

**(1945) 01 MAD CK 0028**  
**In the Madras High Court**

Pl.M.Ct.M. Krishnappa Chettiar

APPELLANT

Vs

Pl.M.Ct.M. Kasiviswanathan Chettiar

RESPONDENT

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**Date of Decision :** 03-01-1945

**Acts Referred:**

**Citation :** (1945) 58 LW 46 : (1945) 1 MLJ 222

**Hon'ble Judges :** King, J

**Bench :** Division Bench

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## **Judgement**

King, J.—This appeal arises out of a suit for partition brought by one brother against another in the Court of the learned Subordinate Judge

of Sivaganga. The defendant resisted the suit on the ground that partition had already been effected between him and the plaintiff by arbitrators in

the year 1935-36. The learned Subordinate Judge has upheld this plea of the defendant and dismissed the plaintiff's suit. Plaintiff has appealed.

2. In the course of the trial, partition lists which were prepared in February, 1936, at the conclusion of the arbitration were produced in evidence.

They were objected to by the defendant as inadmissible under the Registration Act but the learned Subordinate Judge has held that they are merely

memoranda of decisions which had already been arrived at by the arbitrators and the parties and that as such memoranda and as not being

intended in any manner to be utilised as title deeds they do not require registration. The main argument in the appeal is upon this question. The lists

are quite clearly not title deeds on the face of them; they do not contain the usual recitals to be found in title deeds and indeed it is only with some

difficulty and after a careful comparison with the evidence in the case that they can be made sufficiently intelligible in themselves. The only real

posrtion of the deeds upon which reliance has been placed in the argument is the indorsement by the two brothers that the decision embodied in

the lists shall be in force till the document is executed and completed. It has been pointed out in regard to a very similar kind of document by the

Privy Council in *Rajangam Iyer v. Rajangam Iyer* (1922) 44 M.LJ. 745 : L.R. 50 IndAp 134 ILR 46 Mad. 373 that the document there merely

created a right to obtain another document which would, when executed, create a right in the person claiming the relief It seems to us that it is

impossible to hold that the parties here, who definitely contemplated executing a partition deed, could have intended at any time to make use of

these lists as deeds of title. We see no ground whatever to differ from the opinion of the learned Subordinate Judge that these lists are mere

memoranda and therefore do not require registration and can be admitted in evidence.

3. On the general questions as to the details of the partition effected by the arbitral-tors, very little has been said. There can be no doubt that the

learned Judge is right in holding that the partition then effected was a fair and exhaustive one.

4. The final argument was with reference to an alleged family asset which was not considered by the arbitrators. The plaintiff claims that there was

a sum of Rs. 10,000 to the credit of the family in Rangoon and he now asks that he be given his share in that asset. There is no specific decision on

this item in the judgment of the learned Subordinate Judge but the Judge does hold on issue 5 that the whole" of the family property was included in

the lists which the arbitrators drew up. There is nothing in the history of the case to show that the plaintiff ever pressed his claim with special

reference to this item of property and nothing in the manner in which the grounds of appeal are formulated which contains any specific complaint

against any of the learned Judge"s procedure in disposing of the case. It is too late now to investigate the matter of the assets.

5. The appeal fails and is dismissed with costs.