IN THE COURT OF XV ADDITIONAL CITY CIVIL& SESSIONS: JUDGE AT BENGALURU. (CCH.No.3)

Dated this the 17th day of January 2020

O.S. No. 25874/2010

Present	:-	Sri. JAISHANKAR, B.Sc., LL.M. XV Additional City Civil & Sessions Judge, Bengaluru
Plaintiff's	:-	Smt. Radhika Vasudevan and another
	V/s	
Defendant's	:-	Sri. G Parthasarathy and others (Since dead by LR Smt. Indira Parthasarathy)

ORDERS ON I.A. No.1/17 FILED BY THE PLAINTIFFS U/O 13 RULE 8 OF CPC R/W Sec.34 OF INDIAN STAMP ACT

The plaintiffs have filed this application praying to impound the document, confronted and marked in confrontation by the defendant No.3 as Ex.D.19.

2. The plaintiff No.1 has filed her affidavit along with the I.A and has stated as follows :-

That she has filed the suit for partition and separate possession. The suit is filed against her father during his lifetime. After his death, she has a successive right as there is no partition in the family of her father. She being the Class I heir, she had a share, right, title equally to them and all the siblings born along with her. She has contended in the plaint that the Memorandum of Agreement is not registered in respect of ancestral Hindu Undivided Family property. Smt. Padmini Narayan about two years back went around Bengaluru and Chennai with the defendants No. 1, 3 and 4 to get a copy of the same, but in vain and the said document was kept a guarded secret for a long time. She has also pleaded in her examination in chief that there is no partition and separate possession in respect of the immovable properties and that the created and fabricated documents are held at the custody of the defendant. During her cross examination on 13.09.2017, she has denied the execution of the document. Prior to 13.09.2017, the entire evidence is recorded in English and on the said date the evidence was recorded in Kannada. All questions were put in English and thereafter recording of the evidence being undertaken in English. At that juncture taking undue advantage of the change of language, another document is confronted and it was brought for the purpose of marking and it came to be marked. It is well settled that instrument of partition which operates or intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under Section 17(1) (b) of the Act. Therefore, the said document is compulsorily registrable document and it attracts duty and penalty. The said document ought not to have been received in evidence by the Court for any purposes. That apart, the document is not marked in evidence of the defendant. But, it is used in confrontation. Therefore, the document which is already on record, requires for consideration of marking thereof. Hence, prayed to impound the document for the purpose of effective adjudication as contemplated under the statute and also the statutory provisions of the

Registration Act.

3. The defendant No.3 has filed objection to this application and has contended as follows :-

That Order 13 Rule 8 of CPC applies only with respect to the documents which are produced in the Court and which are not marked. The moment a document is marked, the application under Order 13 Rule 8 is not permissible. This proposition of law gains support from Section 35 of the Karnataka Stamp Act which mandates that once an instrument is admitted in evidence, it cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The present application is abuse of the process of Court and as such it is liable to be dismissed. Section 33 of the Karnataka Stamp Act provides for impounding of documents. In this case, the documents clearly states that there was an oral partition by virtue of the same, shares were decided and for the records the fact of the partition already made orally it is executed. Such a document, does not require to be made on stamp paper and does not require registration as held in the decision reported in **AIR 1976 SC 807.** It is clear that a Memorandum Reciting oral partition does not create or extinguish any rights in immovable properties. The MOA dated 11.06.1986 marked as Ex.D.19 is a record of an oral partition. The same does not require registration or Stamp. It is false that the plaintiffs have equal right, share or title. Late. G. Parthasarathy did not have any right, title or interest in the suit schedule properties at the time of his death. Hence, there is no property to be divided to claim as class I heirs. It false that the MOA is a guarded secret and the plaintiffs attempted to obtain a copy. The very fact that the plaintiffs knew about the MOA prior to filing of this suit show that the MOA is not fabricated or created. The existence of MOA and it is genuineness is reflected in various documents which are confronted to P.W.1 and marked as Exs.D.1 to D.3, Exs.D.5 to D.8 and Exs.D.18 to D.21. The Exs.D.1 to 3, D.5 and D.7 are documents authored and executed by the plaintiffs wherein the MOA dated 11.06.1986 is admitted to be genuine. Infact, the plaintiffs have produced the copy of the same as reflected in Ex.D.2. P.W.1 has admitted her signatures and the signatures of her sisters on the MOA dated 11.06.1986. She has also admitted the signature of her father upon the said document. She has also admitted that the property inherited by G. Parthasarathy came to be divided into suit schedule 'A' and suit schedule 'B' properties as per the MOA dated 11.06.1986. P.W.1 has also admitted that the suit schedule 'A' property is allotted to her and suit schedule 'B' property is allotted to defendant No.4 as per MOA dated 11.06.1986. She has also admitted that the defendant No.3 is in exclusive possession of the same. P.W.1 has also admitted that G. Parthasarathy issued a letter to Corporation of Bangalore seeking bifurcation of khata and separate assessment of schedule 'A' and 'B' properties in terms of the MOA dated 11.06.1986 which is marked as Ex.D.18. P.W.1 has also admitted that the Corporation issued a reply as per Ex.D.21. Throughout her cross examination, P.W.1 has admitted the execution of MOA dated 11.06.1986. It is false that her cross examination is conducted in installment basis or piece meal basis and by taking advantage of change of language, the said document is confronted. All questions were put to P.W.1 was in English. P.W.1 read the document completely before answering. She has understood her deposition dated 13.09.2017 before signing the same. She is making false allegations. Ex.D.19 does not require Registration or Stamp. At the time of confronting neither the witness nor her Counsel raised any objection regarding the Registration or Stamp Duty. Ex.D.19 is admitted in evidence and it is marked. The plaintiffs are now barred from raising any objection regarding the admissibility of Ex.D.19 MOA. No document can be impounded for non registration. Indian Registration Act does not provide for impounding of any document. Indian Stamp Act have no application to Ex.D.19. Stamp laws in Karnataka are governed by the Karnataka Stamp Act. On all these grounds, the defendant No.3 has prayed for dismissal of the I.A.

4. I have heard the arguments of both sides and perused the entire materials on record. Now the points that arise for my consideration are as follows :-

1. Whether the plaintiffs have made out sufficient grounds to impound the document marked as Ex.D.19 as sought?

2. What order ?

5. Having regard to the arguments heard and the materials on record, I answer the above points as hereunder :-

Point No. 1	:-	In the negative
Point No. 2	:-	See final order for the following

R E A S O N S

6. Point No.1 :- The plaintiffs have filed this suit for partition and separation possession of 1/6th share in the suit schedule property. The matter is now posted for further cross examination of P.W.1. During the cross examination of P.W.1 on 13.09.2017 the Counsel for the defendant No.3 confronted the Memorandum of Agreement dated 11.06.1986 and got it marked as Ex.D.19 since the witness admitted the signature of her father on the said document. After that on 07.11.2017, this application has been filed by the plaintiffs. The plaintiff No.1 has filed her affidavit along with the I.A and has stated in her affidavit that prior to 13.09.2017, the entire evidence was recorded in English and on the said date, the evidence is recorded in Kannada. All questions were put in English. Thereafter, the recording of the evidence was being undertaken. At that juncture, taking undue advantage of change of language, the document was confronted and it was brought for the purpose of marking and it came to be marked. The said document is an unregistered document and it is a compulsorily registrable document. The said document ought not to have been marked for any purpose. Hence, it is necessary to impound the said document. During the cross of the arguments also the Counsel for the plaintiff argued that since it is the partition deed, it is compulsorily registrable. It is also insufficiently stamped. As such, the said document has to be impounded, though it is marked.

7. In support of his arguments, the Counsel for the plaintiffs has relied on several decisions. In the decision relied on by him reported in **ILR 2003 KAR 3716** in the case of Krishna V/s Sanjeev the Hon'ble High Court it is held that "marking of a document is a ministerial act whereas, admitting a document in evidence is a judicial Act. Before a document is let in evidence, there should be a judicial determination of question whether it can be admitted in evidence or not. In other words, the Court admitting a document must have applied its mind consciously to the question whether the document was admissible or not". In another decision relied on by him reported in **ILR 2002 Karnataka 3369** in the case of Riyaz Khan and others V/s Modi Mohammed Ismail and others it is held that "whenever there is an objection to admissibility of a document on the ground that the documents is not stamped, it is the bounden duty of Trial Courts to decide admissibility aspect of the document as soon as it is tendered and objected on the said ground by the other side. But, if the document is inadvertently marked without judicially determining the objection, then marking of a document as an exhibit has to be treated merely as tentative and taking a decision on the objection at a later stage by the Trial Court cannot be said to be impermissible or without jurisdiction". In another decision relied on by him reported in **ILR 2015 Karnataka 1984** in the case of Smt. Savithramma R.C V/s M/s Vijaya Bank and another it is held that " if the Judge does not act under Section 34 of the Act, but the documents is insufficiently stamped and admitted in evidence though objection regarding admissibility cannot be raised subsequently that does not take away his obligation to impound the document under Section 33 of the Act. If the document is insufficiently stamped and if the Court has admitted such instrument in evidence without collecting duty and penalty, then the Judge shall proceed under Section 33 of the Act and impound the document. After impounding the document, he shall proceed under Section 37(2) of the Act and shall send the impounded instrument in original to the Deputy Commissioner to be dealt with under Section 39 of the Act". In another decision relied on by him reported in **ILR 2015 Karnataka 2325** in the case of KSFC V/s M/s Siyaram Arcade and others it is held that “the trail Court has to ascertain in terms of Sections 33 to 35 of the Karnataka Stamp Act as to whether the stamp duty affixed on the document is sufficient and if not, to impound the document, determine the deficit stamp duty and penalty, collect the same and thereafter admit it in evidence and not until then". In another decision relied on by him reported in **ILR 2013 KAR 368** in the case of Miss.Sandra Lesley Anna Bartela Vs. Miss.P.Gunavathy in which it is held that "under Section 33 of the Stamp Act, the moment an insufficiently stamped instrument comes to the notice of the Court, the same has to be impounded in accordance with Section 33 of Karnataka Stamp Act. The power of impounding a document is to collect stamp duty and penalty whenever there is an escape of duty. Therefore, when it is brought to the notice of the Court that a document is insufficiently stamped, the Court exercising its power under Section 33 of the Act has to pass an order at the first instance for impounding the document". He has also relied on another decision reported in **AIR 1988 SC 881** in which in the case of Roshan Singh and others V/s. Zile Singh and others in which it is held that “a partition may be effected orally; but if it is subsequently reduced in writing which purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence”. In another decision relied on by him reported in **AIR 1976 Supreme Court 807** (in the case of Kale and others V/s Deputy Director of Consolidation and others) and the decision reported in **AIR 2006 SC 151** (in the case of Amteshwaranand Vs. Virender Mohan Singh and others) the same principle has been laid down. By relying on these decisions, the Counsel for the plaintiffs argued that Ex.D.19 has to be impounding since it is insufficiently stamped and unregistered.

8. On the other hand, the Counsel for the defendant

No.3 argued that the Ex.D.19 is a Memorandum of Agreement. It is a record of an earlier oral partition. There is no partition through the said document. It could be written on a white paper and there is no necessity of payment of Stamp Duty and the registration is also not compulsory. In support of his oral arguments, he has relied on a decision reported in **AIR 1961 SC 1655** in which in the case of Javer Chand and others Vs. Pukhraj Surana, it is held that "when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument has not been duly stamped.Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. When the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trail Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction". He has also relied on another decision reported in **ILR 2007 Karnataka 2786** in which in the case of Smt.Malliga Paneer Selvam Vs. Sri.Raja Sathyanarayana Shetty and others, it is held that "once the document is marked as a document in a suit and the proceedings of the suit is started on the basis of the documents marked, the objection cannot be raised at a later stage on the admission of a document and it cannot be questioned". He has also relied on the decision reported in **AIR 1976 SC 807** (Kale and others V/s Deputy Director of Consolidation and others) which the plaintiff has also relied upon. Further, he has also relied on another decision reported in **AIR 2016 SC 3236** in which in the case of Subraya M.N. Vs. Vittala M.N and others it is held that “there is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than Rs.100/- can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties”. By relying on these decisions, the Counsel for the defendant No.3 pray to dismiss the application.

9. I have perused the entire materials on record. As observed above, Ex.D.19 is marked during the cross examination of P.W.1 by confronting the same to her. It is a Memorandum of Agreement dated 11.06.1986. It is recited at para 3 of the said Agreement that " Whereas the three parties 1 to 3 referred to above have orally agreed and partitioned the said joint family property. It is further recited at page 2 that this Memorandum records the fact of the partition already made orally among the parties referred to above. As such, the partition is not effected through or under the said document. It is clearly mentioned that it is a recording of an oral partition or Palupatti. It can be recorded in a white paper also. There is no Stamp Duty fixed for the same. In the decision relied on by the both sides reported in **AIR 1976 SC 807** in the case of Kale and others V/s Deputy Director of Consolidation and others it is clearly held by the Hon'ble Supreme Court that "the distinction should be same between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made for necessary mutation. In such a case, the Memorandum itself does not create or extinguish any rights in immovable properties and therefore it does not fall withing the mischief of Section 17 of the Registration Act and it is therefore not compulsorily registrable". As such, it is clearly held in the said decision by the Hon'ble Supreme Court that the recording of an earlier oral partition for the purpose of record, does not create and extinguish any rights in the immovable properties and therefore it is not compulsorily registrable. It is also held in another decision reported in **AIR 1988 SC 881** in which in the case of Roshan Singh and others V/s Zile Singh and others it is held that "Section 17(1)(b) of Registration Act lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document". As such, in this case also it is clearly held that the recording of an earlier oral partition is not compulsorily registrable. In this case, the document which is marked as Ex.D.19 is only a Memorandum of Agreement which has been confronted to P.W.1 and marked as an exhibit. Since it is very clearly recited in Ex.D.19 that it is a only a record of earlier oral partition, it is not compulsorily registrable document. As such, the question of payment of Stamp Duty and Registration does not arise. As such, the plaintiffs have not made out sufficient grounds to impound the document which is marked as Ex.D.19. Hence, I answer this point in the negative.

10. <u>Point No.2</u> :- In view of the above findings on point No.1, the following is made **:-**

<u>O R D E R</u>

I.A. No. 1/17 filed by the plaintiffs under Order 13 rule 8 of CPC readwith Section 34 of Indian Stamp Act is dismissed. No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this the 17th day of January 2020.)

(Jaishankar)
XV Addl.City Civil & Sessions Judge, Bengaluru

He has also relied on another decision reported in **2008(5) ALLMR 671** in the case of Mahadeo and his LR's and others Vs. Vatsalabai, it is held that " once a document in admitted in evidence it cannot be

and thereafter that grund that it was duly stated one the Court the document have been regularly

He has also relied another decision AIR 1988 SC 881 which the Counsel for the plaintiff has also relied upon.