

(1930) 03 MAD CK 0016
In the Madras High Court

Vatrapu Subbarao alias Pamireddi Subbareddi and Others	APPELLANT
Vs	
Pamireddi Mahalakshamma	RESPONDENT

Date of Decision : 27-03-1930

Acts Referred:

Registration Act, 1908 — Section 17(b)

Citation : AIR 1930 Mad 883 : (1931) ILR (Mad) 27 : (1930) 32 LW 233 :
(1930) 59 MLJ 558

Hon'ble Judges : Horace Owen Compton Beasley, C.J.;Curgenven, J

Bench : Full Bench

Judgement

Horace Owen Compton Beasley, C.J.—Plaintiffs 2 to 7 are the appellants. The 1st plaintiff died after the suit was filed. The 1st defendant is

the wife of Sambayya, the deceased brother of the 1st plaintiff, and the 2nd defendant is the son-in-law of Sambayya having married Suramma, his

fourth daughter. The 1st plaintiff and Sambayya were formerly members of an undivided Hindu family in possession of large properties. It is alleged

in the plaint that Sambayya managed the family property and that he died an undivided member of the family on the 24th November, 1925. He

was at the time of his death the Village Munsif of Dokiparru. One of the questions to be decided in this appeal is whether the 1st plaintiff and

Sambayya became divided or not. Neither the 1st plaintiff nor Sambayya had any male issue. They had only daughters. It is alleged in the plaint

that after the death of Sambayya the entire property of the joint family devolved upon the 1st plaintiff by right of survivorship. It is alleged that the

1st and 2nd defendants nevertheless took possession of the joint family property and a decree is sought establishing the right of plaintiffs 2 to 7 and

the 3rd defendant to enjoy the property set out in Schedule A and a permanent

injunction is claimed restraining the 1st and 2nd defendants from causing obstruction to the enjoyment of plaintiffs 2 to 7 and the 3rd defendant in this property and other reliefs. The plaintiffs, therefore, base their claim on a right to enjoy the undivided property of the 1st plaintiff and Sambayya. To meet this case the defendants set up the plea that Ramayya (the 1st plaintiff) and Sam- bayya were divided members and that the share of Sambayya did not pass to the 1st plaintiff after his death by right of survivorship. It is alleged that a partition was effected in November, 1924, between Sambayya and Ramayya and that share lists showing a division of the properties were prepared at Bunder on the 9th November, 1924 and in para. 5 of the written statement the items which fell to the share of Sambayya are set out. At this time Sambayya was very ill and he died on the 24th November, 1925. Before he died it is alleged that he made a will at Bunder disposing of the property which fell to his share in the partition. The date of this alleged will is the 26th February, 1925. Under the terms of this document, Exhibit VII, 15 acres of land passed to his daughters, 12 acres under a codicil of the same date to the 2nd defendant, some 5 acres of land and godowns to a temple and the residue to one Koti Reddi, who was the son of the 2nd defendant and whom it is alleged by the defendants Sambayya adopted. Sambayya's second daughter, Sowbhagyam, who was a widow living in Sambayya's house was not provided for in the will. In Exhibit VII Koti Reddi is described as the adopted son of Sambayya and it is also stated in it that Sambayya had given authority to the 2nd defendant, the natural father of Koti Reddi, to act as guardian of Koti Reddi and to act as Village Munsif during his minority and to manage all his properties. The rice mill at Gudlavalleru which in the will is stated by Sambayya to be his self-acquired property was bequeathed to Koti Reddi. This alleged will--I describe it as an alleged will because it is the plaintiff's case that it is a spurious document--was attested by four witnesses, namely, Divi Rangacharyulu, a doctor who was attending on Sambayya, Pamireddi Ramayya, the 1st plaintiff;-- Korapati Venkatakrishnayya (D.W. 4) and another witness whose signature is illegible but who was examined as D.W. 5. It is not disputed by the plaintiffs that the signature of the 1st plaintiff is his, but it is alleged that he was an uneducated man and under the influence at this time of the 2nd

defendant and that he either signed the document being unaware of its contents or the document was written on blank paper which bore the

signature of the 1st plaintiff. It will be seen, therefore, that the respondent's case is that Sambayya having effected a partition with Ramayya

disposed of by will the share which fell to him by reason of the partition and that, therefore, the plaintiffs have no right to any of the property of

Sambayya so disposed of ; and a matter of considerable importance to be considered here is whether the allegation by the defendants that the 2nd

defendant's son Koti Reddi was adopted by Sambayya is true or false. It should be mentioned that the 2nd defendant's son Koti Reddi died on

the 1st January, 1926. Not, however, content with setting up a defence claiming Sambayya's property, a claim for Ramayya's property is also

made by reason of an alleged relationship of illatom son-in-law to Ramayya. The 2nd defendant, it will be remembered, married Sambayya's

fourth daughter. He was, therefore, a son-in-law of Sambayya, but notwithstanding this it is the case of defendants 1 and 2 that Ramayya who had

no unmarried daughters and no male issue brought up Surammal and gave her in marriage to the 2nd defendant. In the written statement of the 1st

and the 2nd defendants it is stated that Sambayya and Ramayya effected an arrangement to the effect that Ramayya should take Surammal as his

foster-daughter and she should be given in marriage to his sister's son, the 2nd defendant, that the latter should have a joint right to the property of

Ramayya and that after the death of Ramayya the entire property forming the share of Ramayya should pass to him. This illatom relationship and

the rights attaching thereto are denied by the plaintiffs. It is also alleged by the defence--and this is admitted by the plaintiffs--that whilst the suit

was pending Ramayya, the 1st plaintiff, disposed of the bulk of the plaintiff properties, having by means of a Dhakal deed disposed of Immovable

properties worth Rs. 50,000 and under another Dhakal deed properties worth Rs. 8,000. Ramayya died in July, 1926.

2. Several points of great importance and difficulty arise in this appeal. They are : (1) Did Ramayya and Sambayya become divided before the

death of the latter? (2) Is the will, Exhibit VII, and its codicil genuine? (3) Was Koti Reddi the adopted son of Sambayya? (4) Was the 2nd

defendant the illatom son-in-law of Ramayya? (5) If he was, to what share of Ramayya's property is he entitled? and (6) Was the rice mill in

Gudlavalleru the self-acquired property of Sambayya? In considering the before-mentioned matters several difficult questions of fact and law

present themselves.

3. In dealing with the first question what we have to consider is whether what is described by the defendants as a ""share list"" can be properly given

that description and whether it is a deed effecting a partition as is alleged by the defendants. This question is a most important one because that

document is an unregistered one. If it is a document which under the Registration Act is required to be registered, then the question arises whether

it can be referred to in evidence in order to prove that there was a partition or division in status as between Sambayya*" and Ramayya or whether

it can be disregarded altogether and parol evidence admitted to prove a division in status or partition. First of all, does this document require

registration? u/s 17(b) of the Registration Act (XVI of 1908) amongst other documents required to be registered are non-testamentary instruments

which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or

contingent of the value of one hundred rupees and upwards, to or in Immovable property. If Exhibit VIII is a document of this description, then u/s

49 of the same Act it shall not affect any Immovable property comprised in it or be received as evidence of any transaction affecting such property

unless it has been registered. Therefore the first thing to be considered is whether this is a document such as is described in Section 17(b) of the

Registration Act. Exhibit VIII is headed ""Particulars of the Immovable properties which fell to the share of Pamireddi Sambayya in the division of

the family properties effected on the 9th November, 1924, between the sons of Pamireddi Lakshmana (1) Sambayya and (2) Pamireddi

Ramanna's adopted son, Ramayya, residents of Dokiparru village."" Then follow the survey numbers of the properties, their situation and their

rough extent. This document was signed by both Sambayya and Ramayya. The writer of the document is stated to be Burra Ramayya (D.W. 3)

and there are the signatures of two attesting witnesses, Nagabhushanam who was not called as a witness in the Court below and Seetaramaswami

(D.W. 7). For the plaintiffs it is contended that this document operates to create an interest in the Immovable property described in it and by the

defence it is contended that it is nothing more than a memorandum of a division of properties previously agreed upon. A wealth of authority upon

this question has been presented to us in the course of the argument by both sides. Amongst the cases to which we were referred are the following

: Pothi Naicken v. Naganna Naicker (1915) 30 M.L.J. 62. There the document in question reads as follows:

As we have, in the presence of the undermentioned Panchayatdars, divided, into equal moieties, the cash, moveables and immovables, Court

decrees, etc., of which we are now possessed, valued at Rs. 80,000, our connection shall hereafter be only by relationship, but we shall have no

monetary connection in respect of these properties.

4. It was there held by Sir John Wallis, C.J., Sadasiva Aiyar and Seshagiri Aiyar, JJ., constituting a Full Bench, that the document had the effect of

causing Immovable properties heretofore held by the co-parceners as joint tenants thenceforward to be held by them as tenants-in-common and as

such, without registration, could not affect Immovable property. In my view, the document in question did not create much difficulty on the face of

it. It did more clearly appear to be a document effecting a partition than otherwise. The question whether a document is a deed of partition or a

mere memorandum of partition is a pure question of fact to be decided on a perusal of the actual document. This was the opinion of Jackson, J., in

Veerappan v. Mylai Udayan (1924) 87 I.C. 285 and also of Spencer, J., in Ayyakutti Man-kondan v. Periaswami Koundan (1913) 30 M.L.J.

404. In the former case after an award directing a partition was passed by panchayatdars a list was drawn up which contained the shares given to

the different members and was signed by them and attested by witnesses. Jackson, J., held that the document was a deed of partition declaring an

interest in the Immovable property mentioned therein and, if unregistered, was inadmissible in evidence respecting any transaction affecting such

property. Jackson, J., however, thinks that at the most it will be evidence of an intention to divide and receivable in evidence as proof of such

intention. The latter opinion deals with the question as to admissibility and the former as to whether it purports to create an interest in Immovable

property. In Saraswatamma v. Pad-dayya ILR (1922) M. 349 : 44 M.L.J. 45 the document was described as a "List of shares of division." Lands

were divided in it and then the residential house and it contained the statement :
""Both of us have agreed to the said shares and effect settlement

without any dispute whatever."" Venkatasubba Rao, J., was of the opinion that this document afforded clear evidence of conduct from which an

intention to divide on the part of the executants was deducible but that all the co-parceners not being parties to the document it did not effect an

immediate division in status. With this opinion Spencer, J., agreed. On page 359 he states :

On the same principle I think that documents which are instruments of partition, as defined in Section 2(15) of the Stamp Act, that is, instruments

whereby co-owners of any property divide or agree to divide such property in severally, are required by Section 17 of the Indian Registration Act

to be registered when the property to be divided is Immovable property over Rs. 100 in value, and if they are not so registered they cannot by

reason of Section 49 be admitted as evidence of the transaction they purport to effect; but they may be used for the collateral purpose of proving

division of status among the parties to the documents. When so used they do not "affect" Immovable property nor is the division of status a

"transaction affecting Immovable property" in the sense intended by the Act to be given to the word "affect". Documents that do not fall under the

above description are not required to be registered at all and are admissible in evidence without registration.

5. The observations of Spencer, J., are useful in our consideration of the question whether and for what purpose a document inadmissible u/s 49 of

the Registration Act by reason of want of registration may yet be used in evidence. In *Gopayya v. Kristnayya* (1922) 16 L.W. 784 it was held by

Krishnan and Venkata-subba Rao, JJ., that if the parties had treated the ""Share lists"" as final it would be inadmissible in evidence without

registration and that an oral agreement as to partition could be proved and, if proved, the written deed could be treated as the minutes of

agreement between the parties and not as a completed partition deed and even though unregistered could under these circumstances be admitted in

evidence to prove the terms agreed to. In (1929) ILR 51 771 (Privy Council) it was held that an agreement for the sale of Immovable property is a

transaction affecting the property within the meaning of Section 17 of the Registration Act inasmuch as, if carried out, it will bring about a change of

ownership and that to allow a document which does itself create such an interest to be used as the foundation of a suit for specific performance

appeared to be little more than an evasion of the Act. This case was strongly relied upon by the learned Advocate-General in support of his

argument but when the agreement for sale is examined it will be seen that it on the face of it affected the property. In it Clause 8 reads as follows:

The said vendor confirms this to be a complete and (sic) vendor and on all his heirs or assigns, etc., in favour of the said vendee...and if the vendee

should ever consider necessary to execute a registered sale-deed...vendor or his heirs, assigns, etc., will always be ready to execute and register

the same at the expenses of the vendee.

6. It will be seen that this clearly purports to transfer the vendor's interest in Immovable property. In *Gnanamuthu Nadan v. Veilukanda Nadathi*

(1923) 19 L.W. 494 *Odgers and Hughes, JJ.*, held that a partition list containing a list of the properties which fell to each sharer on a partition did

not require registration even though signed by all the co-sharers and attested when it contained no words which could be construed as creating a

partition of status. In this case *Gopayya v. Kristnayya* (1922) 16 L.W. 784 was followed. This decision strongly supports the contention of Mr.

Varada-chari on behalf of the respondents that the document is not one required to be registered. In *Referred Case No. 5 of 1883*, A reference

u/s 49 of the Stamp Act ILR (1884) M. 385 it was held by a Full Bench of this Court that a document signed by the members of a Hindu family

and attested by witnesses, which purported to be an account or list" of the share of one member of the family in the family property and in which it

was recited that the parents of the family were to enjoy certain lands and that the outstanding debts should be divided at a future date was not

liable to stamp duty as a partition deed. In *Rama-swami Aiyar v. Thirupathi Naik* ILR (1903) M. 43 : 13 M.L.J. 356 a case relied upon by the

learned Advocate-General on behalf of the appellants, it was stated that the criterion for purposes of registration is what is expressed on the face

of the documents, not what incidents may be annexed by custom to a grant of the kind. This case was relied upon by the appellants because it was

there held that the document must be taken to be an agreement to lease, and in consequence subject to the provisions of the Registration Act as if

it were a lease.

7. On a consideration of these cases I have come to the conclusion, although not without some hesitation, that this document cannot be said to be

merely the minutes of a previous oral agreement to divide. The fact that it is of the same date as the alleged oral agreement to divide is of

importance, but it does not necessarily follow that the proper conclusion to be drawn from that is that it is an agreement to partition and I am not

basing my conclusion merely upon that fact because it seems to me that the document being signed and the other document (not produced) which

is its counter-part also being signed indicates that it was intended that this document and the other should be the evidence of the partition. It must

be borne in mind that no partition deed is effected without some previous discussion of its terms and it is not rendered any the less a partition deed

on that account and although this case is not very dissimilar to *Gnanamutku Nadan v. Veilukanda Nadathi* (1923) 19 L.W. 494 for the reasons

already given, Exhibit VIII, in my view, required to be registered and not having been so it is not admissible in evidence for the purpose required.

But even though inadmissible in evidence to prove a partition, I am of the view that it could be used in evidence not for what it contains but as

evidence of a division in status. As Jackson, J., stated in *Veerappan v. Mylai Udayan* (1924) 87 I.C. 285 it would be evidence of intention to

divide, and as Spencer, J stated in *Saraswatamma v. Pad-dayya* ILR (1922) M. 349 : 44 M.L.J. 45 being unregistered it could be used to prove a

division in status. In *Ramu Chatty v. Panchammal* (1925) 92 I.C. 1028 it was held by Kumaraswami Sastri and Venkatasubba Rao, JJ., that a

division of status can be proved even if the deed of partition is inadmissible in evidence for want of registration and that an unregistered document

may be used to determine the nature of the possession held by a party and that where a deed of partition is inadmissible in evidence for want of

registration the terms of the partition cannot be proved except by the document itself but if it is unnecessary to decide the terms of partition, it is

open to a Court to infer from the conduct and dealings of the parties that there was a division in status. On page 1029 Kumaraswami Sastri, J.,

states as follows:

So far as the division of status is concerned, a recent decision of the Privy

Council in 27 CWN 561 (Privy Council) is clear to the effect that a division of status can be proved even though the document has not been registered. It has also been held by their Lordships of the Privy Council that an unregistered document may be used to determine the nature of the possession held by a party. The Subordinate Judge has not relied upon any unregistered partition deed. For the purpose of coming to the conclusion he has arrived at, he takes the conduct of the parties into consideration and comes to the conclusion that not only has the division of status been proved but all the properties claimed have been enjoyed by the defendant's husband in his own right. I do not see why the evidence as regards the conduct of the parties in their dealings with each other and with regard to specific items of property should not, coupled with the finding of a division of status, be used and relied upon to show that certain properties which the plaintiff claims are not in wrongful possession of the defendant but belonged to the defendant's husband. I do not think that on the facts of the case, Section 92 of the Evidence Act is necessary to be invoked by any of the parties. The plaintiff comes into Court and says that he is the absolute owner of the property, because he is a member of an undivided family.

I may pause here and say that that is what the plaintiffs in this suit base their claim upon.

The defendant says that her husband was not a member of an undivided family, that he was divided in status, and that he enjoyed certain properties separately, as a divided member of the family.

that is what the 1st and 2nd defendants say in this suit.

This is not a case when a claim is made by the defendant to any property on the allegation that it came to her by virtue of a deed of partition which is unregistered and so inoperative. The plaintiff's claim as a member of the joint family could not be sustained.

8. Although the correctness of Kumaraswami Sastri, J.'s opinion in stating the effect of the decision in 27 CWN 561 (Privy Council) has been questioned, his judgment in other respects is a very strong one in support of the respondent's contention here. Another case relied upon by the respondents is Chhotalal Aditram v. Bai Mahakore ILR (1917) B. 466. There it was held that the fact of partition may be proved by oral evidence

although the deed embodying the terms of partition cannot be proved for want of registration. In the course of the judgment paragraph 405 of

Taylor on Evidence (10th Edition) was quoted. It is as follows :

The fact of the existence of a particular relationship may be shown by parol evidence, though the terms which govern such relationship appear to

be in writing...The fact of partnership may be proved by parol evidence of the acts of the parties without producing the deed.

9. In Ahobilachariar and Others Vs. Thulasi Ammal and Others, Ramesam, J., took the same view. In Subramania Aiyar v. Savitri Ammal (1908)

19 M.L.J. 228 Sankaran Nair, J., held that a partition deed not registered is admissible in evidence to prove the status of the members but is

inadmissible in evidence to prove the transaction so far as it affects Immovable properties and Pinhey, J., held that such a partition deed cannot

affect any Immovable property comprised therein nor be received in evidence of any transaction affecting such property but is admissible to prove

the fact of a partition having been effected. In Sikhamani Pandithar v. Ammani Ammal (1917) 40 I.C. 36 Spencer and Phillips, JJ., held that a

document which effects a partition by itself where there has been no prior partition is not admissible in evidence to prove a unilateral declaration or

division in status but if such declaration has taken place prior to the document it can be received as evidence of that division in status. There is no

doubt now that an unequivocal declaration by a member of an undivided family of his intention to be divided in status is sufficient to effect a

partition and in Girja Bai v. Sadashiv Dhundiraj (1916) L.R. 43 IndAp 151 : ILR 43 C. 1031 : 31 M.L.J. 455 (P.C) it was held that a letter by a

member of a Hindu family indicating his intention to separate himself and enjoy his share in severalty coupled with a suit for partition was as

unequivocal and clearly expressed an intention as could be made and that it amounted to a separation with all its legal consequences. The case

referred to by Kumaraswami Sastri, J., in Ramu Chetty v. Pancham-mal (1925) 92 I.C. 1028 is 27 CWN 561 (Privy Council) and his opinion as

to the effect of this judgment has been doubted as before stated and, in my view, it does no more than decide that the document in that case not

being a document by itself creating, assigning, limiting or extinguishing any right or interest in Immovable property and not therefore requiring

registration was admissible in evidence so far as it went. It did not decide that a document which did, require to be registered could yet be used in

evidence to prove a division in status although cases since that time, namely, Gnanamuthu Nadan v. Veilukanda Nadathi (1923) 19 L.W. 494

Ramu Chetty v. Panchammal (1925) 92 I.C. 1028 and Mahalakshamma v. Suryanarayana ILR (1928) M. 977 : 55 M.L.J. 733 have clearly laid

down that a document required to be registered as effecting a partition can be used as evidence of a division in status. The latter case is reported in

Mahalakshamma v. Suryanarayana. ILR (1928) M. 977 : 55 M.L.J. 733 Reilly, J., states :

The effect of the ruling of the Privy Council in (1918) L.R. 46 I.A. 285 (Privy Council) is that, while such a document cannot be used to prove

such a transaction, it can be used to prove a different fact relating to the property even though that fact is intimately connected with the transaction,

and on page 991 dealing with the unregistered document he states :

But the opinion has been expressed--and I venture to think rightly that it can be used to prove a division in status, which we can dissociate from,

and which does not necessarily imply, a division of property.

10. In (1918) L.R. 46 I.A. 285 (Privy Council) there was a document reciting a gift and it was not registered and it was held that the gift was

invalid and that the recitals in the document could not be used as evidence of a gift but might be referred to as explaining the nature and character

of the possession thenceforth held by the person to whom the gift had been made. On page 251 Viscount Cave in delivering the judgment of their

Lordships of the Privy Council states:

It should be added that, although the petitions of 1895 and the change of names made in the register in consequence of those petitions are not

admissible to prove a gift, they may nevertheless be referred to as explaining the nature and character of the possession thenceforth held by

Duraisani

11. A consideration of these cases leads me to the conclusion that Exhibit VIII was admissible in evidence to prove a division in status but could

not be used as evidence of how the property was divided ; and furthermore in my opinion it was not necessary even to refer to Exhibit VIII at all

for purposes of proving a division in status as such division could be proved by

evidence as to the conduct of Sambayya and Ramayya. When that conduct is considered it seems to me clear that there was a division in status between them.

[His Lordship then dealt with the evidence.]

12. I see no reason for thinking that the will, Exhibit VII, is not genuine or for believing that Ramayya did not know what it contained. That being

so, he acquiesced in the position taken up by Sambayya, namely, that of a divided brother. This, coupled with his own statement in Exhibit I, is

sufficient evidence that he and Sambayya were at least divided in status. This disposes of the appellants' contention that they are entitled to the

whole of Sambayya's property by right of survivorship. It is quite true that Exhibit VIII cannot be referred to in order to say what properties fell to

the share of Sambayya and I do not think that the will can be referred to for that purpose either. The fact remains that he had a power of

disposition over his half share in each of the joint family properties. It is quite clear from the evidence already referred to that Sambayya took Koti

Reddi in adoption. But the respondents' case is that the appellants are not entitled to any share in Ramayya's property because the 2nd defendant

was his illatom son-in-law and by survivorship he is entitled to the whole of that property. It lies upon the defendants to prove this relationship and

it must be proved very clearly and must not be left a matter of speculation at all. I have had the advantage of reading the judgment of my learned

brother Curgenvin, J., and entirely agree with the conclusions he has arrived at with regard to the alleged illatom relationship between the 2nd

defendant and Ramayya both on the facts and upon the law, and I also agree with him in his opinion as to the effects of an illatom relationship if

proved on the shares in the property. With regard to the rice mill, I am satisfied that it was the self-acquired property of Sambayya and as this

question has been fully dealt with in the judgment of my learned brother I do not think it is necessary for me to add anything further upon this point.

13. The appeal is allowed in part. In modification of the decree of the lower court we declare that the late Pamireddi Sambayya and Ramayya died

divided in status from each other, that the plaintiffs 2 to 7 and the 1st and 3rd defendants are entitled to the right and enjoyment of the 1st plaintiff's

half share of items 1 to 51 of the plaint A schedule and to be placed in joint

possession of the same along with defendants 1 and 2 as co-owners in respect of the said items and that items 52 and 53 of the said A schedule were the self-acquired properties of the late Sambayya to which the plaintiffs have no right; and"" we further order that except as to the declaration before granted in respect of items 1 to 51 of plaint A schedule, the decree of the lower court is confirmed and that each party do bear his own costs throughout.

Curgenven, J.

14. The main facts of this case have been summarised in the judgment which My Lord has just delivered. The question of fact first arising is whether the partition deed, Exhibit VIII, and the will, Exhibit VII, purporting to have been executed by Sambayya, are genuine. As to this there can I think, be no two opinions, so that it is unnecessary to go at great length into the evidence.

[His Lordship dealt with the evidence and continued.]

15. It has next to be considered whether Exhibit VIII is admissible in evidence to prove the partition. The document opens thus : -

Particulars of the Immovable properties which fell to the share of Pamireddi Sambayya in the division of the family properties, effected on 0th

November, 1924, between the sons of Pamireddi Lakshmana (1) Sambayya, and (2) Pamireddi Ramahna's. adopted son Ramayya, residents of

Dokiparru village.

16. Then follows a list of the items of property comprising Sambayya's share. The circumstances in which this document and the corresponding

document setting out Ramayya's share, which is not now forthcoming, were executed are narrated by the writer of them, D.W. 3. Sambayya gave

him rough drafts and he wrote the fair copies from them in the presence of the two brothers, Sambayya himself dictating the particulars from the

drafts. The deeds were then signed and attested. We have to consider whether in the terms of Section 17 of the Registration Act, Exhibit VIII

purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in Immovable

property,"" and the first test to apply is whether the document formed an essential part of the process of dividing the property or whether there is

ground to suppose that the partition had already taken place, perhaps by oral

arrangement, and was complete when the document was executed.

It appears to me that the circumstances narrated by the writer show that this was not a case of an oral partition completed and done with, and lists

separately and subsequently drawn up. I think that if ever a partition deed can be regarded as an integral part of the partition, Exhibit VIII was

such a deed. The importance attached to it is shown by the previous preparation of a rough draft and by the employment of a draftsman, and its

formal and binding character is apparent from its being signed by both the brothers and attested by witnesses. So far then as intention can be

gathered from the course taken, it was not merely to prepare a list or memorandum but to execute a legally valid deed. In point of fact it affords

virtually the only evidence relied upon in proof of the partition in this case, although it so happens that other incidental evidence of the fact of

partition is forthcoming.

17. It is then necessary to see whether Exhibit VIII can be said to purport or operate to affect Immovable property within the meaning of Section

17. We have had a variety of other cases relating to partition documents brought to our attention but no very useful purpose will be served by

discussing them in detail as each document must be dealt with according to its terms. An instance of a somewhat extreme view is afforded by *Jiwan*

Ali Beg v. Basa Mal ILR (1886) All. 108 which dealt not with, a partition document but with a receipt for money paid under a mortgage bond.

The contention was. that the document pro tanto extinguished the mortgage debt and accordingly should be registered. I only refer to the case

because *Edge, C.J.*, who delivered the leading judgment, expressed the view that the strictest construction must be placed upon the provisions of

the Registration Act and it must be clear that the document objected to comes within the four corners of those provisions. An alternative view is

that the Court should ensure that the provisions of the Act are not evaded by any mere informality in the language, so long as the document was

intended to operate and does operate in the manner laid down in Section 17. In *Reference u/s 49 of the Stamp Act* ILR (1884) Mad. 385 a Full

Bench had to consider on a reference u/s 49 of the Stamp Act whether the referred document was a partition deed, but in that case I think the

terms of the document, which were bare of any operative words, led without

difficulty to the conclusion that it was, "a note that a certain property had on partition been allotted for the maintenance of parents and a memorandum of the particulars of property which had on partition fallen to the share of one of the brothers." So too the document in *Gnanamuthu Nadan v. Veilukanda Nadathi* (1923) 19 L.W. 494 was a mere list of property headed with the name of the sharer to whom it fell, and although it was signed and attested, it was held to be admissible in evidence. Of a different character was the partition deed in *Pothi Naicken v. Naganna Naicker* (1915) 30 M.L.J. 62 which contained the recital "As we have in the presence of the undermentioned panchayatdars divided. . . ." and which was held actually to effect a division and so to be inadmissible for want of registration. No doubt the legal character and effect of Exhibit VIII would be clearer if it contained some such formal declaration as "we hereby divide," but mere informality of language should not, in my view, be allowed to defeat the provisions of the Registration Act. The document says Particulars of the Immovable property which fell to the share of Pamireddi Sambayya in the division of the family properties effected on 9th November, 1924." If it had said "we hereby declare that the following are the particulars of Immovable property, etc.," no; doubt could be entertained as to its nature; and since it is in substance and intention a declaration to that effect, it must, I think be deemed to operate within the meaning of Section 17, Indeed, had it been a registered document and tendered in proof of Sambayya's title to his share in the property, I have no doubt that any Court would accept it as such. In these circumstances I am clearly of opinion that u/s 49 of the Registration Act it must be excluded in so far as it is evidence of a transaction affecting Immovable property.

18. Assuming then that the deed is inadmissible to show what disposition of the family property was made at the division, the point next arising is whether it is admissible to prove a division of status. Mr. Varadachari has endeavoured to show, I think successfully, that upon this question judicial opinion, as revealed by the decisions of this Court, has gradually but unmistakably settled to the view that a partition deed, otherwise inadmissible may be received in evidence of a division of status. As an instance of the earlier view that such a document is in all respects inadmissible may be cited the judgment of Oldfield, J., in *Pothi Naiken* though his

next friend K.N.P.R. Narayanasami Naicker Vs. K. Nagama

Naicker and Others, . The learned Judge held that a division in status alone necessarily converted the joint tenancy of a co-parcener into a

tenancy-in-common, and this change extinguished one kind of right in the property and treated another within the meaning of Section 17 of the

Registration Act. The other member of the Bench, Sankaran Nair, J., took the different view that a document merely creating a separation in status

did not fall within the provisions of the Registration Act because the consequential change in the tenure of the property was by operation of rules of

Hindu law and not by virtue of the instrument. In the Letters Patent Appeal from these judgments reported as Pothi Naicken v. Naganna Naicker

(1915) 30 M.L.J. 62 the view was taken that the document must be treated as a whole, and as a whole was inadmissible, notwithstanding that it

dealt with moveables as well as immovables. Ayya-kutti Mankondan v. Periaswami Koundan (1913) 30 M.L.J. 404 is another Letters Patent

Appeal from differing judgments of two learned Judges, Spencer and Sadasiva Aiyar, JJ. Spencer, J., thought that the document did not require

registration at all, so that the further question did not arise; Sadasiva Aiyar, J., took the opposite view and considered further that the division of

status created by it could not logically or properly be separated from the extinction of joint rights in Immovable property effected by the same

document, which is the same view as Oldfield, J., took in Pothi Naicken though his next friend K.N.P.R. Narayanasami Naicker Vs. K. Nagama

Naicker and Others, . We find this opinion adopted again by Spencer and Phillips, JJ., in Sikhamani Pandithar v. Ammani Animal (1917) 440 I.C.

36. Two judgments of their Lordships of the Privy Council appear to have contributed more than anything else to an alteration of opinion. One is

the well-known case of Girja Bai v. Sadashiv Dhundirap 16 which held that an unequivocal expression of intention on the part of a co-parcener

was sufficient to effect a division of status. The other was 27 CWN 561 (Privy Council) which dealt with the admissibility of a document drawn

up in certain partition proceeding. Admittedly the document in the latter case effected a division of status, and although their Lordships did not refer

to or discuss any of the Madras decisions upon this point, the only conclusion compatible with their judgment is that a document declaring a

division of status does not require registration on the ground that such a division must necessarily affect the family property within the meaning of

Section 49 of the Registration Act. In *Saraswatamma v. Paddayya* ILR (1922) M. 349 : 44 M.L.J. 45 a partition deed which was inadmissible to

prove particulars of partition was accepted to prove an intention to be divided in status, the learned Judges relying much on *Girja Bai v. Sadashiv*

Dhundiraj (1916) L.R. 43 IndAp 151 : ILR 43 C. 1031 : 31 M.L.J. 455 (P.C.) in coming to this conclusion. *Ramu Chetty v. Panchammal* (1926)

M.W.N. 45 is another decision to the same effect; and the principle was accepted by *Kumaraswami Sastri and Reilly, JJ.*, in *Maha-lakshamma*

v. Suryanarayana ILR (1928) M. 977 : 55 M.L.J. 733. I think accordingly that, following the current of recent judicial opinion, there is no question

but that we may look into Exhibit VIII to decide whether the brothers were joint or several in status. Even if the current course were to exclude the

document altogether, there is ample authority for the view that evidence of division may be received from other sources. Direct authority for this

proposition is furnished by *Chhotalal Aditram v. Bai Mahakore* ILR (1917) B. 466 where it is explained that Section 91 of the Evidence Act does

not preclude proof by parol evidence of a fact which is not a term of the document; and the fact of division is not such a term any more than would

be, for instance, the fact of relationship of mortgagor and mortgagee or of landlord and tenant. A case of this Court dealing with same matter is

Ramu Chetty v. Panchammal (1926) M.W.N. 45. The evidence in order not to offend against Section 91 of the Evidence Act, must be restricted

to the fact that a partition has taken place and must not extend to the particulars of the division, as, for instance, the items which fell to *Sambayya's*

share. That apart from the recital in Exhibit VIII there is ample evidence of the fact of a partition can-not be disputed. It is unnecessary I think to

go further than the will Exhibit VII itself, attested as it is by *Ramayya*, Therein it is stated that *Sambayya* and his younger brother remained joint for

a very long time and recently became divided. Exhibit I, *Ramayya's* petition to the Deputy Collector, contains an express admission to the same

effect. The finding that Exhibit VIII is inadmissible to show what property fell to each brother's share must result in the conclusion that each

enjoyed an undivided share in each item of property, a conclusion which must necessarily involve an alteration in the decree which has been passed

in this suit.

19. The next question is whether the 2nd defendant has succeeded in proving his relationship as illatom son-in-law to Ramayya. He is a son of a

sister, Machamma, of Ramayya and Sambayya and evidence is adduced to show that he was brought into the house in which the brothers were

jointly residing when he was 14 or 15 years old, and married to Sambayya's daughter, Suramma. This girl, it is said, was brought up by Ramayya

who gave her away in marriage to the 2nd defendant. In this way, it is explained, his illatom relationship to Ramayya originated. The proof which is

offered of it consists, firstly, in some oral evidence as to what took place at the marriage, and what then and subsequently the brothers said; and,

secondly, in Ramayya's admissions contained in the applications, already referred to, for the village munsif's post. In weighing this evidence, it will

be well to bear in mind with what difficulties the 2nd defendant is confronted. An illatom relationship to a father-in-law may or may not be rare in

the community to which the parties belong but there can be no question that such a relationship to a father-in-law's brother is quite unusual, so that

it is unlikely on a priori grounds that such an expedient would be resorted to; nor is it easy to see with what motive or intention an undivided

brother would adopt such a course. It is said that he brought up Suramma as he was living with her father in a state of jointness. It is difficult to see

what this means, and what practical difference it would make in Suramma's position in the family. If it was desired to bring the 2nd defendant into

the house, the obvious course would have been for Sambayya himself, who had no son, to take him as illatom. [After discussing the documentary

evidence in the case, His Lordship observed that there "was no scrap of paper" to prove alleged relationship of the second defendant as the illatom

son-in-law of Ramayya.]

20. As has been observed by a Bench of this Court, *Panda Pat-tayya v. Panda Venkamma* (1915) 17 M.L.T. 393 claims of this nature should be

very carefully scrutinised, as an ordinary son-in-law may be tempted to get possession of his father-in-law's property by such means. In the

present case, the 2nd defendant's claim is to an estate of about half a lakh in value and he seeks to displace persons whose title is otherwise

unimpeachable. Allowing all due weight to the admissions made by Ramayya, it

cannot be gainsaid that they occur at a very late stage, and that there is no record to show that on any previous occasion the illatom relationship was asserted. On the contrary, such documents as bear upon the matter rather run counter to the theory. Thus the oral evidence has a very heavy burden thrown upon it. It is unnecessary, I think, to hold that the witnesses are consciously misrepresenting the truth in order to arrive at the conclusion that it would be unsafe to act upon their statements. They are reporting observations made in conversation for the most part a good many years ago, and there is probable source of confusion arising from the identification of Ramayya with his undivided brother's concerns. He might quite naturally have said-as indeed he appears to have said to the Deputy Tahsildar in Exhibit II-"We have taken Krishna Reddi as illatom son-in-law." It may even be that, of his brother's daughters, he bestowed his affection and care specially upon Suramma--no other meaning has been suggested to the statements that he "brought her up"--and if so he would naturally take a particular interest in her husband, and may have gone so far as to say that he was going to make him his heir. However that may be, the oral evidence does not" in my view establish the status, and differing from the trial Court, which appears to regard as proved an unqualified agreement by Ramayya to make the 2nd defendant his heir, I am unable to accept the fact of illatom.

21. Even if the illatom relationship" had been established, I do not think that the learned advocate for the respondents has succeeded in demonstrating that a father-in-law who takes a son-in-law in illatom thereby deprives himself of the right to devise his property, much less to alienate any portion of it while still alive. It is not disputed that in the Reddi community to which the parties belong the custom is to be found of taking a son-in-law into the family, especially where there is no son. This may be done, it seems, without the execution of any document or the performance of any ceremony, though it cannot be inferred that every son-in-law, who becomes an inmate of his wife's family house thereby acquires the status of illatom, son-in-law. The practice is a departure from ordinary Hindu law, and accordingly it lies upon the party claiming by virtue of the status to override the provisions of that law to substantiate his claim. This cannot in general be done, as for instance can be done in a

case of adoption, by appeal to settled rules of law, because the practice of illatom, being of rare occurrence and confined to certain castes, has

never become crystallised into fixed rules of law by a long course of judicial decisions. Thus we frequently find that, when some legal consequence

of the relationship has had to be decided, the Court has found it necessary to base its finding upon evidence specially recorded for the purpose.

Upon the question now before us, no such evidence is available, and Mr. Varadachari has had to depend upon the available case-law as the only

means whereby to demonstrate his proposition.

22. Unfortunately little if any direct authority for it or against it has been found. There are cases where the question arose as to the right of an

illatom son-in-law, compared with that of a natural-born son, as, for instance, Hanumantamma v. Rami Reddi ILR (1881) M. 272 where the

procedure I have already alluded to that of taking evidence ad hoc, was resorted to, and the trial Court returned a finding that the illatom takes the

same share as would be taken by an adopted son, while the High Court held that upon the evidence he should take an equal share with a natural-

born son a difference of view which shows how doubtful may be the incidents of his custom. In the same case, the power of an illatom to demand

partition was a question raised but not decided; and this same question was in Chinna Obayya v. Sura Reddi ILR (1897) M. 226 held to depend

upon custom and to be determinable only upon evidence. The case was remanded for evidence to be taken, but what the result was has not been

discovered. In Chenchamma v. Subbayya ILR (1885) M. 114 the status of an illortorn arose for consideration, and it was held that he was not a

co-parcener with an after-born son, nor a joint tenant, but a tenant-in-common. It has not been seriously contended that a co-parcenery exists

between the illatom and his father-in-law, and there is authority, as, for instance, in Emi Sooramma v. Yarabati Varahalu (1926) 101 I.C. 828 that

on the father-in-law's death he gets no right of survivorship. It is not possible, I think, to deduce from these decisions, even were they capable,

which they are not, of universal application, that the illatom has, during the father-in-law's life-time, such an interest in the latter's property as

would give him a right to interdict alienation and devise. Mr. Varadachari admits that the interest enjoyed is of a peculiar kind, which he would

define as vested but variable. It would certainly be a very strong thing to hold that a father-in-law debars himself from disposing of any property

thenceforward, and, indeed, the learned advocate only goes to the length of suggesting that alienation for the purpose of defeating the illatom rights

would be invalid as against it. It would be more reasonable to impose a limit upon the father-in-law's power of devise, although whether this

should be total or partial would need to be decided by reference to evidence of usage. On the whole, later cases appear to me not to be in conflict

with the earliest cited to us, Challa Papi Reddi v. Challa Koti Reddi (1872) 7 M.H.C.R. 25 The finding in that case was that the defendant's father

obtained his rights in pursuance of a special custom which entitled his father-in-law to select a son-in-law who should take his pro-party as if a son.

Holloway, J. (with whom Innes, J., agreed) held that the son-in-law did not become a joint tenant, and the father-in-law had no such restrictions

imposed upon his powers of alienation as the existence of a son would entail. He goes on: "The power of complete disposition, as against both a

widow and daughters, has, rightly or wrongly, been upheld, and there would be great difficulty in saying that the son-in-law, so affiliated, could be

in a better position. ...There is nothing illogical in saying that the person so affiliated shall inherit all of which the affiliator died possessed, but that he

does not and cannot stand in the same position as one who became a joint tenant at the instant of birth.

23. So far as I can see, it is only by reference to a special agreement that this conclusion can be successfully resisted. In the present case, even if

the evidence is relied upon to the full, I do not think that more could be derived from it than that Ramayya agreed to take the 2nd defendant as

illatom, subject to what were known or understood to be the incidents of that status. As was held by the Judicial Committee in Narain Das v.

Ramanuj Dayal a promise to make a person one's heir may while giving rise to an expectation fall short of a contract.

24. Near the conclusion of the arguments, Mr. Raghava Rao for the appellants drew our attention to an unreported case of this Court, A.S. No.

206 of 1912, where the very question which now engages us arose. The learned Judges found the evidence available for the decision of the point

so unsatisfactory that they called for a finding upon fresh evidence; and the District Judge, after examining numerous witnesses on each side,

returned a finding that the father-in-law was not precluded from disposing of his property either inter vivos or by will, which was accepted by the

Bench. The case came from the Kurnool District, and while it may not be permissible to import the conclusion, as partly a conclusion of fact, into

this case, yet the procedure adopted is only one further illustration of the correct method of settling a disputed question of usage. It lay heavily upon

the 2nd defendant, in my view, to show that by specific customary law overriding the general Hindu Law he had a preferential right to the rights of

Ramayya's alienees, and in this respect too I think that his case fails.

25. A question that remains is whether the mill and godown, items 52 and 53, were owned jointly by the brothers or were the separate property of

Sambayya.

[His Lordship then discussed the evidence.]

26. It is impossible to suppose that Ramayya would have signified his assent to this arrangement if the mill had in fact been joint property and

accordingly, in spite of one or two earlier indications to the contrary, I agree with the learned Subordinate Judge in regarding this last piece of

evidence as conclusive of Sambayya's separate ownership.

27. These are all the questions that have been argued in this appeal, and, agreeing with My Lord as to the answers which should be given to them,

I agree also as to the practical consequences which should follow, and the orders which should be passed.