiff. The copy of the same is with the Defendant that was marked as Ex.B-1. If Ex.B-1 is not true, it is the duty of the second Defendant to furnish documents containing admitted signatures. Ex.A-4 is the certified copy of the registered partition deed dated 06.10.2008 in which the property purchased jointly in the name of Arvind Kumar, second Defendant herein, along with Arunachalam, Pushpathal and Mani. After purchase of the properties under Ex.A-3, partition was effected among the purchasers subsequent to the death of Arunachalam by allotting a share in the property purchased under Ex.A-3 in favour of the legal heirs of Arunachalam. Therefore, in the registered partition under Ex.A-4, the property allotted to the second Defendant Arvind Kumar was shown as property under “A” schedule. The property is in Erode Registration District, Kangeyam Sub-Registration District, Kangeyam Taluk, Sivanmalai Village R.S.No.1419/6, old No.848A measuring an extent of Punja Acre 0.98. Out of which R.S.No.1419/5C East-West on the Northern side 96 ft. on the Southern side 96 ft. North-South on the Western side 26 ft. on the Eastern side 26 ft. with specific boundaries an extent of 2496 sq. ft. of the



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properties was allotted to Arvind Kumar, the second Defendant under Item-1 in “A” Schedule. Item 2 R.S. No.1431 East-West on the Northern Side 96 ft.

Southern side 29 ft. on the North-South on the Western side 24 ft. Eastern side 24 ft. measuring to an extent of 2340 sq. ft. totally 4,836 sq. ft. of the property was allotted to the second Defendant Arvind Kumar under “A” Schedule in Items 1 and 2. “B” schedule was allotted to the legal heirs of Arunachalam. “C” schedule was allotted to the purchaser Pushpathal. “D” schedule was allotted to the purchaser Mani.

31. The property allotted in “A” schedule i.e., Items 1 and 2 to Arvind Kumar the purchaser under Ex.A-3 is the property that Arvind Kumar is stated to have given an undertaking under Ex.A-5. Subsequent to the registered partition deed under Ex.A-4 undertaking given to the Plaintiff Rajendran on 20.10.2004 in which he had clearly stated that property purchased under Ex.A-3 even though purchased in the name of Arvind Kumar was purchased as joint family property on behalf of his father Ramachandran and his paternal junior uncle, the Plaintiff herein. In the recital under Ex.A-5, it is clearly stated that the Plaintiff Rajendran is entitled to half share in the property. Therefore, what was allotted in favour of Arvind Kumar under Ex.A-4 prior to Ex.A-4 he had executed Ex.A-5 undertaking that the property purchased in the name of

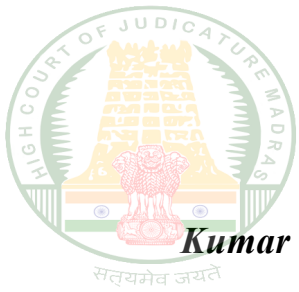


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Arvind Kumar, Arunachalam, Pushpathal and Mani. The property purchased in the name of Arvind Kumar is a joint family property whereby Ramachandran the elder brother of the Plaintiff, second Defendant's father also has a share in the property which was subsequently denied by second Defendant while deposing evidence. The Defendants had marked Ex.B-1. What was marked as Ex.A-5 was marked as Ex.B-1 regarding the undertaking.

32. When Defendant-2 as D.W-1 was confronted regarding Ex.A-5 whether he had furnished any document containing admitted signatures, he admitted he had not furnished any document. Also he would add that there is no document available for the relevant point of time. Under those circumstances, the Court failed to take adverse inference regarding the conduct of the second Defendant. The second Defendant as D.W-1 denies the signatures claims that he used to sign as Ram Arvind Kumar. It is considered to be an evasive answer to evade from his undertaking given in the presence of his relatives, particularly P.W-2 and other mediators. An undertaking given as a family arrangement need not be registered. It is in the nature of affidavit. Therefore, the arguments of the learned Counsel for the Respondent in the Appeal relying on the ruling in the case of *Kale v. Deputy Director of Consolidation* reported in *1976(3) SCC 119* and in the case of *Avinash*



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Kumar Chauhan v. Vijay Krishna Mishra reported in 2009(2) SCC 532 are

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33. The learned III Additional District and Sessions Judge, Tiruppur at Dharapuram was carried away by the argument of the learned Counsel appearing for the Defendant before the trial Court and thereby rejected the claim of the Plaintiff to Item No. 4 of the property which is found erroneous. The learned III Additional District and Sessions Judge, Tiruppur at Dharapuram failed to take adverse inference against the conduct of the second Defendant in denying Ex.A-5.

34. Only to wriggle out of Ex.A-5, a suggestion was put to the P.W-1 that it is not executed on stamp paper. Only when there is transfer of right from one party to another party in an immovable property it needs to be registered. Here it is not transferred. The nature of the property is a common property belonging to Plaintiff and his elder brother Ramachandran, father of Defendant-2. At the relevant point of time, when the property was acquired, the Plaintiff and his elder brother Ramachandran wantonly evaded to purchase the property in their name for reasons best known to them and that is admitted in cross examination by Defendant-2 as D.W-1. The said fact is also stated by



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P.W-2 in his evidence. P.W-2 clearly states that he was the person who acted as broker for acquiring the property. The suggestion put to P.W-2/Vedhagiri on behalf of the second Defendant that he is a relative of Plaintiff and he was tutored by the Plaintiff, he does not know the facts of the case and his evidence has no evidentiary value was rejected by him claiming that he is related to both the parties as he is a cousin to Plaintiff as well as father of the Defendants 2 and 3. He would further add that he himself had acted as broker for acquiring the property. Therefore, the suggestion of the Defendants that he does not know about the nature of the property and nature of the claim made by the Plaintiff and Defendants was denied by him. His evidence has more evidentiary value, as he helped in acquiring the property and acted as mediator between Plaintiff and Defendants 2 and 3 who are nephew of Plaintiff. On perusing Ex.A-5, it is nothing but an affidavit in the form of an undertaking that the nature of the property as common property of Plaintiff and the father of second Defendant, even though it was acquired in the name of second Defendant and along with the names of Pushpathal, Arunachalam, the brother of P.W-2 and one Mani. Only among the persons who lend their names in the sale deed, the partition was effected and registered, as stated in paragraph-30 above to give out that the property in “A” schedule under Ex.A-4 even though stands in the name of second Defendant, it is the property common for Plaintiff



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and father of second Defendant, for which only Ex.A-5 is an affidavit, an undertaking, that need not be registered. That is among the family arrangement. The rulings relied on by the learned Counsel for the Appellant reported in *(2019) 6 SCC 409 [Thulasidhara and another v. Narayanappa and others]* and *(2016) 8 SCC 705 [Subraya M.N. v. Vcittala M.N]* are applicable to the facts of this case. Therefore, the finding of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram that it requires stamp duty as well as registration. Therefore, Ex.A-5 is inadmissible in evidence, oral evidence of the Plaintiff regarding Ex.A-5 was rejected on that ground is found erroneous. Therefore, the same is set right by this Court warranting interfere by this Court. The claim of the Plaintiff to Item No.4 of the property is proved by Ex.A-5. The judgment of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dismissing the suit of the Plaintiff regarding Item No.4 of the property is found erroneous. Therefore, it has to be set aside. The Plaintiff is entitled to half share in Item No.4 also.

35. In the light of the above discussion, **the points for determination are answered in favour of the Appellant and against the Respondents.** The judgment of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dismissing the suit of the Plaintiff regarding Item No.4 of the



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property is found perverse and the same is to be set aside. The Plaintiff is entitled to half share in Item No.4 also.

In the result, **this Appeal Suit is allowed.** The Judgment and Decree dated 27.02.2024 passed in O.S.No.198 of 2020 on the file of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, in so far as it relates to Item No.4 of the suit schedule property is set aside. The Plaintiff/Appellant herein is entitled to half share in Item No.4 of the suit property. Considering the relationship between the parties, there is no order as to cost. Consequently, connected miscellaneous petition is closed.

24.06.2025

Shl/srm
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order



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To

- 1.The III Additional District and Sessions Judge,
Tiruppur at Dharapuram.
- 2.The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

shl/srm

Judgment made in
A.S.No.476 of 2024

24.06.2025