

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

C.A. NO(S). 3606/2018
(ARISING FROM S.L.P. (c) NO.19567/2017)

S. GOVINDARAJAN (DIED) & ORS.

APPELLANT (S)

VERSUS

S. THIRUMALAI

RESPONDENT (S)

O R D E R

Leave granted.

2. Heard Mr. S. Nagamuthu, learned counsel appearing for the appellants and Mr. V.N. Subramaniam, learned counsel appearing for the respondent.

3. This appeal is by the defendant against the judgment dated 7.11.2016 passed by the Madras High Court, Madurai Bench in Appeal Suit (MD) No.55 of 2002 wherein the High Court had reversed the judgment of the Trial Court dismissing the suit for partition.

4. Records reveal that the appellant (original defendant) and the respondent (original plaintiff) are brothers, both of them purchased both items of the suit schedule properties jointly in the year 1972. The first item of the property is in possession of the plaintiff and the second item of

the property is in the possession of the defendant. The suit for partition came to be filed by the respondent herein claiming half share in both the suit properties on the ground that no partition has taken place in between the brothers at an earlier point of time and therefore, he is entitled to half of the share, inasmuch as both the suit properties are purchased by the funds earned by both the parties.

5. The Trial Court dismissed the suit, relying upon the Partition Deed Ext.B7 dated 07.04.1983 wherein the parties have mutually divided the properties between them. The High Court in the First Appeal reversed the judgment of the Trial Court and decreed the suit mainly on the ground that the Deed of Partition dated 07.04.1983 was not a registered deed.

6. Learned counsel appearing on behalf of the appellant/defendant taking us to the material on record including the Deed of Partition contends that the Deed of Partition dated 07.04.1983 is undisputed, inasmuch as the said document is produced by the plaintiff herein in OS. No.431/1976; and in the said suit the plaintiff has deposed that the properties are divided among the two brothers.

7. Per contra, learned counsel for the plaintiff

argued in support of the judgment of the High Court contending that the Partition Deed dated 07.04.1983 cannot be relied upon by the defendant, inasmuch as the same is unregistered and that the plaintiff is put to injustice in case the said Partition Deed is believed.

8. We do not find any reason to disbelieve the Deed of Partition dated 07.04.1983 which is at Ext. B7 before the Trial Court. It is not in dispute that the very Deed of Partition, though was unregistered, was initially produced and relied upon by the present plaintiff himself in O.S. No.431/1976 on the file of District Munsif Court, Thanjavur and the same was marked at Exhibit B1. The said suit was filed by one Katappa against the respondent herein (i.e. present plaintiff). Exhibit B7 is a certified copy of Exhibit B1 in O.S. No.431/1976.

9. In the normal course, we would have remitted the matter to the Trial Court for getting the original deed from bank wherein the said document is stated to be deposited and for being marked. However, since the Deed of Partition has remained undisputed by the plaintiff, we do not propose to do so. It is not in dispute that the Deed of Partition dated 07.04.1983 which is now being disputed by the plaintiff, was produced by the plaintiff himself in O.S. No.431/1976

in support of his case against Mr. Katappa. In the said suit, the respondent herein i.e. the original plaintiff has deposed as under:-

"The suit property, which stood in the name of my younger brother Govindraj was partitioned among ourselves in the year 1983 in the said partition the suit property was allotted to my brother. Ex.B1 is the partition chit, the property was purchased jointly in my name and in the name of my brother. From the year 1983 onwards my brother has been cultivating on the suit property. I do not have any rights whatsoever over the suit property."

10. From the aforementioned, it is amply clear that the plaintiff candidly admitted in O.S. No.431/1976 about the partition of the year 1983. Since, it is specifically admitted by the plaintiff in his deposition it is not open for the plaintiff to deny for the present as the deposition in earlier suit was obviously on oath.

11. To satisfy our conscience, we have perused Exhibit B7. Though, the document is titled as Deed of Partition, we find it impossible to accept the contention of the respondent that the partition of the properties was itself effected by the document. The document expressly mentions that the Panchayatdars have settled the properties between the parties, which means that the parties have decided to accept the decision given by the Panchayatdars. In

memory of such settlement, the document was drawn on 7th day of April, 1983, which can be called as Memorandum of Partition. The parties appear to have asked the Panchayatdars to effect partition and consequently the Panchayatdars have effected the partition between the parties. Since the document is memorandum of partition, it could, therefore, be received in evidence, though it is unregistered.

Such a transaction affects the status of the members who have separated themselves from the rest of the coparcenary. As mentioned supra, Exhibit B7 merely records the nature of arrangement arrived at between the parties as regards the division of the properties. The document is admissible to prove an intention on the part of the coparceners to become divided in status; in other words, to prove that the parties ceased to be joint from the date of instrument dated 7.4.1983. In view of the same, the contention of the respondent that the document as Exhibit B7 cannot be looked into since it is unregistered, cannot be accepted under the facts and circumstances of this case.

Exhibit B7, i.e., Memorandum of Partition dated 7.4.1983 reveals that the first item of the property was settled by the Panchayatdars to the plaintiff/respondent and the second item of the

property to the appellant/defendant by the Panchayatdars. Apart from the same, certain agricultural land was also settled in favour of the plaintiff by the Panchayatdars. Such decision of the Panchayatdars is accepted by the parties and they have signed the memorandum evidencing the settlement arrived at by them before the Panchayatdars. The document in question is executed in memory of the earlier event. These facts reveal that there was disruption of joint family status between the parties as far back as on 7.4.1983. Moreover, the fact remains that the parties have acted upon such settlement and are residing separately pursuant to the said settlement evidenced by Memorandum of Partition. As mentioned supra, the settlement arrived at between the parties pursuant to the verdict of the Panchayatdars is not disputed by the plaintiff in the earlier proceedings. On the other hand, he has specifically admitted by deposing in the earlier suit that such arrangement did take place and that partition had taken place between the parties.

12. In view of the same, the judgment of the High Court is liable to be set aside and, accordingly, the same is set aside and the decree of the Trial Court is restored.

13. The appeal is, accordingly, allowed. There shall

be no orders as to costs.

14. Pending application(s), if any, shall stand disposed of.

.....J.
[MOHAN M. SHANTANAGOUDAR]

.....J.
[NAVIN SINHA]

NEW DELHI;
APRIL 05, 2018.

ITEM NO.3

COURT NO.5

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19567/2017

(Arising out of impugned final judgment and order dated 07-11-2016
in ASMD No. 55/2002 passed by the High Court of Judicature at
Madras At Madurai)

S. GOVINDARAJAN (DIED) & ORS.

Petitioner(s)

VERSUS

S. THIRUMALAI

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 05-04-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. S. Nagamuthu, Adv.
Mr. M.P. Parthiban, Adv.
Mr. S. Parthasarathi, Adv.
Mr. A.S. Vairavan, Adv.
Mr. T.R.B. Sivakumar, AOR

For Respondent(s) Mr. V.N. Subramaniam, Adv.
Mr. Anzu. K. Varkey, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)