

(2009) 07 MAD CK 0165
In the Madras High Court
Case No : C.R.P. (P.D.) No. 483 of 2009

K. Veerabadran and K. Balaraman	Vs	APPELLANT
K. Venugopal and Others		RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Registration Act, 1908 — Section 17
Stamp Act, 1899 — Article 45, 35

Citation : (2009) 5 LW 465 : (2010) 1 MLJ 472

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : M.S. Subramanian, for T.V. Venkataraman, for the Appellant; N.R. Jasmine Padma, for L. Chanda Kumar, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—This revision petition is directed against the Order dated 12.12.2008 in O.S. No. 159/2000 whereby and

whereunder, the document produced by the revision petitioners dated 05.08.1993 was rejected as inadmissible in evidence.

2. The suit was preferred by the first Respondent against the revision petitioner and respondents 2 to 5 praying for a Judgment and Decree of

partition to divide the property into three shares and to allot one such share to him. The said suit was contested by the revision petitioners by filing

Written Statement.

3. Subsequently, the matter was taken up for trial. After the closure of the evidence on the side of the plaintiff, it was the turn for the Defendants to

adduce evidence. While DW-1 was in the midst of chief examination, a document dated 05.08.1993 was attempted to be marked as an exhibit.

Since the said document was not sufficiently stamped and as it was not registered, the admissibility of the said document was put in issue.

4. The learned Trial Judge found that the document dated 05.08.1993 was shown as a sworn affidavit. However, the document was executed by

the Defendants 4 to 6 in the suit in favour of the plaintiff and Defendants 1 and 2. The executor of the document was none other than the wife of

the late Krishtappa Naicker and her two daughters. Since the beneficiary of the document are the sons of Krishtappa Naicker through his first wife

Rajammal, the parties are family members. The executants of the document on receipt of a sum of Rs. 20,000/- by cash and Rs. 50,000/- by

cheque, released their right in respect of the property left by late Krishtappa Naicker. The learned Trial Judge was of the view that the document

was a family arrangement. According to him, the family arrangement could never be made orally and it should be only by way of a registered

document. The value of the property involved in the document was more than Rs. 100/- and as such, in the absence of registration, the document

was inadmissible in evidence. The learned Trial Judge also found that the value of the transaction in the document was Rs. 70,000/-. However, the

document was engrossed only in a stamp paper of Rs. 15/- and as such, the stamp duty was also insufficient. In such circumstances, the learned

Trial Judge concluded that the document dated 05.08.1993 was a family arrangement and it requires to be stamped under Article 45 Schedule I of

the Indian Stamp Act. Since it was not made in stamp papers of the appropriate value and as it was not registered, the learned Trial Judge held

that the document cannot be looked into for any purpose and as such, it was inadmissible in evidence. It is the said Order which is impugned in the

revision petition at the instance of the Defendants 1 and 2 in O.S. No. 159/2000.

5. The learned Counsel for the revision petitioner contended that the document in question was only an affidavit recording the transaction and it

cannot be treated as a document requiring registration. According to the learned Counsel, the question of admissibility and the evidentiary value has

to be decided only at the time of deciding the matter and it was too premature to decide the admissibility during the time of marking the document.

6. The issue of admissibility and the evidentiary value of the document was considered by the learned Trial Judge during the time of examination of

DW-1 and at the time of marking the said document as an exhibit. It is true that the document as a whole has to be considered for the purpose of

deciding the nature of the document. Mere nomenclature is not the deciding factor for determining the true nature of a document. Court has to look

into the entire text of the document and must come to a definite finding about the admissibility of an unregistered family arrangement.

7. The learned Counsel appearing for the petitioner also contended that the admissibility of the documents as well as its evidentiary value has to be

decided by the trial Court only at the time of deciding the matter and not at the time of marking the document. He also placed reliance on the

decision of the Hon'ble Supreme Court in *Bipin Shantilal Panchal v. State of Gujarat* and Anr. 2001 (3) SCC 1 in support of his contention.

8. In *Bipin Shantilal Panchal's* case, the Supreme Court indicated the procedure to be adopted by the trial Court during the time of marking the

document for the purpose of avoiding delay. The relevant observation would read thus:

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding

the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document

tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in

the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence

excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to

deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure

suggested above can be followed.)

9. However, even in *Bipin Shantilal Panchal's* case, the Supreme Court has observed that the objection with regard to deficiency of stamp duty

has to be decided at the time of marking the document.

10. In *A.C. Lakshmipathy and Anr. v. A.M. Chakrapani Reddiar and five Ors.* 2001 (1) CTC 112, a Division Bench of this Court had an

occasion to consider the essential features of a family arrangement and the

question regarding the registration of such documents. After considering the provisions of the Stamp Act as well as the Registration Act, the Division Bench observed thus:

29. The next question is how a family arrangement can be effected and what are the aspects to be considered or noted in testing the validity and

binding nature of a family arrangement. The family arrangement can even be made orally and in which obviously the question of registration does

not arise. What is required to be seen is whether the family settlement is a bona fide one so as to resolve family disputes and rival claims at a fair

and equitable decision or allotment of properties between the various members of the family. Similarly, the family arrangement should not be result

of any fraud or undue influence etc. played on the member/members of the family. In other words such a family arrangement must be voluntary and

entered into by the parties on their own accord and free will.

It is only when the family arrangement reduced into writing with the purpose of using that writing as proof of what they had arranged and where the

arrangement is brought about by the document as such, that the document requires registration, then it would amount to a document of title

declaring for future what rights and what properties the parties to possess.

30. But, however after family arrangement if a mere memorandum is prepared for the purpose of record or for information of the Court for making

necessary mutation, such memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the

mischief of Section 17 of the Indian Registration Act and therefore, not compulsorily registerable. Similarly, a mere list prepared by the parties, not

setting out the entire terms of the family arrangement need be registered.

....

42. To sum up the legal position

(I) A family arrangement can be made orally.

(II) If made orally, there being no document, no question of registration arises.

(III) If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any

immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

(IV) Whether the terms have been reduced to the form of a document is a question of fact in each case to be determined upon a consideration of

the nature of phraseology of the writing and the circumstances in which and the purpose with which it was written.

(V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a

record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered.

(VI) Only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and,

where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a

document of title declaring for future what rights in what properties the parties possess.

(VII) If the family arrangement is stamped but not registered, it can be looked into for collateral purposes.

(VIII) Whether the purpose is a collateral purpose, is a question of fact depends upon facts and circumstances of each case. A person can not

claim a right or title to a property under the said document, which is being looked into only for collateral purposes.

(IX) 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.

11. In a recent Judgment in Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, , the Hon"ble Supreme Court has considered the effect of an

unregistered and unstamped document and its admissibility even for collateral purpose in a judicial proceeding and observed thus:

24. ...The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof, which reads as under:

49. Effect of non-registration of documents required to be registered. - No document required by Section 17 or 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 (1

of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

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* wherein it was held:

[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.

In *Bhaskarabhotla Padmanabhaiah v. B. Lakshminarayana* it has been held:

9. In this case, the learned Subordinate Judge has observed that what the plaintiff was trying to prove was not the division in status but to show that

the property was divided under the partition deed. In any case, the fact that the document is inadmissible due to want of being stamped is clear.

For, in *Ram Rattan v. Parma Nand*. Their Lordships of the Privy Council held 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 purpose of determining even the factum of partition as distinct from its terms.

It was furthermore held: *Bhaskarabhotla* case AIR 1962 A.P. 132

10. In the result, I agree with the learned Munsif Magistrate that the document is

"an instrument of partition" u/s 2(15) of the Stamp Act and it is not admissible in evidence because it is not stamped. But, I further hold that if the document becomes duly stamped, then it would be admissible in evidence to prove the division in status but not the terms of the partition.

28. In Sanjeeva Reddi Vs. Johanputra Reddi, it has been held:

9. While considering the scope of Section 35 of the Stamp Act we cannot bring in the effect of non-registration of a document u/s 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 u/s 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 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.

In T. Bhaskar Rao Vs. T. Gabriel and Others,

5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence.

Proviso (a) to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document

is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an

instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or

collateral purpose, unless the requirements of proviso (a) to Section 35 are complied with. It follows that if the requirements of proviso (a) to

Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence.

It was further held:

7. It is now well settled that there is no prohibition u/s 49 of the Registration Act, to receive an unregistered document in evidence for collateral

purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not

stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid u/s 35 of

the Stamp Act....

12. The learned Trial Judge has not considered the entire documents in accordance with the settled legal position and as such, I am of the view that

the matter requires fresh consideration by the learned Trial Judge in the light of the Judgment of the Division Bench of this Court as well as

Judgment of the Hon'ble Supreme Court cited supra.

13. In the result, the Order dated 12.12.2008, made in O.S. No. 159/2000 on the file of the Principal Subordinate Judge, Chengalpattu is set

aside and the matter is remitted to the learned Trial Judge for fresh consideration.

14. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, M.P. No. 1/2009 is closed.