
Muniappa Gounder Vs P. Dhanasekaran

C.R.P. (PD) 3732 of 2014 and M.P. No. 1 of 2014

Court: Madras High Court

Date of Decision: Nov. 13, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 13 Rule 3#Registration Act, 1908 " Section 17, 49, 49(c)

Citation: (2015) 1 CTC 363 : (2015) 1 LW 306 : (2015) 1 MLJ 145

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandra Babu, J.

The defendant is the petitioner and the plaintiff is the respondent herein. The petitioner is aggrieved against the

order of the Trial Court in dismissing his application filed under Order 13 Rule 3 CPC to reject Ex.A.6/unregistered partition deed, dated

13.06.1988 filed by the plaintiff as inadmissible.

2. The case of the plaintiff in his suit filed for declaration of his title and for permanent injunction in respect of the suit property is as follows:

The plaintiff's father and the defendant are brothers and they are jointly entitled to 3 acres of land and on 13.06.1988, they divided their property

into two equal shares and out of such partition, the father of the plaintiff was put in separate and exclusive possession and enjoyment of "B(1)"

scheduled properties under the said partition deed, which is the suit property herein. The plaintiff's father and the sister of the plaintiff jointly

executed a registered gift settlement deed dated 24.11.2008 in favour of the plaintiff in respect of the said property and on and from the date of the

said gift settlement deed, the plaintiff has become the absolute owner of the same. The suit property is lying in Old Survey No. 269A, Re-survey

No. 306/2 measuring an extent of 1.43 acres.

3. The said claim of the plaintiff was resisted by the defendant in general, however in paragraphs 9 and 11 of his written statement, it is stated as

follows:

The plaintiff's father and the defendant together were entitled to punja acre 3.00 in old S.F.No. 269A of Elavamalai Village and they were

enjoying the property in common without any partition. There was no partition on 13.06.1988 as claimed by the plaintiff. Out of the above 3 acres

of land, a substantial portion of the same was taken away for so many purposes like formation of the Government road; to the Karupparayan

temple and for the formation of east west cart track. Therefore, a substantial portion of land, out of the total extent of 3 acres was taken away and

only an extent of 1.90 acres at R.S.No. 306/2 is available, to which the plaintiff's father and the defendant were made as joint pattadhars. Thus the

plaintiff's father was entitled to = share in common in punja acre 1.90, whereas the defendant is entitled to remaining = share in common.

Therefore, the claim of the plaintiff in the suit in respect of the suit property is false. If the plaintiff's false claim on partition deed dated 13.06.1988

is accepted, then the defendant will get only 0.40 cents, whereas the plaintiff will get 1.50 acres. The entire survey field in R.S.No. 306/2 is

enjoyed by the parties in common without any partition.

4. With the above pleadings of the respective parties, the said suit for declaration and permanent injunction is pending before the trial court for its

consideration and adjudication. During the pendency of the suit, the plaintiff sought to mark the said unregistered partition deed dated 13.06.1988,

when he was examined as P.W.1. The defendant filed I.A.No. 233 of 2014 for rejection of the said unregistered partition deed. The Trial Court

dismissed the said application by observing that the admissibility of the said partition deed will be decided only at the time of trial.

5. Challenging the said order, a Civil Revision Petition in C.R.P.No. 2954 of 2014 was filed before this Court and this Court by order dated

06.08.2014 has upheld the order of the Trial Court by holding that whether the document is admissible in evidence and whether the document can

be marked for collateral purpose can be decided at the time of trial. However, this Court has granted liberty to both the parties to agitate when the

document is marked. This Court also imposed a cost of Rs.2,000/- on the defendant for abusing not only the Trial Court but also this Court by

preferring a revision. Further, a direction was issued to the Trial Court to take up the suit and dispose of the same within three months. Thereafter,

the said document was marked as Ex.A.6 and in pursuant to such marking, the defendant once again filed the present I.A.No. 339 of 2014

seeking for rejection of the said document as inadmissible, only on the reason that the same was not registered.

6. The said application was opposed by the plaintiff. The Trial Court once again dismissed the application by holding that the maintainability and

admissibility of the said document could be considered and decided at the time of deciding the suit itself finally, especially when the said document

was marked only after recording the objections raised by the defendant. Challenging the said order, the defendant has filed this revision before this

Court once again by contending the very same submission.

7. The learned counsel appearing for the petitioner submitted that the plaintiff is seeking the relief of declaration based on the said partition deed,

which is admittedly not a registered one and therefore it cannot be received in evidence, when such document is sought to be marked not for any

collateral purpose. Subsequent payment of stamp duty will not cure the defect of non-registration. In support of his submission, the learned counsel

relied on a decision of this Court reported in Vincent Lourdhenathan Dominique and Lenin Anand @ Paquinadane Dominique Vs. Josephine Sylva

Dominique, .

8. Per contra, the learned counsel appearing for the respondent submitted as follows:

The relief sought for by the plaintiff is not solely based on the partition deed dated 13.06.1988. On the other hand, the plaintiff seeks the relief

based on the gift settlement deed dated 24.11.2008, which is admittedly a registered document. Marking of Ex.A.6/partition deed is only for

collateral purpose to show that the plaintiff's father was in possession of the suit property. The admissibility of the document should be gone into

and decided only at the time of final disposal of the suit and therefore, the defendant cannot have any grievance, since such document was marked

only after recording the objections raised by him. Even the unregistered partition deed can be marked and considered as evidence for collateral

purpose.

9. Heard the learned counsels appearing on either sides and perused the materials placed before this Court.

10. This is the second time the defendant has approached this Court questioning the maintainability of the document namely, the unregistered

partition deed dated 13.06.1988. Earlier, he challenged the very marking of the said document and such challenge was rejected by the Trial Court

and confirmed by this Court on 06.08.2014 in C.R.P.No. 2954 of 2014. Again, after marking of the said document, the defendant has filed the

present application to reject the said document on the very same reasoning namely, the said document is unregistered one and therefore, the same

is inadmissible in evidence.

11. Before considering the objections repeatedly made by the defendant before this Court in respect of the said unregistered partition deed dated

13.06.1988, a little analysis of the pleadings of the respective parties in the suit would help this Court to find out as to whether such repeated

contention has any force or basis to sustain the same.

12. The plaintiff seeks for declaration of his title to the suit property measuring an extent of 1.43 acres in Re-survey No. 306/2, by contending that

the said property was settled in his favour by way of a registered gift deed dated 24.11.2008. Thus, according to the plaintiff, he placed his

reliance primarily on the said settlement deed to seek the relief of declaration and injunction. In order to show as to how his father came into

possession of the same, he sought to rely on the unregistered partition deed dated 13.06.1988. In other words, according to the plaintiff, his father

and the defendant who were originally entitled to 3 acres of land, got it divided by way of partition on 13.06.1988 and thereafter, his father and his

sister have settled the said property, so partitioned, in his favour by way of settlement deed dated 24.11.2008.

13. The defendant has not disputed the fact that the plaintiff's father and the defendant were together entitled to 3 acres. On the other hand, it is

admitted by the defendant that both of them were entitled to punja 3.00 acre in old S.F.No. 269A of Elavamalai Village and however, the major

portions of the said land were taken away by way of the land acquisition proceedings for formation of road and for formation of cart track for the

purpose of convenient use and enjoyment of the parties, apart from leaving some land to one temple. Thus, according to the defendant, out of 3

acres, only 1.90 acre of land is available and the same was assigned with Re-Survey No. 306/2, to which the plaintiff's father and the defendant

were the joint pattadhars.

14. It is specifically stated by the defendant in the written statement that the plaintiff's father was entitled to = share in common in punja acre 1.90

whereas the defendant is entitled to remaining = share in common. Therefore, the defendant has not disputed the right of the plaintiff's father in

respect of his = share, but on the other hand, he disputes only the extent available for such entitlement. Therefore, it is the contention of the

defendant that the plaintiff cannot seek for relief of declaration in respect of 1.43 acre of land at Re-Survey No. 306/2. When such being the rival

contention of the parties, I am of the view that even in the absence of the partition deed dated 13.06.1988, the right of the plaintiff's father to have

= share in the property jointly owned by him and the defendant, is not at all disputed by the defendant. His objection is only with regard to the

extent to which the plaintiff's father is entitled to.

15. Therefore, such issue as to what is the extent of land available between the parties and as to whether the plaintiff's father was in possession

and enjoyment of the suit property measuring an extent of 1.43 acre as contended by the plaintiff or less than the same are the issues that are to be

considered and decided in the main suit. Therefore, for deciding such issue, the document in Ex.A.6/partition deed can be considered only for

collateral purpose to find out as to whether the plaintiff's father was put in possession of the said extent of 1.43 acres or not, as contended by the

plaintiff. No doubt that it is for the plaintiff to prove the said document in a manner known to law and mere marking or admitting the said document

does not mean that the same is accepted by the Court.

16. At this juncture, the decision rendered by this Court, reported in R. Munusamy Vs. G. Krishtappillai, is useful for reference. Paragraphs 8 and

10 to 13 reads as follows:

8. A careful perusal of the abovesaid provision of law would indicate that a document required to be registered under Section 17 of the

Registration Act, 1908, if not registered, it shall not be received as evidence of any transaction affecting such property or conferring such power.

Though such an embargo is put under Section 49(c) of the said Act, the proviso made to the said Section however contemplates that such

unregistered document affecting immovable property may be received as evidence either in a suit for specific performance or as evidence of any

collateral transaction not required to be effected by registered instrument. Thus, it is evident that the proviso to Section 49 permits receipt of such

unregistered document as evidence of any collateral transaction.

. . .

10. At this juncture, the decision of the Honourable Supreme Court reported in Bondar Singh and Others Vs. Nihal Singh and Others, can be

safely relied upon. A perusal of the facts and circumstances of the case before the Honourable Supreme Court in that case would show that the

plaintiffs therein filed the suit for declaration by adverse possession and for injunction to restrain the defendants from interfering with their

possession of the suit lands. The plaintiffs therein marked an unregistered sale deed, dated 9.5.1931 in proof of their possession. The defendants

therein contended that the said document was unstamped and unregistered, and therefore, it cannot convey title. The Honourable Supreme Court,

while considering the said issue, has observed in paragraph 5 as follows:

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 interest of the plaintiff, is an admitted document in the

sense its execution is not in dispute. The only defence set up against 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.

11. In the decision reported in S. Kaladevi Vs. V.R. Somasundaram and Others, , the Honourable Supreme Court has considered the question of

admissibility of an unregistered sale deed in a suit for specific performance of a contract and observed in paragraph 11 as follows:

11. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any

immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso,

however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act,

1882 to be registered may be received as an evidence to the contract in a Suit for specific performance or as evidence of any collateral transaction

not required to be effected by registered instrument. By virtue of Proviso, therefore, an unregistered Sale Deed of any immovable property of the

value of Rs.100/- and more could be admitted in evidence as evidence of a contract in a Suit for specific performance of the contract. Such an

unregistered Sale Deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered

document. When an unregistered Sale Deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of

sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the

Proviso to Section 49 of 1908 Act.

12. Further, this Court, in the decision reported in *Durai @ Subrayan Vs. Anandan*, , while considering the very same issue in respect of a suit for

permanent injunction, has followed the decision of the Honourable Supreme Court in *Bondar Singh's* case (cited supra) and observed in

paragraphs 10 and 16 as follows:

10. The fate of non-registration of the documents require to be registered under the aforesaid provision of law has been dealt with under Section

49 of the Registration Act, 1908. A document required to be registered but not registered shall not be received as evidence of any transaction

affecting such property as per Section 49 of the Registration Act, 1908. But, there is a proviso found thereunder which reads that such an

unregistered document affecting immovable property can be received as evidence in a suit for specific performance filed invoking the provision

under the Specific Relief Act, 1877. The proviso would further read that such an unregistered document affecting immovable property can also be

received as evidence of any collateral transaction, which transaction is not required to be effected by registered instruments.

16. Reverting back to the ratio laid down by the Supreme Court in *Bondar Singh and Others Vs. Nihal Singh and Others*, , the Court finds that an

unstamped and unregistered sale deed can very well be looked into, even if the same was not admissible in evidence, to establish the nature of

possession of the party concerned over the suit property.

13. Thus, a perusal of the above referred to decisions of the Apex Court as well as this Court, would make it clear that the unregistered sale deed

can be marked as evidence and looked into only for the collateral purpose of finding the nature of possession of the property concerned.

17. No doubt, the learned counsel for the petitioner relied on the decision of this Court reported in Vincent Lourdhenathan Dominique and Lenin

Anand @ Paquinadane Dominique Vs. Josephine Sylva Dominique, , Vincent Lourdhenathan Dominique and another v. Josephine Sylva Dominique

to contend that the unregistered partition deed cannot be admitted in evidence. A perusal of the said decision would show that a family

arrangement which allotted the properties to the respective parties and did not record the earlier partition came up for consideration regarding its

admissibility and the learned Single Judge of this Court has found that such family arrangement allotting the properties and not recording the earlier

partition cannot be admitted in evidence as the same was an unregistered document. This Court found in the said decision that the agreement that

was entered into therein on 21.05.1999 cannot be marked as document, since it required to be stamped and registered, since the reading of the

entire agreement showed that there was no recital to the effect that it was for recording the earlier partition which had already taken place. Here, in

this case, as already pointed out, the plaintiff seeks for the relief of declaration only based on the registered settlement deed and to prove the

possession of his father, which being the collateral purpose, he wants to mark the unregistered partition deed. At any event, based on the

respective pleadings of the parties as discussed supra and also based on the finding of the Court below that such admissibility of the document can

be decided at the later point of time while deciding the suit, I am of the view that the present application filed once again by the defendant before

the Court below is totally unwarranted and the same was rightly rejected by the Trial Court.

18. Accordingly, I find no merits to interfere with the order of the Trial Court and hence, the Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.