

(1961) 02 MP CK 0001
In the Madhya Pradesh High Court
Case No : C.R. No. 331 of 1959

Chhaganlal

APPELLANT

Vs

Madanlal

RESPONDENT

Date of Decision : 04-02-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 15

Citation : (1961) JLJ 1036

Hon'ble Judges : V.R. Nevaskar, J

Bench : Single Bench

Advocate : S.L. Dubey, for the Appellant; J.D. Patel for opponent, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Nevaskar, J.—This is a suit brought by plaintiff Madanlal claiming partition of certain items of what he alleges to be joint family property and delivery to him of the half share therein. The suit was against two of his brothers Chhaganlal and Ramlal.

2. The suit was resisted and one of the contentions was as regards the joint character of house tearing Municipal No. 3992/2 (present No. 4/1633) in Mohalla Gopal Mandir Chowk, Ujjain.

3. On behalf of the plaintiff a document purporting to be an agreement executed by all the four brothers in favour of their mother Narbadabai whereby they purported to transfer the said house in her favour. An objection to the admissibility of this document was raised both on the core of insufficiency of stamps as also for non-registration. These intentions were over-ruled and the document was held to be admissible for collateral purpose of proving that the house was a joint family property.

4. The present revision petition is directed against the order dealing with the question of objection regarding the admissibility on the ground of non-

registration. This order is dated 8-8-1959.

5. The points raised by this petition are:-

1. That the court below ought not to have permitted the plaintiff to produce the document in view of the circumstances that the defendant had served the plaintiff with a notice to produce the document in question in pursuance of the provisions of Order 11, Rule 15 CPC and that since the plaintiff had failed to produce the document in pursuance of such notice he ought not to be allowed to use that document at the trial.

2. That the view of the court below that the document could be used for collateral purpose is not correct. Nor is it correct that the purpose for which the plaintiff seeks to use that document is collateral.

6. As regards the first contention it seems that it is the subject matter of a separate order dated 11-8-59 against which the present revision petition is not directed. I would, therefore, not permit this point to be taken in the revision-petition directed against the order dated 8-8-59.

7. As regards the second contention it is clear from the terms of Section 49 of the Registration Act that although a document required by law to be registered u/s 17 when not registered cannot be allowed to affect an immovable property comprised therein, nor can it be received as evidence of any transaction affecting such property yet such document can be admitted to prove the admission of a party with regard to the character of that property i. e. whether it is joint or otherwise. It is well established by the decision of the Privy Council in the case reported in A. I. R. 1919 PC 44 N. Varada Pillain Vs. Jeevarathnamal, that a deed of gift which is not registered could be admissible for the purpose of showing the nature of possession. In Rajani Kanta Deb and Others Vs. Bashiram Mestari and Others, , it is held by the Division Bench consisting of Rankin, C. J. and Ghose J., that although u/s 49 of the Registration Act document which should be registered and is not registered is inadmissible as evidence of a transaction affecting property yet when it is put forward as containing an admission it is not being put forward as an evidence of a transaction affecting the property and so it cannot be said to be inadmissible as evidence of an admission. Their Lordships relied upon the decision of the Madras High Court reported in 57 IC 18 Kanjagamier vs. Ranjagamiyyar, for the view thus expressed by them. Similar view is expressed in G. Balakishtiah Vs. B. Ranga Reddy, , in connection with a Kabuliyat. There the Kabuliyat was sought to be used for collateral purpose after proving the admission of a party regarding title to the property. Their Lordships in that case relied upon the decision of the Privy Council reported in AIR 1919 PC 79 Hemaut Kumari Debi vs. Midnapur Zamindari Co. In light of the view thus expressed I would hold that the Court below was not in error in coming to the conclusion that the document is admissible for the purpose of proving admission as to Title although it is not admissible for proving the actual transaction of transfer of the house to the mother by all the brothers including the parties to the suit. There is

therefore no material irregularity in the exercise of jurisdiction nor any absence of jurisdiction on the part of the trial court.

8. Mr. Dubey for the petitioner expressed concern about the absence of the original document from the record and stated that in spite of the efforts made on the part of the petitioner the original is not being produced before the Court. Mr. Patel for the opposite party stated that he would have no objection to secure the submission of the original document in the trial court. It is but proper in such cases that the original document should be put on record. This may now be done.

9. The petition, however, has no force. It is dismissed with costs.