



2026:CGHC:13572

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 955 of 2025

1 - Dilip Nirmalkar S/o Late Milau Aged About 55 Years R/o Village Jota, Tehsil Pathariya, District Mungeli, C.G. Present Address Bada Bazar, District- Mungeli, C.G.

2 - Neeraj Kumar Nirmalkar S/o Dilip Nirmalkar Aged About 32 Years R/o Village Jota, Tehsil Pathariya, District Mungeli, C.G. Present Address Bada Bazar, District- Mungeli, C.G.

3 - Rama Nirmalkar D/o Late Milau Nirmalkar Aged About 42 Years (Mentally Incapacitated) Represented By Neeraj Kumar Nirmalkar, S/o Dilip Nirmalkar, R/o Village Jota, Tehsil Pathariya, District Mungeli, C.G. Present Address Bada Bazar, District- Mungeli, C.G.

... Petitioner(s)

Versus

1 - Ramesh Kumar S/o Late Milau Nirmalkar Aged About 44 Years R/o Village Jota, Tehsil Pathariya, District Mungeli, C.G. Present Address Bada Bazar, Kumharpara Shubhash Ward, District- Mungeli, C.G.

2 - Kamlabai D/o Late Milau, W/o Late Narayan Prasad Rajak Aged About 48 Years R/o Kamalidungu Darri, Post Jamnipali, District Korba, C.G.

3 - State Of Chhattisgarh Through District Magistrate, Mungeli, C.G.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioners	:	Shri Ranjan Gupta, Shri Kishan Kashyap and Shri Aatish Mishra, Advocates.
For Respondent No.1	:	Shri Ankur Diwan, Advocate.
For State	:	Ms. Richa Sahu, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

20.03.2026

- The present writ petition under Article 227 of the Constitution of India has been filed by the petitioners against the impugned order dated 22.08.2025 passed by IInd Civil Judge (Senior Division) Mungeli, in

Civil Suit No.49-A/2022 whereby the trial court sustained the objection raised by the defendant No.1 with respect to marking of the Exhibits on the documents of two Batwaranamas dated 15.09.2014 during the examination of the witness Dilip Nirmalkar on 11.08.2025.

2. The subject matter in brief is that, the petitioners are plaintiffs before the trial court. They are prosecuting a Civil Suit for declaration of title and permanent injunction over the suit land Khasra No. 157/1 area 0.148 Hect., Khasra No.50/2 area 0.243 Hect. situated at village Jota, Tehsil Pathariya, District Mungeli. It was the claim of the plaintiff that the suit lands were initially owned by the father of plaintiff No.1&3 and father of defendant No.1&2 namely late Milau. After his death, the suit land was mutated in the names of plaintiffs No.1&3 and defendant No.1&2 jointly. The defendant No.1 filed an application for partition of the suit land before the Tehsildar Pathariya and considering the provisions of Section 178 of The Chhattisgarh Land Revenue Code, 1959, the Tehsildar Pathariya directed the parties to get their title decided by the competent civil court thereafter they filed the suit civil suit. It is pleaded that during the lifetime of their father late Milaur Ram had already partitioned his property between the plaintiffs and defendants and as per their partition, the suit land was obtained in the share of plaintiff No.1&3. The other land of 40 dismil out of Khasra No.157 and 40 dismil was given to plaintiff No.1. The plaintiff No.3 is differently abled and unmarried for whom their father have retained 0.60 Acre of land of Khasra No.50/2 and it was given to her. As per their partition, the parties are cultivating their land separately. On the basis of oral partition a deed of memorandum of partition was executed

on 15.09.2014 by their father late Milau in presence of witnesses and thereafter they got their names mutated as per their respective shares. The defendant No.1 sold his property which was obtained by him in partition. After partition of the property, late Milau executed a Will on 23.10.2013 in favour of plaintiff No.2 Niraj Kumar with respect to 1.25 Acres of land and the liability of nurture of plaintiff No.3 was given to plaintiff No.2, yet the defendants are raising dispute over the suit land by which the civil suit was filed.

3. The defendants in their written statement denied the fact of partition and claimed that the suit property was never partitioned and they have equal share over the suit land as per their their respective share. They also denied oral partition by their father late Milau and stated that the suit lands are still lands of undivided family and claimed dismissal of the suit.
4. The issues have been framed by the trial court and recording of plaintiff's evidence was started. During recording of plaintiff's evidence, on 11.08.2025 while exhibiting deeds dated 15.09.2014 an objection was raised by the defendant No.1 with respect to exhibiting those documents in evidence on the ground that it was an unregistered document and therefore it cannot be exhibited in evidence and is inadmissible.
5. The trial court decided the objection on 22.08.2025 and sustained the objection holding that the subject deeds are the partition deeds which are required to be registered and in absence thereof it is inadmissible in evidence and cannot be exhibited which is under challenge in the present petition.

6. Learned counsel for the petitioners would submit that the court court has erred in deciding the objection raised by defendant No.1. The subject deeds are not the partition deed, but it is the memorandum of partition and contents of the deeds clearly stipulates that it was a memorandum of partition and not the partition deed. An oral partition of the property had already been taken place 10 years back which was executed in writing on 15.09.2014. The memorandum of partition is not required to be registered and is admissible in evidence. Further, the subject deeds can be exhibited for its collateral purposes to examine the nature of deeds as well as conduct of the parties because the documents also create the estoppel against the parties. Even if it is unregistered for the collateral purposes, it can be admissible in evidence and should be marked as exhibit. He would further submit that the petitioners are only seeking exhibition of the documents in evidence to read in evidence. Non permitting to exhibit would amount to deciding the nature of documents without considering the other evidence available on record. He would further submit that trial court has relied upon the judgment passed in Digambar Adhar Patil Vs. Devram Girdhar Patil (Died), AIR 1995 SC 1728, according to which also unregistered deed can be considered for its collateral purposes and it should be exhibited in evidence, yet the petitioners have not been permitted to exhibit the documents during evidence which may prejudice the ultimate adjudication of the dispute between the parties. Therefore, the writ petition may be allowed, the impugned order may be set aside and the petitioners be permitted to mark exhibit on the documents submitted by them.

7. On the other hand, learned counsel for respondent No.1 opposes the submissions made by the counsel for the petitioners and would submit that the deeds which are sought to be exhibited in evidence are partition deeds and not the memorandum of partition. The contents of deeds clearly states that it was a partition deed. The partition deed is required to be registered under Section 17 of the Registration Act and in absence of its registration, it is inadmissible in evidence for which the trial court has rightly rejected the prayer of the petitioners to get it exhibited during the evidence. The subject deeds are compulsorily required to be registered, however, in the present case it is neither registered nor sufficient stamp duty has been paid in it. The trial court has also considered the judgment passed by Allahabad High Court in *Raj Gopal Sharma Vs. Krishna Gopal Sharma and Others*, AIR 2013 Allahabad 187 in which it has been considered that the document recognizing oral partition, needs to be registered and in absence thereof it is inadmissible in evidence as provided under Section 49 of the Registration Act. Therefore, the impugned order passed by the trial court is absolutely justified and there is no scope for any interference in refusing to permit the petitioners to exhibit the deeds dated 15.09.2014 and the writ petition is liable to be dismissed.
8. I have heard the counsel for the parties and perused the material annexed with the writ petition.
9. The only question involved in the present case is whether the trial court has rightly refused the petitioners/plaintiffs to exhibit two deeds dated 15.09.2014 holding that the subject deeds are required to be registered and in absence thereof it cannot be permitted to exhibit during the

evidence. Copy of both the two deeds which were sought to be exhibited during evidence have been annexed in the present writ petition at page No.28, Annexure P/4. From perusal of both these deeds it is found that it contains with the earlier partition taken place since 10 years back. In the first deed which has been titled as “Batwaranama” annexed at page No.29 of the writ petition, it has been stated that “इस सबब मे उपर बताए कृषि भूमि को पारिवारिक व्यवस्था के अनुसार हमेशा के लिए बँटवारा में दे दिया, दखल वो कब्जा मौखिक बँटवारा के अनुसार आज से 10 वर्ष पूर्व से दे दिया हूँ उक्त बटवारा मे दी गई भूमि पर दिलीप कुमार काबिज होकर खेती कर रहा है। Further, in another deed titled as “इकरारनामा (बटवारा पाने बाबत) it has been mentioned that हमारे पिता जी के द्वारा हमारे पारिवारिक व्यवस्था के अनुसार अपने इस कृषि भूमि की सम्पत्ति पर से स०नं० १५७ का टू० रकबा ०-४० एकड़ भूमि दिलीप कुमार को तथा उसी स०नं० १५७ का टु० है रक्वा ०-४०एकड़ भूमि रमेश कुमार को इस तरह से हम दोनों पुत्रों को बंटवारा में दिया है। इस तरह से हमारे पिता जी मिलऊराम के द्वारा सम्पत्ति का विभाजन कर हमें बंटवारा दे दिया है। और हम बंटवारा प्राप्त कर अपने अपने हिस्से में काबिज है तथा खेती कर रहे हैं।

10. Whether or not the deeds conveyed the effect of partition or memorandum of partition are required to be decided after considering the entire evidence produced by the parties. Without considering the evidence of the parties, deciding the nature of deeds as it a partition deed and requires registration is not the proper consideration at the stage of recording evidence of the plaintiffs and during executing the documents in evidence. The interpretation of documents is a

substantial question of law as well as fact which are to be decided after sufficient evidence led by the parties.

11. Merely marking of exhibits in the documents during the evidence does not amount to its proof and does not make it admissible in evidence. It is only to facilitate the trial court in the proceeding to read the document in evidence.
12. In ***Bipin Shantilal Panchal Vs. State of Gujarat & Another, 2001(3)SCC-1***, the Hon'ble Supreme Court in para 13 & 14 has held as under:

“13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)”

13. In ***S.Kaladevi Vs. V.R. Somasundaram & Others, 2010(5)SCC 401***, it has been held in paragraph 12 by the Hon. Supreme Court as under:

“12.The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.”

14. In ***Subraya M.N. Vs. Vittala M.N. & Others, 2016(8) SCC 705***, the Supreme Court has further held that even if the document is not registered, it can be considered for collateral purposes. The unregistered documents can be used as an evidence.
15. In ***Roshan Singh & Others Vs. Zile Singh & Others, 2018 (14) SCC 814***, it has been held by the Supreme Court in paragraph 10 & 11 as under:

“10. The tests for determining whether a document is an instrument of partition or a mere list of properties, have been laid down in a long catena of decisions of the Privy Council, this Court and the High Courts. The question was dealt with by Vivian Bose, J. in *Narayan Sakharam Patil v. Cooperative Central Bank, Malkapur & Ors.*, ILR (1938) Nag. 604. Speaking for himself and Sir Gilbert Stone, C.J. the learned Judge relied upon the decisions of the Privy Council in *Bageshwari Charan Singh v. Jagarnath Kuari* LR (1932) 59 IA 130 and *Subramanian v. Lutchman* LR (1923) 15 IA 77 and expressed as follows:

10. It can be accepted at once that mere lists of property do not form an instrument of partition and so would not require registration, but what we have to determine here is whether these documents are mere lists or in themselves purport to 'create, declare, assign, limit or extinguish any right, title or interest' in the property which is admittedly over Rs.100 in value. The question is whether these lists merely contain the recital of past events or in themselves embody the expression of will necessary to effect the change in the legal relation contemplated.”

Sir Gilbert Stone, CJ speaking for himself and Vivian Bose, J. in *Ganpat Gangaji Patil v. Namdeo Bhagwanji Patil & Ors.*, ILR (1942) Nag. 73 reiterated the same principle. See also: order cases in Mulla's Registration Act at pp. 56-57.

11. Even otherwise, the document Exh. P-12 can be looked into under the proviso to Section 49 which allows documents which would otherwise be excluded, to be used as evidence of 'any collateral transaction not required to be effected by a registered instrument'. In *Varada Pillai v. Jeevarathnammal*, LR (1919) 46 IA 285 the Judicial Committee of the Privy Council allowed an unregistered deed of gift which required registration, to be used not to prove a gift 'because no legal title passed' but to prove that the donee thereafter held in her own right. We find no reason why the same rule should not be made applicable to a case like the present."

16. In *Thulasidhara & another Vs. Narayanappa & Others*, 2019(6)SCC

409, the Supreme Court has held in paragraph 9.3 to 9.5 as under:

"9.3 Now so far as the finding recorded by the High Court that as the Partition Deed dated 23.04.1971 (Exhibit D4) was unregistered though required registration under the Provisions of the Registration Act and therefore the same is not admissible in evidence is concerned, it is required to be noted that as such Exhibit D4 can be said to be a Palupatti as has been described as Palupatti. Palupatti means list of properties partitioned. At the most, it can be said to be a family arrangement. Therefore, in the facts and circumstances of the case, the same was not required to be registered.

9.4 It is required to be noted that the deed dated 23.04.1971, under which the suit property had gone /devolved in favour of the Krishnappa, was reduced in writing before the Panchayat and Panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Exhibit D4, on considering the entire evidence on record and even the deposition of plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tallies with the document dated 23.04.1971 (Exhibit D4). Execution of the document/ Partition Deed/ Palupatta dated 23.04.1971 has been established and proved by examining different witnesses. The High Court has refused to look into the said document and/or consider document dated 23.04.1971 (Exhibit D4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in the case of *Kale (Supra)* that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in the case of *S. Shanmugam Pillai and Others v. K. Shanmugam Pillai and Others* (1973) 2 SCC 312 in which it was observed as under:

"13. Equitable, principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They

have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

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22. As observed by this Court in T.V.R. Subbu Chetty's Family Charities case, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

9.5 As held by this Court in the case of Subraya M.N. (Supra) even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23.04.1971 and he also admitted that 3 to 4 punchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of plaintiff that there was an oral partition on 23.04.1971, the document Exhibit D4 dated 23.04.1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Exhibit D4 dated 23.04.1971."

17. Without commenting anything on the merits of the case, this court is of the opinion that the petitioners/plaintiffs are entitled to get the subject deeds exhibited in evidence. The consideration of the nature of deed and its evidenciary value are to be decided by the trial court along with other evidences produced by the parties and it is only for the sake of reading those documents in evidence, they may be permitted to exhibit it.
18. Accordingly, the impugned order dated 22.08.2025 is set aside and the petitioners/plaintiffs are permitted to exhibit those two deeds dated 15.09.2014 in evidence for which the trial court stopped them from

exhibiting during recording of evidence of plaintiff No.1 Dilip Nirmalkar on 11.08.2025. By permitting the plaintiffs/petitioners to exhibit those documents, the trial court may further proceed in the case in accordance with law.

- 19.** With the aforesaid observations, the present petition stands allowed.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder