

D. AgastIn and Another Vs. Devasagayan and Another

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Court : Chennai

Decided On : Mar-03-1999

Reported in : AIR1999Mad341; 1999(2)CTC555

Judge : R. Balasubramanian, J.

Acts : [Registration Act, 1908](#) -- Sections 17-B and 49,

Appeal No. : C.R.P. No. 2371 of 1998

Appellant : D. AgastIn and Another

Respondent : Devasagayan and Another

Advocate for Def. : Mr. T.R. Rajaraman, Adv.

Advocate for Pet/Ap. : Mr. Srinath Sridevan, Adv.

Judgement :

ORDER

1. Defendants 1 and 2 in O.S. No. 229 of 1997 on the file of the District Munsif, Nagapattinam, are the revision petitioners. The first respondent is the plaintiff in that suit and the second respondent is the third defendant in that suit. A document dated 5.8.1991 came to be marked through the plaintiff during trial. According to the plaintiff, it was a partition list evidencing tile event of partition that had already taken place. According to the defendants, it is the partition deed itself creating an

interest in praesenti over the immovable properties worth more than Rs.100 and therefore it is inadmissible in evidence in the context of Sections 17 and 49 of the Registration Act. The learned trial Judge by order dated 8.7.1998 overruled the objections of the defendants and directed the document to be marked as Ex.A-2. In so doing, the learned trial Judge was of the opinion that the probative value of the said document could be looked into at a later stage and the defendants have enough opportunity to attack the same. It is against this order, this Revision is before this Court.

2. I heard Mr. Srinath Sridevan, learned counsel for the petitioners and Mr.T.R. Rajaraman, learned counsel appearing for the first respondent in this revision. According to Mr. Srinath Sridevan, the document referred to above is in fact a partition deed by itself which determines the rights of parties over immovable properties. As it creates a right, title and interest of the value of Rs. 100 and more in immovable properties, the said document is compulsorily registrable. Such document which requires compulsory registration shall not be received as evidence under Section 49(c) of the Registration Act. Therefore according to the learned counsel for the petitioners, the order of the Lower court has to be set aside and the document should be eschewed from consideration. Mr.T.R. Rajaraman, on the other hand would argue that the document is not a partition deed but it is only a memorandum of record evidencing the partition that had already taken place. Therefore the law does not require such a document to be registered compulsorily.

3. In the context of the arguments advanced on either side, I perused the pleadings as well as went through the document itself. When the admissibility of a document is raised, it is the duty of the Court to find out what exactly the document conveys. Two learned Honourable Judges of this Court in the Panchapagesa v. Kalyanasundaram, : AIR1957 Mad472 held, as to what should be the approach of the Court in such circumstances.

'(19) In construing such documents for the purpose of determining whether or not there is a creation or declaration of a right or title in the sense contemplated by S. 17 of the Act, undue emphasis should not be laid on isolated words and phrases in

the document. The Court must read the document as a whole and take a broad view of the circumstances in which and the purpose for which it was written.

Looking at the substance of the transaction the Court must arrive at the conclusion one way or the other whether the parties in fact intended the document to be an instrument of partition and the sole evidence of partition and as actually effecting a division of the property. *Subba Rao v. Mahalakshmma*, ILR 54 Mad 27 : AIR 1930 Mad 883 (Curgenv J.); *Bhangaji v. Pandurang*, 76 Ind Cas 158 : AIR 1924 Nag. 395 ; *Rudragowda v. Basangouda*, 40 Bom. LR 202 : : AIR1938 Bom257 at '

Having the principles laid down above, I applied my mind to the case on hand. The suit is for recovery of possession of the moveables mentioned in Schedule A to the plaint or, in the alternative, the money value of the same as well as for the recovery of the immovable properties set out in Schedules B and C to the plaint. The next prayer in the suit is for mesne profits till such time the plaintiff gets possession of the immovable properties. The plaintiff and the second defendant are the sons of the first defendant. The first defendant had two more sons. There was a partition between the first defendant and his four sons under a deed of registered partition dated 29.3.1979 in respect of the properties owned by the family. As Sebastian, one of the sons of the first defendant and who is not a party to the suit, was creating problems in respect of the division, the said registered partition deed dated 29.3.1979 was later avoided and ignored and in the presence of mediators, a partition list dated 5.6.1981 was prepared in respect of the family properties between the father and his sons. As per the partition list, the properties allotted were left to be in the possession of the respective parties. The further allegation in the plaint is that the properties so allotted to the plaintiff under the partition list dated 5.6.1981 continued to be in the occupation of the first defendant as the plaintiff was then a minor. The partition list was filed as document along with the plaint and the xerox copy of the earlier registered partition dated 29.3.1979 was also filed before the Court. There is an allegation in the plaint itself that though the document dated 5.6.1981 referred to earlier is styled as partition deed, yet in effect it is only a partition list. In any event, as the execution of the document dated 5.6.1981 has been admitted by the contesting parties, they cannot have any objection for delivering the properties mentioned therein to the plaintiff. The cause

of action alleged in the plaint is so called partition list dated 5.6.1981. Therefore it is clear that the suit for recovery of possession is based on the document dated 5.6.1981.

4. To decide whether this is only a partition list creating no interest over immovable property under that document itself or it is otherwise, I have read the entire document. The first defendant and his four sons are parties to the document. At the end of paragraph 1, it is stated that it is a partition agreement. At the end of paragraph 2, it is stated that in the interest of all the parties concerned and voluntarily they have divided the properties. Various items of properties were shown against the name of each of the parties to the document and at the end of this list, it is stated that they have divided all the family properties by consent and from that date onwards, it is agreed that every one is entitled to enjoy the properties allotted to him. There is no reference in this partition list to the earlier partition deed entered into between the parties on 29.3.1979. A reading of the entire document dated 5.6.1981 and its contents leaves no room for any doubt that it is in fact a partition deed and not a mere memorandum of partition. It is in effect a deed of partition declaring an interest in the immovable property mentioned therein.

5. The judgment in *Panchapagesa v. Kalayanasundaram*, : AIR1957 Mad472 brought to the notice of this Court by Mr. Srinath Sridevan, lends support to the view which I have taken on the construction of the document in question. The learned Judges have laid down the law on the admissibility of a document like the one on hand by taking note of the principles illustrated in numerous decisions relating to partitions, family arrangements and equitable mortgages. It is better I extract the exact words of the Honourable Judges in laying down the law in this regard.

'(17) If the parties elect to reduce the transaction of partition into writing with the intention that the document itself should constitute the sole repository and the only appropriate evidence of the partition and to serve, so to speak, as a document of title, the writing must be regarded as the formal and operative deed of partition and as such requiring registration under Section 17, Cl. (b), provided the property

affected is of the value of over Rs. 100. It is not the less a partition deed because its terms and contents were previously discussed and decided upon and then alone put into writing. But if the document is drawn up only with the intention of reciting an already completed oral partition and is merely in the minutes or incidental recital of a *fait-accomplis*, it is not compulsorily registrable.

(18) Thus documents so drawn up may fall under two heads viz., (a) a document may be drawn up with the intention of reciting an already completed oral partition or (b) with that of superseding the oral bargain and formally reducing the terms of the partition to the form of a document. In the former case when the document itself does not effect any partition but which maintains a partition already effected, or which simply acknowledges, or makes an admission, as to a prior partition, or which merely gives a right to have a document of partition executed it is not an instrument of partition which is compulsorily registrable.

But when the document is not intended by the parties to be merely the minutes or incidental recital of a *fait accompli*, i.e. of a partition that had already taken place, perhaps by oral arrangement, and was complete when the document was executed but forms an integral and essential part of the partition transaction i.e., of the process of dividing the property and was intended to be the only evidence of and to be the formal instrument of partition superseding and embodying the oral bargain and was intended to serve as the sole repository of the arrangement of partition arrived at by them, and to be the only evidence, the document would undoubtedly require registration. The question to be determined in effect is, does the document constitute a bargain between the parties i.e., is it a deed of partition effected in *praesenti* or is it merely the record of an already completed transaction i.e., partition or to put it shortly, is it a speaking partition instrument as aptly observed in the course of the arguments by Govinda Menon J?

(20) It is in the light of these principles that partition lists should be judged and the standard text books on the Indian Registration Act have laid down the following considerations relating thereto. 'Where lists are drawn up showing the properties that have fallen to the shares of the dividing co-owners, and have been signed by the parties, the question whether such list require registration will depend upon the

further question whether, such lists have, on the facts of the particular case, been intended by the parties to be the sole and formal record of the partition. If they are so intended then they would be compulsorily registrable as instruments of partition.

If they are, on the other hand, intended to be merely a memo of a partition that had already taken place or of the way in which a partition is intended to be effected later on by a formal document, they are not compulsorily registrable. The degree of formality of the document is a factor that may be taken into consideration in deciding the question' (Chitale and Annaji Rao's Indian Registration Act (2nd Edition) (AIR Commentaries) pages 228-229.

(21) Whatever may be the form of the document, if it is to all intents and purposes and in substance a deed of partition it would require registration. Thus, documents though drawn up as family arrangements, awards, partition-lists, share-lists, inventories, release, receipts, entries in account books and so forth, have on numerous occasions been held to be instruments of partition. But the question is undoubtedly one of construction in each individual case; see Rustomji's Law of Registration (3rd Edition) page 75.

6. In the light of the law laid down by the Honourable Judges of this Court in the judgment referred to above, I have no hesitation to hold that the plaintiff had based his claim for the relief asked for in the plaint only on the document dated 5.6.1981 and the said document is not a mere memorandum evidencing the partition already taken place. All the parties to the document have signed in it. There are witnesses to the document and they have also signed. The intention of the parties to the document is very clear that the document itself should constitute the sole repository and only appropriate evidence of the partition and to serve as a document of title. No other contra intention leading to the inference that it is not a partition deed is available. In view of my decision on the construction of the document that it is only a partition deed, under Section 17-B of the Registration Act, it is compulsorily registrable. Consequently the bar created under Section 49(c) of the said Act will operate resulting in the document being inadmissible in evidence. The materials on record do not disclose that the plaintiff wants to rely

upon this document for a collateral purpose. The proviso to Section 49 of the Registration Act provides for admission of certain documents which requires compulsory registration for circumstances stated therein. Since no collateral purpose for which the plaintiff wants to rely upon this document, is shown to exist, the question of considering the admissibility of the document in question under the proviso to Section 49 of the Registration Act does not arise. Accordingly this revision is allowed. No costs. The order dated 8.7.1998 in O.S.No. 229 of 1997 on the file of the District Munsif, Nagapattinam, is set aside and consequently the document dated 5.8.1981 is declared to be inadmissible in evidence. Consequently C.M.P.No. 12058 of 1998 is dismissed.

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