

(2010) 01 MAD CK 0157

In the Madras High Court

Case No : C.R.P. (PD) No. 1723 of 2009 and M.P. No. 1 of 2009

Nithyanandam

APPELLANT

Vs

Poornachandran, Dr. V. Seshia, Dr. V. Balaji and Dr. Madurai
Balaji

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

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

Citation : (2010) 1 LW 884

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Parthasarathy, for the Appellant; T.V. Ramanujam and M.
Rajasekaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The Plaintiff, aggrieved by the order passed by the Trial Court in the application filed by him under Order 13 Rule 3 of the Code of Civil Procedure, prefers the present civil revision petition.

2. The suit was filed by the Plaintiff praying for partition of the suit properties. The first Defendant is none other than his brother, who remained ex parte during the trial proceedings. Claiming that Defendants 2 to 5 have purchased the share fell to the first Defendant, they are contesting the suit.

3. In the trial, PW 1, who filed proof affidavit, subjected himself for cross-examination. During the course of cross-examination, Defendants 2 to 5, having drawn the attention of the Plaintiff to the Family Arrangement Confirmation Deed which came into existence in the family of the Plaintiff, marked the same through PW 1. In fact, a xerox copy of the Family Arrangement Confirmation Deed was produced by the Plaintiff, but, the same was not marked by him and it came to be marked during the course of cross-examination at the instance of Defendants 2 to 5.

4. The Plaintiff, having meekly admitted the existence of the Family Arrangement Confirmation Deed, Ex. A3, allowed the same to be marked through him during the course of cross examination. He challenges the said document as inadmissible in evidence on the ground that it deals with the current division of the property and therefore, it attracts not only stamp duty but also registration. As the same has not been executed on proper stamp paper and the same was not registered, Ex. A3 is not admissible in evidence, it is contended.

5. The Trial Court, having adverted to the fact that Ex. A3 was, in fact, produced by the Plaintiff, but marked during the course of cross-examination of the Plaintiff by Defendants 2 to 5 in the absence of any objection from the Plaintiff, chose to dismiss the petition filed under Order 13 Rule 3 of the Code of Civil Procedure.

6. Learned Senior Counsel appearing for the Plaintiff would vehemently submit that a xerox copy of the document was simply marked by the Trial Court. Though there is a bar u/s 17 read with Section 49 of the Registration Act, the Trial Court has permitted to mark an unstamped and unregistered family arrangement which gives effect to the partition only from the date when the document was executed. As Ex. A3 has brought out a complete division of the property and it does not record the past transaction of the division of the property, the said document is to be compulsorily registered. Therefore, it is his submission that Ex. A3 should be eschewed from evidence.

7. Learned Senior Counsel appearing for Respondents 2 to 4 would vehemently submit, referring to the tenor of Ex. A3, that it speaks only about the recording of past transaction of division of the property in the family. Though the document was loosely worded, in sum and substance, it speaks about the recording of only the past transaction. Therefore, it is his submission that Ex. A3 does not require any registration. The Trial Court has rightly permitted Defendants 2 to 5 to mark the xerox copy of the document which was produced by the Plaintiff.

8. Section 17 of the Registration Act, 1908 deals with the documents of which registration is compulsory. Section 49 of the said Act imposes a bar for receipt of any document which was not registered as mandated u/s 17 as evidence of any transaction affecting the property concerned. Of course, collateral transaction which does not require to be effected by registered instrument can be established by marking such unregistered document.

9. It is relevant to refer to Ex. A3 which was, in fact, produced by the Plaintiff, but, was marked at the instance of Defendants 2 to 5. The document reads that it is only a Family Arrangement Confirmation Deed. It specifically refers to a family settlement which, in fact, took place on 5.11.1991. The said family arrangement, which took place on 5.11.1991, was clinched in the presence of four panchayatdars. Having accepted the advice of the panchayatdars, who participated in the family arrangement which took place on 5.11.1991, it appears that Ex. A3 was reduced into writing confirming the family arrangement which

took place in the family. The Family Arrangement Deed was executed exactly 30 days after the family arrangement was clinched in the presence of the panchayatdars.

10. As rightly pointed out by the learned Senior Counsel appearing for Respondents 2 to 4, the Family Arrangement Confirmation Deed was loosely worded. But, on a careful perusal of the sum and substance of the Family Arrangement Confirmation Deed, we can safely come to a decision that there was, in fact, a family settlement dividing orally the properties in the family on 5.11.1991 and the same was recorded after 30 days under Ex. A3. Therefore, the Plaintiff cannot take advantage of such loose references made in the deed to classify the document as a deed of partition which presently divides the properties by metes and bounds. Therefore, I conclude that Ex. A3 Family Arrangement Confirmation Deed only refers the past transaction of the division of the property in the family which does not require any registration.

11. Coming to the facts of this case, it is found that it is only the Plaintiff, who produced the xerox copy of the document to the court, but, unfortunately Defendants 2 to 5, who purchased the share of the first Defendant, were not armed with even a copy of the Family Arrangement Confirmation Deed. In fact, many a reference has been made by the Plaintiff with reference to Ex. A3 during the course of his chief examination. Defendants 2 to 5 have simply referred to the xerox copy of the document produced by the Plaintiff and marked it through the Plaintiff. The Plaintiff had not objected to marking of such a document.

12. The learned Senior Counsel appearing for the Plaintiff/ Petitioner would refer to the decision in *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, which speaks about the objections that could be raised with respect to a document that could be classified into two categories. The first category relates to a document which is inadmissible in evidence. The second category relates to an irregular document.

13. The Supreme Court has held in the aforesaid decision that an objection with respect to the first category can be raised at any stage of the proceedings even after admission of the said document as an exhibit. Even in appeal or revision stage, an objection can be raised. But, with regard to the second category of documents, objections on the ground of irregularity or insufficiency, cannot be raised after the document was admitted in evidence and marked as exhibit.

14. The aforesaid ratio will not apply to the facts and circumstances of this case where it is found that Ex. A3 is very well admissible in evidence inasmuch as it does not require registration as the said document records only the past transaction of the division of the property.

15. Of course, it is held in *Arulsingamani v. Vaiguntha Rajan* 2000 (1) MLJ 530 that a document which is inadmissible in evidence cannot be permitted to remain in the records just because it was not originally objected to while marking the same during the course of recording evidence. Here is a case where the

document Ex. A3 was marked during cross-examination of PW 1. The document originated only from the Plaintiff. It has already been held that Ex. A3 is very well admissible in evidence. For all these reasons, the aforesaid ratio also will not apply to the facts and circumstances of this case.

16. Of course, under Order 13 Rule 3 of the Code of Civil Procedure, an irrelevant or in-admissible document can be rejected at any stage of the proceedings. As it is found that Ex. A3 is a relevant and admissible document, the question of rejection of Ex. A3 does not arise.

17. Therefore, the revision fails and it stands dismissed. There is no order as to costs. The connected miscellaneous petition also stands dismissed.