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AS Nos. 157 of 2017 & 378 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

**AS Nos. 157 of 2017 & 378 of 2018,
CMP Nos.6884/2017,
7009/2022, 10550 and 10055 of 2026**

A.S.No.157 of 2017

1. G.Ponnusamy (died)
2. G.Gopal
3. J.Amudha
4. Arunkumar
5. G.Gnanasoundari
6. P.Krishnaveni
(A1 died, A6 is brought on record as LR
of deceased A1, vide order dated 12.06.2024 in
CMP Nos.11941 & 11943 of 2024 in
AS.No.157/2017)

..Appellants

Vs

1. A.Suseela
2. Jayaganthi (Died)
3. P.Vijayalakshmi
4. G.Kasthuri Gandhi
5. Rajeswari
6. Murali
7. P.T.Govindaraj
(RR5 to 7 brought on record as LR
of the deceased R2 vide court order
dated 18.04.2022 in CMP Nos.19837,
19836 and 19832 of 2021)

..Respondents

Appeal Suit filed under Order 41 Rule 1 read with Section 96 of CPC to
set aside the Preliminary Judgment and Decree dated 16.12.2016 made in



O.S.No.2 of 2011 on the file of III Additional District Court, Vellore at Tirupathur and allow the appeal.

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For appellants : Mr.K.Raja

For respondents : Mrs.Hema Sampath, Senior Advocate
for Mr.S.Prabhu for R1, R3 & R4
No appearance for R5 to R7.

AS No. 378 of 2018

1. A. Suseela
2. Jayagandhi (Died)
3. P.Vijayalakshmi
4. G.Kasthuri Gandhi

..Appellants

Vs

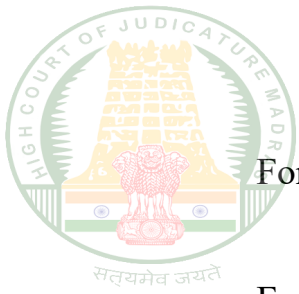
1. G.Ponnuswamy (died)
2. G.Gopal
3. J.Amudha
4. Arunkumar
5. G.Gnanasoundari
6. Rajeswari
7. M.Murali
8. M.Govindaraj
9. P.Krishnaveni

(RR6 to 8 brought on record as LR's of the deceased 2nd appellant vide court order dated 30.03.2022, made in CMP.Nos.14762, 14765 and 14764 of 2021 in AS.No.378 of 2018)

(R1 died, R9 is brought on record as LR's of deceased R1, vide order dated 12.06.2024 made in CMP.Nos.12017, 12020 & 12019 of 2024 in AS.No.378 of 2018)

..Respondents

Appeal Suit filed to set aside the Preliminary Judgment and Decree dated 16.12.2016 made in O.S.No.2 of 2011 on the file of III Additional District Court, Vellore at Tirupathur and allow the appeal by passing preliminary decree that the appellants/plaintiffs are each entitled to 1/8 share in the plaint schedule properties "A", "B", "C" and "D".



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For appellants : Mrs.Hema Sampath, Senior Advocate
for Mr.S.Prabhu

For respondents : Mr.K.Raja for R1 to R4 and R9
No appearance for R5 to R8.

COMMON JUDGMENT

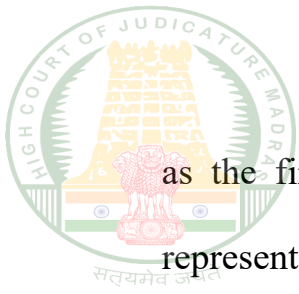
(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The plaintiffs in O.S.No.2 of 2011 on the file of the III Additional District Court, Vellore at Tirupattur have filed A.S.No.378 of 2018 aggrieved by the judgment and decree dated 16.12.2016. The defendants therein had filed A.S.No.157 of 2017. The defendants have also filed C.M.P.No.10055 of 2026 under Order XLI Rule 27 CPC seeking to introduce one further document viz., the order passed by the Income Tax Appellate Tribunal, Chennai on 05.12.1978.

2. O.S.No.2 of 2011 had been filed seeking a judgment and decree to divide the schedule mentioned properties into 8 equal shares and to allot 4 such shares to the plaintiffs by passing a preliminary decree and for further consequential reliefs for determination of mesne profits till the date of delivery of possession after the final decree had been passed.

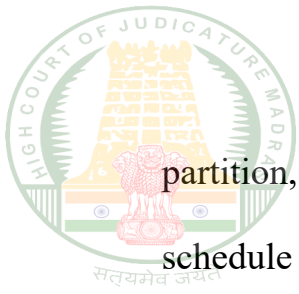
3. Even before proceeding further, it would only be appropriate that the relationship among the parties are stated.

4. The four plaintiffs are all daughters of one Gangadhara Chettiyar, who had five daughters and three sons. The other daughter had been impleaded as the fifth defendant. Among the three brothers, two brothers had been impleaded



as the first and second defendants. Another brother had died and his legal representatives had been impleaded as defendants 3 and 4. It had been contended that among the suit properties, A schedule properties as described in the plaint were ancestral properties of one Ramasamy Chettiyar, who had two sons, viz., Gangadhara Chettiyar (from whom, the plaintiffs and defendants claim title) and Perumal Chettiyar. It had been further contended that the plaintiffs had been in joint possession of the A schedule properties alongwith their father and the defendants and that they were entitled to a share as per the provisions of the Hindu Succession Act, as amended in the year 2005. It had been contended that the plaintiffs had been seeking partition and separate possession of their lawful shares, but, since that had been denied by the defendants, particularly, the first and second defendants/their brothers, they had no other option except to file the suit for partition and separate possession.

5. In the written statement filed by the first defendant, it had been contended that the contention that A schedule properties were ancestral properties was not correct. It had been further contended that except a house property, all other properties were jointly acquired by Gangadhara Chettiyar and his three sons Ponnusamy Chettiyar, Gopal Chettiyar and Jagadeesan. It had been further contended that the fifth defendant is the eldest daughter in the family. It had been stated that during the life time of Gangadhara Chettiyar, there was a partition in the year 1973 by way of a Koorchit among Gangadhara Chettiyar and defendants 1 and 2 and the deceased brother Jagadeesan. In that



partition, A schedule properties were allotted to Gangadhara Chettiyar, B schedule properties were allotted to the first defendant, C schedule properties were allotted to the second defendant and D schedule properties were allotted to Jagadeesan (deceased brother). It had been further contended that on and from such partition by way of Koorchit, Gangadhara Chettiyar and his three sons were enjoying their respective shares independently and separately. It had also been stated that they were paying kist and municipal taxes with respect to their individual shares. It had further been contended that Gangadhara Chettiyar had also executed a Will dated 13.12.1974 with respect to his share. In accordance with the Will, one house property was given to the fifth defendant, Gnanasoundari while another house property was given to the first plaintiff and another property was allotted to the first and second defendant and the deceased brother Jagadeesan equally. It had further been contended that Gangadhara Chettiyar died on 08.01.1975 and thereafter, the Will came into force and the legatees under the Will were enjoying the properties as bequeathed under the said Will. It was also contended that the amended Hindu Succession Act would not apply to the claim of the plaintiffs and the suit should be dismissed.

6. An additional written statement was also filed wherein, it had been contended that the Koorchit, under which the properties had been partitioned on 25.03.1973, was considered by the Income Tax Appellate Tribunal, which forum had upheld the veracity of the same. It had been further stated that in view of this confirmation by the Income Tax Appellate Tribunal, the court

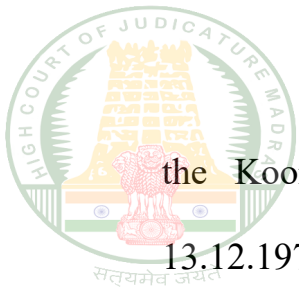


should take judicial notice of that fact and hold that the properties had been divided under the said document. It had been stated that for the said reasons also, the suit filed by the plaintiffs should be dismissed.

7. On the basis of the above pleadings, the III Additional District Court, Thirupathur at Vellore framed the following issues:-

- "1) Whether the suit properties were joint family properties as contended by the plaintiffs?*
- 2) Whether the contention of the defendants that there was a partition of the suit properties under a Koorchit dated 25.03.1973 is correct?*
- 3) Whether the Will dated 13.12.1974 is valid and binding document?*
- 4) Whether the plaintiffs are entitled to the relief of partition?*
- 5) To what other relief the plaintiffs are entitled?"*

8. During the Trial, the first plaintiff was examined as PW1 and the first defendant was examined as DW1 and two other witnesses were examined as DWs.2 and 3. The plaintiffs also marked Exs.A1 to A32. The notices exchanged between the parties were marked as Exs.A2 to A4 and A32. Other documents were title deeds of the property. The defendants marked Exs.B1 to B31. They also marked the title deeds in the name of Gangadhara Chettiyar and



the Koorchit dated 25.03.1973 as Ex.B20 and the original Will dated 13.12.1974 as Ex.B29.

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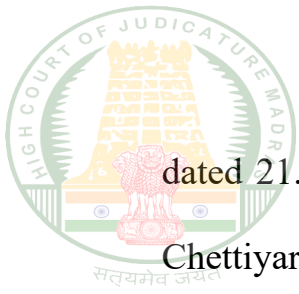
9. On the basis of the oral and documentary evidence and on the basis of the pleadings, the Trial Judge had taken up for consideration the first issue, namely, whether the suit properties were ancestral properties as contended by the plaintiffs. It had been held that the house property in Vaniyambadi Town, Amburpet, Ramasamy Street bearing Door No.1/638, which was described as item No.31 was admittedly an ancestral property acquired by Gangadhara Chettiyar from his father Ramasamy Chettiyar. Further, the defendants had contended that the other properties as described in the suit schedule were not ancestral properties. The learned Trial Judge had examined the cross examination of DW1 wherein it had been stated that the first and second defendant and the deceased brother Jagadeesan were involved in the family business only after 1956 and on perusal of Exs.B1 to B19, sale deeds, except one sale deed of the year 1962, all the properties were purchased by Gangadhara Chettiyar even prior to 1956. It was contended by the plaintiffs that the properties had been purchased out of the joint family nucleus and the money earned in the business, which had been given by the father Ramasamy Chettiyar. The learned Trial Judge finally held that the amendment to the Hindu Succession Act in the year 2005 cannot be taken advantage by the plaintiffs and therefore, held that the first and second defendants and their deceased brother and Gangadhara Chettiyar had each 1/4 share in A schedule property and that



the plaintiffs as daughters of Gangadhara Chettiyar were entitled to a share in the 1/4 share of Gangadhara Chettiyar alone. It was contended that Gangadhara Chettiyar died on 08.01.1975 itself and therefore, succession opened on that day itself.

10. With respect to the second issue regarding the Koorchit projected by the defendants, it had been held that the burden was upon the defendants to prove the partition. The original Koorchit marked as Ex.B20 was an unregistered and unstamped document. One of the attestors to the Koorchit, T.Annamalai had been examined as DW2. It had been held by the learned Trial Judge that the partition under Ex.B20 would reveal that partition had been effected in accordance with a decision of panchayat and after that the Koorchit was written down. It was further held that the Koorchit, through which an earlier partition was recorded need not be stamped and registered. The learned Trial Judge, therefore, rejected the contention of the plaintiffs and held that Koorchit is admissible in evidence and upheld the validity of the Koorchit.

11. With respect to the Will, which was the subject matter of issue No.3, the learned Trial Judge examined the certified copy of the judgment in O.S.No.4 of 1995, which was marked as Ex.A29. The said suit was filed by a third party seeking specific performance of an agreement of sale. The first defendant in this case was also the first defendant in that case. The first defendant had filed a written statement wherein he had stated that Gangadhara Chettiyar died on 08.01.1975 and that the agreement of sale produced in that particular suit was



dated 21.11.1974 and that even four months prior to the death of Gangadhara Chettiyar, he was unconscious and bedridden and therefore, there was no possibility of him entering into an agreement of sale on 21.11.1974. On the basis of such evidence, the learned Trial Judge came to the conclusion that the Will, which was alleged to have been executed subsequently on 13.12.1974, could not have been executed by Gangadhara Chettiyar and rejected the said Will holding that it was not a true document.

12. Finally, with respect to the relief to be granted, the suit was partially decreed and it was held that the plaintiffs were entitled to the share which was allotted to Gangadhara Chettiyar in A schedule property alone and owing to the Koorchit, the suit was dismissed regarding the remaining suit schedule properties.

13. Challenging that particular judgment and decree, the plaintiffs had filed A.S.No.378 of 2018. For good measure, the defendants also filed A.S.No.157 of 2017 and as stated, they have also filed C.M.P.No.10055 of 2026 under Order XLI Rule 27 of CPC to introduce the order passed by the Income Tax Appellate Tribunal with respect to the Koorchit relied on by them.

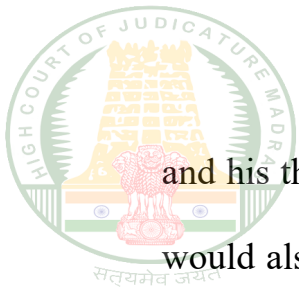
14. Heard arguments advanced by Mrs.Hema Sampath, learned Senior Counsel for the appellants/plaintiffs and Mr.K.Raja, learned counsel for the respondents/defendants.

15. It is the contention of the learned Senior Counsel appearing for the appellants in A.S.No.378 of 2018 that the Trial Court had misdirected itself



with respect to the admissibility of the Koorchit, which was marked as Ex.B20.

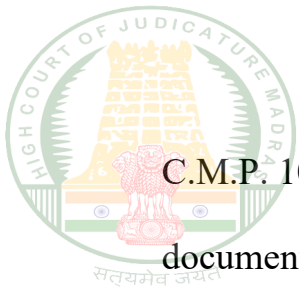
The learned Senior Counsel took the court through the Koorchit and stated that a plain reading of the same would reveal that the said document does not reflect that an earlier partition had already been effected and it was reduced by way of the said Koorchit. The learned Senior Counsel further pointed out that the first defendant in the earlier suit, namely, O.S.No.4 of 1995, which had been instituted seeking specific performance of an agreement of sale entered into by Gangadhara Chettiyar, had taken a specific stand that Gangadhara Chettiyar was unconscious and bedridden from about four months prior to his death and therefore, he could not have executed the agreement of sale. That agreement of sale was entered into in November 1974. The Will had been written in December 1974 and Gangadhara Chettiyar died in January 1975. The learned Senior Counsel submitted that in that particular suit, apart from taking a stand that Gangadhara Chettiyar could not have executed the agreement of sale, the first defendant had further contended that all the daughters and sons of Gangadhara Chettiyar had a share in the property. It was, therefore, contended that the first defendant was bound under the principle of estoppel by his own earlier statement. The learned Senior Counsel further submitted that the partition alleged to have taken place under the Koorchit will have to be rejected on the ground that the Koorchit was not a document recording an earlier partition. The learned Senior Counsel, therefore, contended that if the Koorchit is rejected, then, it would only indicate that the father, Gangadhara Chettiyar



and his three sons had not partitioned the properties and therefore, the plaintiffs would also be entitled to a share in all the properties and not just the properties which were allotted to Gangadhara Chettiayar under the Koorchit. It was also contended that the Koorchit was neither stamped nor registered and was therefore, inadmissible in law. It was, therefore, contended that this court should revisit the judgment and grant partition as prayed for in the suit.

16. The learned counsel for the respondents disputed the contentions raised by the learned Senior Counsel for the appellants. The learned counsel relied on the evidence of DW2, who was one of the attestors to the Koorchit. He had stated in his evidence that a panchayat was held and in accordance with the decision of the panchayat, the Koorchit was written down allotting the properties among Gangadhara Chettiayar and his three sons. It was further contended that only for recording of earlier partition, the Koorchit had been written and therefore, the document need not be registered and stamped and therefore, the learned counsel argued that the Koorchit has to be taken as an admissible document.

17. The learned counsel further contended that the Koorchit was considered by the Income Tax Appellate Tribunal and the Tribunal had accepted it as recording an earlier partition and had also passed orders accordingly. It had been stated that though the order was mentioned in the additional written statement, the order of the Income Tax Appellate Tribunal was not produced and now, it had been located and therefore, a petition in



C.M.P. 10055 of 2026 had been filed to introduce the said order as an additional document. The learned counsel, relying on the order passed by the Income Tax Appellate Tribunal, submitted that the Income Tax Appellate Tribunal had accepted the version that an earlier partition had been effected among Gangadhara Chettiyar and his three sons. The learned counsel, therefore, stated that once a judicial decision had been taken on a particular aspect, the plaintiffs can restrict their claim of share only with respect to the share which had been allotted to their father Gangadhara Chettiyar and cannot claim any share in the other properties which had been allotted to each one of the three sons of Gangadhara Chettiyar. The learned counsel, therefore, contended that the Koorchit should be taken as an additional document and this court should recognize the said Koorchit.

18. We have carefully considered the arguments of the learned counsel for the parties and perused the materials available on record.

19. The suit had been filed by four daughters seeking partition and separate possession of the suit properties. They are all daughters of one Gangadhara Chettiyar. They had an elder sister and she had been impleaded as fifth defendant. They had three brothers. Two of them are the first and second defendants. Another brother, Jagadeesan died and therefore, his legal representatives had been impleaded as defendants 3 and 4 in the suit.

20. The plaintiffs have listed out the properties in the schedule to the plaint, which according to them, are ancestral properties and should be divided



into 8 equal shares. Their specific case is that the properties were ancestral properties of their grandfather Ramasamy Chettiyar and his two sons Gangadhara Chettiyar and Perumal Chettiyar. The properties as mentioned in the suit schedule fell to the share of Gangadhara Chettiyar and since according to them, he died intestate, the suit properties have to be divided into 8 equal shares and they should be allotted their respective shares.

21. The suit had been resisted by defendants 1 and 2 on the ground that the suit properties had been earlier partitioned and the partition was recorded by way of a Koorchit dated 25.03.1973. The defendants claimed that under the Koorchit, which had been entered into by Gangadhara Chettiyar and his three sons, each one of them had been allotted a separate share and they were enjoying their separate shares by mutating the revenue records. It was contended that therefore, the suit should be dismissed as against the shares allotted to the three sons of Gangadhara Chettiyar and the plaintiffs can restrict their claim to the extent of share or the properties allotted to Gangadhara Chettiyar.

22. The defendants also claimed that Gangadhara Chettiyar had executed a Will and under the Will, he had bequeathed the properties, which fell to his share under the Koorchit. It was, therefore, contended that the Will had been acted upon. It was thus pointed out that all the suit properties had been dealt with either by way of Koorchit or by way of a Will and therefore, the plaintiffs, if at all, can claim their share in any residual property which was also not



available and therefore, the suit should be dismissed.

23. The points, which arise for consideration in these Appeal Suits, are:-

i) *Whether the reasoning of the learned Trial Judge relating to the execution of the Koorchit is correct and can be upheld by this court?*

ii) *Whether the reasoning of the Trial Court relating to rejection of the Will is correct and should be upheld by this court?*

iii) *Whether the finding of the learned Trial Judge regarding the allotment of shares is correct or requires modification?*

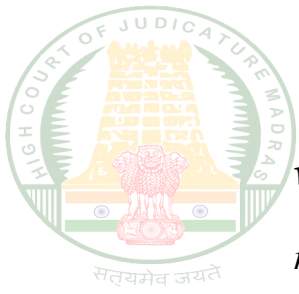
24. Since all the three points are inter-related, they are taken together for consideration. However, we would take up the issue of Koorchit first.

25. Before examining the Koorchit, which is the subject matter of the present suit, we would refer to the decision in ***K.Mahammad Ghouse Sahib vs. Jamila Bi and others*** (AIR 1950 Mad. 433 = (1950) 1 Mad. LJ 151), wherein a Division Bench of this court, while examining the admissibility of a document, which requires registration under Section 17 of the Registration Act and had not been registered, had observed as follows:-

"The relevant provisions of the [Registration Act](#) read as follows :

17 (1) The following documents shall be registered

b) other 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,



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whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property.

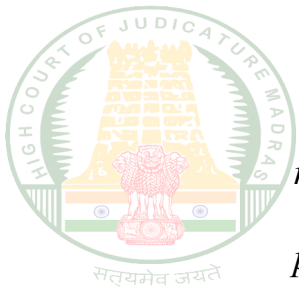
17 (2) Nothing In Clause (b) and (c) of Sub-section (1) applies to

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right title or interest."

49. No document required by [Section 17](#) or by any provision of the [Transfer of Property Act, 1882](#), to be registered shall-

- (a) affect any immoveable property, comprised therein, or*
- (b) confer any power to adopt, or*
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

Provided that an unregistered document affecting immoveable property and required by this Act or the [Transfer of Property Act, 1882](#) to be registered may be



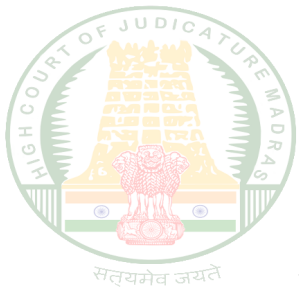
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received as evidence of a contract in a suit for specific performance under Chap. II, Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of [Section 53A](#), T. P. Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

It is clear from the provisions of the above sections that a document in itself creating or declaring etc., any right in immoveable property over the value of the specified amount should be registered, and if not registered it cannot affect any immoveable property comprised therein nor can be received as evidence of any transaction affecting such property except in the three specified cases mentioned in the proviso to [Section 49](#)."

26. In ***Subbu Naidu vs. Varadarajulu Naidu*** (1947 (60) L.W. 135) = ((1947) 1 MLJ 90, AIR 1948 Mad. 26), a Division Bench of this Court, while examining the admissibility of a Koorchit, which had not been either stamped or registered as required under the Stamp Act and was sought to be introduced under Order 41 Rule 27 of CPC, observed as follows:-

"The rejected koorchit has been filed in this Court with a petition for its admission in the appeal under Order 41, Rule 27(1)(a) of the Civil Procedure Code, which allows a party



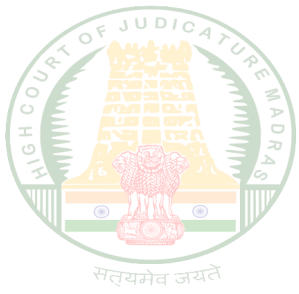
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to produce additional evidence in appeal where "the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted." It was urged that the learned District Judge erred in holding that the unregistered koorchit was inadmissible "for any purpose." This contention is clearly right. Unlike the Indian Stamp Act which renders an instrument not duly stamped inadmissible for any purpose," the [Indian Registration Act](#) prohibits its admission only for certain purpose ([Section 49](#))."

27. In ***Roshan Singh and others viz., Zile Singh and others (AIR 1988 SC 881)***, it had been held as follows:-

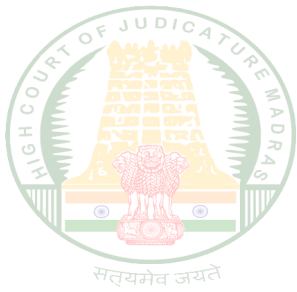
"9. It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under [Section 17\(1\)\(b\)](#) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains



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merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well-settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. [Section 17\(1\)\(b\)](#) 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. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document 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. Secondly evidence of the factum of partition will not be admissible by reason of [Section 91](#) of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the



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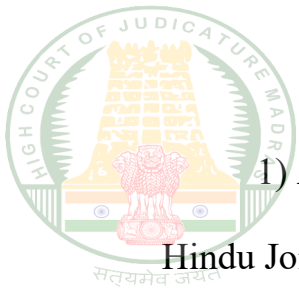
parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: See Mulla's Registration Act, 8th Edn., pp. 54-57.

.....

11. Even otherwise, the document Exh.P12 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](#), (1919) 46 Ind App 285 : AIR 1919 PC 44 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. "

28. The above principle was relied in another judgment of the Hon'ble Supreme Court ***Korukonda Chalapathi Rao vs Korukonda Annapurna Sampath Kumar (2021 INSC 586)***.

29. The principles which emanated from the above decisions are as follows:-

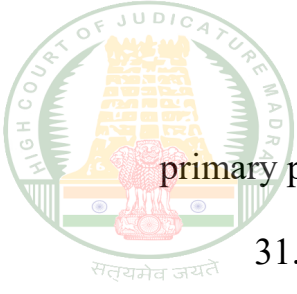


1) A Koorchit, as a document, can be introduced to evidence partition in a Hindu Joint Family.

2) However, it has to record an earlier partition effected or earlier agreement arrived between the parties.

3) It cannot, by itself, be an instrument effecting partition among the parties to the said document.

30. It is thus seen that a Koorchit can only be a document recording a partition earlier agreed upon by the parties. This would necessarily indicate that a partition should have taken place earlier. It need not necessarily be by way of any document, but even oral or an understanding about the manner in which the properties are to be divided. These facts could be recorded later in a Koorchit. If it records an earlier partition, then, it becomes a document, which can be taken into consideration by the court. If it refers to an earlier partition, it need not be registered or stamped. But, if the document records that such partition took place under the said document, then the said document is required to be stamped in accordance with the Stamp Act and registered in accordance with the provisions of the Registration Act and if not, it is inadmissible in evidence. If a document is found to be inadmissible, then the contents of the said document cannot be taken advantage by any party to it. Alternatively, when a document, which is inadequately stamped is presented, the Court has a duty to impound the said document and levy penalty. If such document is impounded and penalty is paid, then the document can only be used for collateral purposes and not as a



primary piece of evidence.

31. In the instant case, this Court has to examine the Koorchit and the covenants in the Koorchit marked as Ex.B20. We are not able to understand as to why the Trial Court had not impounded the said document. We are not able to understand as to why the Trial Court did not even render a finding regarding requirement of stamp and registration of the document in accordance with the Statutes. No reason had been given by the Trial Court to ignore such a procedure

32. Be that as it may, the relevant portion of the said document viz., the Koorchit runs as follows:-

"இதன் கீழ் A, B, C, D ஷெடிடியுக்களில் விவரிக்கப்பட்டவைகள் யாவும் நமக்கு
பிதூராத்திதமும் சுயார்ஜிதமுமானவை. நூன் இன்று வரை இவற்றை ஏகக்குடும்ப
சொத்துக்களாக வைத்து அனுபவித்து அவற்றின் வரும்படிகளை பொதுவில்
அனுபவித்து வந்தோம்."

33. The above contents would show that till the date of the execution of the Koorchit, the parties to the Koorchit viz., Gangadhara Chettiyar and his three sons viz., Gopal, Ponnusamy and Jagadeesan were enjoying A, B, C and D schedule properties jointly and also enjoying the income derived from the properties jointly. This would indicate that till the date of entering into the Koorchit, the father Gangadhara Chettiyar and his three sons were enjoying the



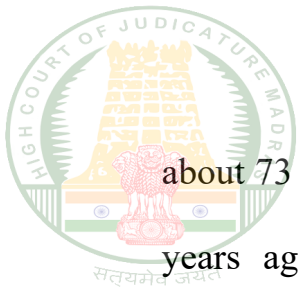
properties together and not separately. Thereafter, it had been stated as follows:-

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" ஆனால் இந்த சொத்துக்களை நாம் பொதுவில் அனுபவித்து வருவதில் சில அசந்தாப்பங்கள் ஏற்படுகின்றன. ஆகையால் மேற்கொண்டும் மிகக்கூடி அடைவதற்கு முன் கீழ்க்கண்ட பஞ்சாயத்தார்கள் முன்னிலையில் அவர்கள் தீர்மானித்தபடி இந்த சொத்துக்களை நாம் A, B, C, D ஷெடியூல்களாகப் பிரித்து அவைகளை இன்னா இன்னார்க்குச் சேர வேண்டும் எனப் பிரித்து வைத்திருப்பதை நாம் யாவரும் ஏகோபித்து சரியாகச் செய்யப்பட்டிருக்கிறதென்ப பார்த்து ஒப்புக் கொண்டுவிட்டோம்."

34. The above statement would indicate that they suffered some inconveniences in enjoyment of the properties jointly and for conducive enjoyment of the same, they had, in the presence of panchayatdars, as decided by the panchayatdars, taken a decision to divide the properties into four schedules as A, B, C and D and to allot them to each one of them and to enjoy them accordingly. This statement does not reflect that the panchayat was convened earlier and that the panchayatdars had earlier suggested a division which had been accepted by the parties and only in accordance with such an understanding, the document had been written down.

35. However, even before proceeding further with the covenants made in the Koorchit, the evidence of DW2 will have to be examined. DW2 was one of the signatories to the Koorchit. He was examined in chief when he was aged



about 73 years and was called upon to speak about an event which happened 43 years ago. Normal human conduct would imply that there is always a possibility of fading of memory. The witness may tell the month and year, but, cannot, certainly give the specific and exact details unless he or she had been tutored earlier or the memory had been refreshed deliberately, which would indicate that his evidence was not voluntary and he had only parroted statements tutored just before he had grazed the witness box.

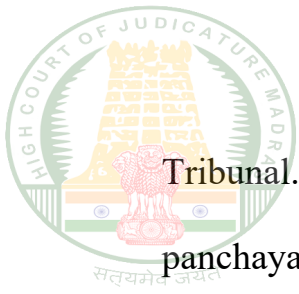
36. In his evidence, he stated that two days prior to the Koorchit, a panchayat was convened and they had suggested a mode of partition and that particular mode of partition had been written down in the Koorchit. This statement should have been made by DW1. He was a party to the document. He should have stated that fact in the written statement. If he had affirmed the Koorchit, there is no reason as to why in O.S.No.4 of 1995, he did not assert the division of the properties among the father and 3 brothers with respect to the shares in the property. A party to the document is the best person to speak about the circumstances surrounding the execution of the document. A witness to a document is merely a witness attesting the signature of the parties to the document. It is not required that he should know the circumstances surrounding the execution of the document. The document speaks for itself.

37. As per Section 91 of the Indian Evidence Act, no oral evidence can be stated as against a written document. DW2, who had stated that there was a partition effected earlier, had tendered evidence, which was in direct



contradiction to the covenants in the document, Ex.B20, the Koorchit. When this court has to evaluate and weigh the credibility of what was recorded in the Koorchit and the statement of DW2 in his evidence, the pendulum naturally swings in favour of accepting the covenants in the Koorchit rather than in favour of the oral evidence tendered by a witness 43 years after he had signed as a witness. We would, therefore, not give much value to the evidence of DW2, particularly to the statement that there was a partition prior to its execution, which had not been spoken by DW1 in the written statement, wherein he could have presented the said fact.

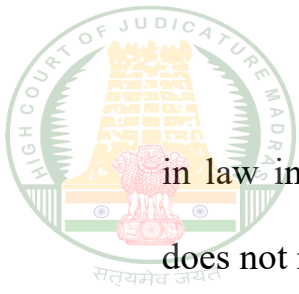
38. The learned counsel for the appellant in A.S.No.157 of 2017 had further widened the scope of the argument by placing reliance on the document sought to be introduced in C.M.P.No.10055 of 2026, namely, the order of the Income Tax Appellate Tribunal wherein the very same Koorchit had been presented for consideration. It had been recorded in the order of the Income Tax Appellate Tribunal that the Income Tax Officer had made necessary enquiries and noticed that the claim for partition was based on a Koorchit and therefore, the Income Tax Officer had taken a view that since the document was not registered, it cannot be acted upon and the claim under the Koorchit was rejected and an order was passed under Section 171 of the Income Tax Act, 1960. Thereafter, the assessee filed an appeal before the Appellate Authority, the Assistant Commissioner, who upheld the claim of the assessee and affirmed the partition. The Revenue filed an appeal before the Income Tax Appellate



Tribunal. The Tribunal found that the issue of partition had been referred to panchayatdars, who had allocated the properties and therefore came to a conclusion that the properties had already been divided into four groups and that the document only recorded an already completed transaction and therefore, registration was not necessary.

39. The order passed by the Income Tax Appellate Tribunal had been placed before this Court by the learned counsel for the appellant in A.S.No.157 of 2017. We have extracted the covenants in the Koorchit which do not reflect an earlier partition. It is only stated that in the presence of panchayatdars, the partition had been effected as per the suggestion of the panchayatdars. There is no evidence that any panchayat was conducted earlier and subsequently, the Koorchit was independently written down recording an earlier division of the properties. We are not bound by the order of the Income Tax Appellate Tribunal. The order is only with respect to the arguments advanced before the said Tribunal. Further, the order also had not extracted the actual wordings in the Koorchit. It only reflects a surmise made by the Income Tax Appellate Tribunal.

40. Further, we had examined the said document and had given our reasons for not being in alignment with the reasoning of Income Tax Appellate Tribunal. We would, still, receive the document on record as **Ex.B32** and accordingly, **we would allow the petition in C.M.P.No.10055 of 2026.** However, we would reject Ex.B20 Koorchit on the ground that it is inadmissible



in law in view of the fact it is an unregistered and unstamped document and does not reveal recording of an earlier partition.

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41. The next point, which had been framed was with respect to the Will, which had been presented under Ex.B29. The learned Trial Judge had extracted the evidence of DW1 in the earlier suit in O.S.No.4 of 1995. That was a suit brought about by a third party seeking enforcement of an agreement of sale claimed to have been entered into by Gangadhara Chettiyar. To reject the agreement of sale, DW1 had tendered evidence in that suit to the effect that Gangadhara Chettiyar had died on 08.01.1975 and he was unconscious and bedridden from four months prior to his death and therefore, he could not have executed the agreement of sale.

42. It cannot be the stand of the defendants that Gangadhara Chettiyar, who was bedridden, woke up to execute the Will in their favour just 25 days prior to his death. The defendants cannot take a varying statement to suit their convenience. Every averment in the written statement is verified as true to the knowledge of the person verifying the statement. There cannot be two separate versions before two separate judicial forums.

43. We affirm the finding of the Trial Court that the Will has to be rejected and we also reject the same.

44. We, therefore, reject both Exs.B20 and B29 the Koorchit and the



Will. This leaves us only with the suit properties which are available for partition. The plaintiffs have claimed partition under Section 6 of the Hindu Succession Act as amended in 2005.

45. In this regard, we would place reliance on the judgment of the Hon'ble Supreme Court in *Vineeth Sharma vs. Rakesh Sharma (AIR 2020 SC 3717)* wherein it had been held as under:-

"116. The intendment of amended Section 6 is to ensure that daughters are not deprived of their rights of obtaining share on becoming coparcener and claiming a partition of the coparcenary property by setting up the frivolous defence of oral partition and/or recorded in the unregistered memorandum of partition. The Court has to keep in mind the possibility that a plea of oral partition may be set up, fraudulently or in collusion, or based on unregistered memorandum of partition which may also be created at any point of time. Such a partition is not recognized under Section 6(5)."

46. In view of the said reasoning, we partly allow the appeal and decree the suit in entirety holding that each of the appellants/plaintiffs are entitled to an undivided 1/8 share each in the suit schedule properties. With respect to the



jewellery and bank accounts, which are the subject matter of C schedule property, since there is no proper evidence relating to the same, we hold that if they are available, the issue can be decided in the final decree proceedings.

47. In the result, the Appeal in A.S.No.378 of 2018 is allowed in part to the extent indicated above. The Appeal in A.S.No.157 of 2017 stands dismissed. C.M.P.No.10055 of 2026 is allowed. No costs. Other connected pending miscellaneous petitions are closed.

(C.V.K.,J.) (K.R.S.,J.)
29-04-2026

Additional Document marked:-

Ex.B32 - Order of Income Tax Appellate Tribunal

Index: Yes/No

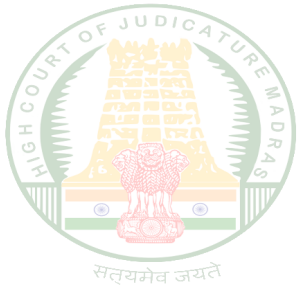
Speaking/Non-speaking order

Neutral Citation: Yes/No

ssk

To

III Additional District Court,
Vellore at Tirupathur.



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AS Nos. 157 of 2017 & 378 of 2



**C.V.KARTHIKEYAN J.
AND
K.RAJASEKAR J.**

ssk

**AS No.157 of 2017 &
AS No.378 of 2018**

29-04-2026