# Korukonda Chalapathi Rao . vs Korukonda Annapurna Sampath Kumar on 1 October, 2021

## Author: K.M. Joseph

## Bench: S. Ravindra Bhat, K.M Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).6141 OF 2021
(Arising out of SLP(C) NO(S).25745 OF 2016)

KORUKONDA CHALAPATHI RAO & ANR. ... APPELLANT(S)

VERSUS

KORUKONDA ANNAPURNA
SAMPATH KUMAR ...RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. Leave granted.

2. By the impugned order the High Court has set aside the order passed by the Trial Court by which latter order, the Trial Court overruled the objections of the respondent to the marking of Exhibits-B12 and B13 on the score that they were documents which were unregistered and unstamped and matter was posted for the evidence of DW1 for marking the said document. The High court found that the documents which were the unregistered family settlement “Khararunama” and receipt of Rs. 2,00,000/- (Rupees two lakhs) by the respondent, were not admissible in evidence.

3. The respondent is the younger brother of the appellants. The respondent instituted the present Suit (O.S. No.39 of 2001) seeking declaration of title over the plaint schedule property and for eviction of the appellants who are the defendants and consequential perpetual injunction is also sought against the appellants.

4. It is not in dispute that there was a partition between the appellants, the respondent and their other siblings. The partition list is marked as Exhbit-A8 in the suit. It is dated 17.11.1980. The plaint schedule properties are a part of F-Schedule in the Deed of partition allotted to the respondent. The case of the respondent is based on the said partition deed allotting F-schedule to him. It is, inter alia, his case in the suit as amended by order dated 19.12.2012 that he was in hospital as in patient for treatment of his liver ailment. The appellants allegedly obtained his signatures on papers and made up the alleged settlement dated 15.4.1986 and the alleged receipt dated 08.12.1983 (The documents which are in controversy). It is his further case that appellants are in occupation of the property with his permission. On refusal of the appellants to vacate and after exchange of notices, the suit is filed seeking the relief as noted. There are two plaint schedule items. Item No.1 is the terrace house, ground floor and upstairs. Item no.2 is half share nadava portion in the boundaries in terms of F-Schedule of the partition deed.

5. On the other hand, the case of the appellants is that while partition list dated 17.11.1980 was executed recording the fact of partition, which was already effected, there were subsequent developments. The respondent and his wife raised dispute before elders complaining that the portion given to them was not sufficient. At the intervention of the elders, it was settled and agreed between the appellants and the respondent that respondent should give away his portion to the second appellant and respondent should also give away his one-third portion in Nadava margam to the appellants and in consideration for the same the first appellant was to give Rs.25,000/- and the second appellant was to give Rs.75,000/- to the respondent. The said amounts were paid. On the advice of the elders the case of the appellants is that Khararunama dated 15.04.1986 was executed recording the facts. On the pleading of respondent and his wife to permit them to stay on, the respondent was permitted to occupy the property. It is the further case of the appellants that in December, 1993, respondent and his wife informed the appellants that they would vacate the portion in the second appellant's house and leave the same but defendants should pay some more money as they intended to vacate the property. The elders settled the matter and it is alleged that Second appellant had to pay Rs.2,00,000/-. Out of affection towards the respondent and to purchase peace, the second appellant agreed to pay Rs.2,00,000/- (Rupees Two Lakhs). Accordingly, Rs.2,00,000/- was paid on 08.12.1993 in the presence of elders and the receipt dated 08.12.1993 was issued by the respondent to the second appellant and on the same day, respondent is alleged to have vacated and left the portion in his occupation in the house of the second appellant and shifted to a rented portion.

6. After completion of the evidence on behalf of the respondent, appellants filed the evidence affidavit and sought to mark the Kharurunama and receipt dated 08.12.1993. As already noticed, the trial court allowed the said documents to be marked. By the impugned judgment the High Court has found that in the absence of registration and not being stamped the documents were inadmissible.

7. We heard the learned counsel for the parties. We heard Shri M. Vijay Bhaskar, learned Counsel on behalf of the appellants and also Shri Venkateshwar Rao, learned Counsel on behalf of the respondent.

8. It is submitted by the appellants that the Family settlement Khararunama dated 15.04.1986 was prepared in triplicate. The respondent also obtained one of the triplicate copies. In his examination the respondent admitted his signature in the said 'Khararunama' and the same has been marked as B1 to B3. It is further submitted that the respondent as PW1 has admitted his signature on the receipt dated 08.12.1993 marked as (B4). B9 to B11 are stated to be admission of signature on the Khararunama dated 15.04.1986 upon the respondent being confronted with the Khararunama. It is pointed out that High Court erred in not considering the family settlement Khararunama and receipt dated 08.12.1993 in accordance with well-established principles relating to the law of family settlement /family arrangement. Reliance is placed on the judgment of this court in Subraya M.N. v. Vittala M.N.1 to contend that there can be an oral relinquishment of the share of the family members in the family settlement and family arrangement. If the terms of the said family settlement is reduced into writing, and it is only a memorandum executed subsequently recording the terms of the oral family settlement, then, no registration is needed, it is contended. The decision of this Court 1 (2016) 8 SCC 705 in Thulasidhara v. Narayanappa2 has also been relied upon. It is lastly contended that even if the family settlement Khararunama is required to be registered, in view of the fact that without registration written document of family settlement/arrangement could be used as corroborative evidence as explaining the arrangement made thereunder and the conduct of the parties, the order of the High Court is infirm.

9. Per contra, apart from reiterating his case about the appellants obtaining his signature on blank papers and subsequently utilizing them for the family settlement, it is contended that family settlement Khararunama dated 15.04.1986 required registration under section 17(1)(b) of the Registration Act, 1908. Under the said settlement, appellants ought to pay certain sum to the respondent. The document would come into force after the receipt of the consideration. It is contended that the High Court is right in finding that unregistered family Khararunama, whereunder a past transaction of relinquishment is recorded, was 2 (2019) 6 SCC 409 inadmissible for want of registration and deficiency of stamp duty.

10. The Khararunama reads, inter alia, as follows:

> "We, the three are brothers. We and our brothers divided family properties and executed partition list dated 17-11-1980. As per the said partition list B schedule property fallen to No.1 of us and E schedule property fallen to No.2 of us and F schedule property fallen to No. 3 of us and we are enjoying those properties. While the matter stood some constructions were undertaken to the house. Nos. 2 and 3 of us have divided the property which jointly fallen to them and made some constructions and enjoying. Nadava way is being enjoyed by all of us jointly.
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> Even after 17-11-1980 by this date we are having common dining though properties are divided and little disputes are arising among us and elders are interfered and settled.
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> We have not reduced into writing the events that took place among three of us subsequent to 17-11-1980. We are enjoying the properties as per the following

changes as per the advice of the elders.

The Nadava way which was originally fell jointly to three of us is being enjoyed by Nos.1 and 2 of us since no. 3 of us gave and 2 of us. Likewise, Nos. 1 and 2 of us have been enjoying said Nadava way with an understanding to enjoy Nadava way likewise if any further floors are raised over ground floor. The undivided ½ share house portion of us which was subsequently mutually divided among Nos. 2 and 3 of us was given away by No.3 of us to No.2 of us and accordingly No.2 of us has been in enjoyment of the entire house portion. No.3 of us is enjoying with absolute rights the shop room which was fallen to his share with an understanding that No.3 of us can raise constructions over the said shop room within the measurements of shop room. We have been enjoying with an understanding that eastern wall of above said shop shall be joint between Nos.2 and 3 of us and western wall shall be joint for all the three of us and northern wall shall be joint between Nos.2 and 3 of us. We have been enjoying with an understanding that none of us shall arrange any door-ways, windows or ventilators to said joint walls.

For the above adjustments No.1 of us has already paid Rs.25,000/- (Rupees Twenty-Five Thousand) to No. 3 of us previously and No. 2 of us has already paid Rs. 75,000/- (Rupees Seventy-Five Thousand) to No. 3 of us previously.

We have agreed to arrange separate steps from our respective ground floor portion as and when further floors are constructed. Nos. 1 to 3 of us have been enjoying the properties as mentioned above with absolute rights. We have been enjoying the remaining properties fallen to us as per partition list dated 17-11-1980 which are not mentioned in this document.

This Kharurunama is executed for record purpose and for remembrance purpose. All the contents of this document are read over and explained to all of us and we have willfully agreed the contents on our volition. We will not raise any disputes in future." Parties 1 and 2 are the appellants. The 3rd party is the respondent.

11. As far as the receipt is concerned, it is signed on a 20 paise revenue stamp. It is allegedly executed by the respondent having received Rs.2,00,000/- (Rupees two lakhs) on 08.12.1983 as per the advice of the elders besides the amount of Rs.1,00,000/- (Rupees one lakh) already paid to the respondent mentioned in the Khararunama dated 15.04.1986 while vacating the house portion mentioned in the Kharurunama excepting the shop room which fell to the share of the respondent under the Partition List 1980 purportedly signed by two witnesses. It is executed in favour of the second appellant.

12. Undoubtedly, Section 17(1)(b) makes 'other non- testamentary instruments', which purport or operate to create, assign, limit or extinguish whether in present or in future any right or interest whether vested or contingent of the value of Rs.100/- and upwards in an immovable property compulsorily registrable. Section 17(1)(c) reads as follows:

> "17(1)(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and"

13. Section 17 (2) provides nothing in Clauses

(b) and (c) of sub-Section(1) applies, inter alia, to any instrument of partition made by the revenue officer. Section 49 of the Registration Act reads as follows:

> "49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—
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> (a) affect any immovable property comprised therein, or
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> (b) confer any power to adopt, or
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> (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: 54 [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 55, 56 [***] or as evidence of any collateral transaction not required to be effected by registered instrument.] .."

14. There is a long line of judgments of this court dealing with the question as to whether a family arrangement is compulsorily registrable. We need only refer to the case of Kale v. Dy. Director of Consolidation3. This Court has summed up the essentials of the family settlement in the following proposition:

> "10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:
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> "(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
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> (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
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> (3) The family arrangement may be even oral in which case no registration is necessary;

> (4) It is well settled that registration would be necessary only if 3 AIR 1976 SC 807 the terms of the family arrangement are reduced into writing. Here also, a distinction should be made 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 either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement." (Emphasis supplied)

15. In the facts of this case, the contention of the appellants is that the Kharurunama dated 15.04.1986 merely sets out the arrangement arrived at between the brothers which is the family arrangement and it was a mere record of the past transaction and therefore by itself it did not create or extinguish any right over immovable property. Resultantly, the document did not attract Section 17(1)(b) of the Registration Act. In other words, it is contended that even if there is relinquishment of rights by the family member, since the document is only a record of what had already happened in the past, the law did not mandate registration.

16. It is to be noted that in this regard emphasis is placed by the appellants on the decision of this Court in Subraya M.N. v. Vittala M.N. (supra). Therein, in regard to the dispute to plaint items 1 and 2 properties, there was D22 resolution passed by the village panchayat signed by the Panchayatdar, plaintiffs 3 and 4 and defendant. It was, inter alia, mentioned therein that the defendant, in whose favour the plaintiffs 3 and 4 relinquished the rights, had paid Rs.15,000/- each to the said plaintiffs. Dealing with the impact of Section 17 and 49 of the Registration Act this Court, inter alia, held:

> "16. Even though recitals in Ext. D-22 are to the effect of relinquishment of right in Items 1 and 2, Ext. D-22 could be taken as family arrangements/ settlements. 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 rupees hundred 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. In the present case, Ext. D-22 panchayat resolution reduced into writing, though not registered can be used as a piece of evidence explaining the settlement arrived at and the conduct of the parties in receiving the money from the defendant in lieu of relinquishing their interest in Items 1 and 2." (Emphasis supplied)

17. This view has been also followed in Thulasidhara v. Narayanappa4. Paragraph-9.5 reads as below:

> "9.5. As held by this Court in Subraya M.N. [Subraya M.N. v. Vittala M.N., (2016) 8 SCC 705] 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 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing.

Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, 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 Ext. D-4 dated 23-4-1971." 4 (2019) 6 SCC 409

18. In the said case plaintiff had admitted the oral partition and the unregistered document dated 23.04.1971 to which he was the signatory, was accepted as the list of properties in the partition.

19. In Ram charan v. Girja Nandini5, this Court was dealing with a case of a compromise decree and this Court went on to hold that it was a family arrangement. It went on to hold as follows:

> ".. For as the Privy Council pointed out in Mst. Hiran Bibi's case, AIR 1914 PC 44 in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiappa Gounden 46 Ind App 72 (AIR 1918 PC 196), that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say affection." (Emphasis supplied) 5 AIR 1966 SC 292

20. This view has been reiterated in Krishna Beharilal v. Gulabchand6. In Yellapu Uma Maheswari and Another v. Buddha Jagadheeswararao and Others7, this Court found that the relinquishment of the right was made through the document. Hence, it was found that documents were compulsorily registrable. This Court inter alia held as follows:

> "15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the 6 AIR 1971 SC 1041 7(2015) 16 SCC 787 considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition." (Emphasis supplied)

21. We may notice that in Sita Ram Bhama v. Ramvatar Bhama8, wherein the appellant and respondent were brothers, according to the appellant, a memorandum of settlement as decided by their late father was recorded in regard to his acquired property. The question arose as to whether the settlement was admissible. It is necessary to notice paragraph-10, which reads as under:

> "10. The only question which needs to be considered in the present case is as to whether document dated 9-9-1994 could have been accepted by the trial court in evidence or the trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 9-9-1994 as memorandum of family settlement. The plaintiff's case is that earlier partition took place in the lifetime of the father of the parties on 25-10-1992 which was recorded as memorandum of family settlement on 9-9- 1994. There are more than one reasons due to which we are of the view that the document dated 9-9-1994 was not mere memorandum of family settlement, rather a family settlement itself. Firstly, on 25-10-1992, the father of the parties was himself owner of both, the residence and shop being self-
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> 8 (2018) 15 SCC 130 acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a will, so that the father could have made the will in favour of his two sons, the plaintiff and the defendant. Neither the plaintiff nor the defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10-9-1993. After his death, the plaintiff, the defendant and their mother as well as sisters become the legal heirs under the Hindu Succession Act, 1956 inheriting the

> property being a Class I heir. The document dated 9-9-1994 divided the entire property between the plaintiff and the defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, the courts below are right in their conclusion that there being relinquishment, the document dated 9-9-1994 was compulsorily registrable under Section 17 of the Registration Act."

22. Thereafter, we may notice the view of this Court in paragraph-13 as under:

> "13. There is only one aspect of the matter which needs consideration i.e. whether the document dated 9-9-1994, which was inadmissible in evidence, could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds..."

23. No doubt in the said case, the court has followed the Judgment in Yellapu Uma Maheswari and Another (supra). It found that the unregistered memorandum could be used for collateral purpose within the meaning of Section 49 of the Registration Act subject to payment of penalty and stamp duty.

24. Order 13 Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code', for short) enables the Court to reject any document which is considered irrelevant or otherwise inadmissible recording the ground of such rejection. Order 13 Rule 4 of the Code provides for the procedure when a document has been admitted in evidence. Section 49 deals with the effect of non-registration of documents which are compulsorily registrable under Section 17 of the Registration Act and Transfer of Property Act. Section 49(a) of the Registration Act declares that an unregistered document which is compulsorily registrable cannot 'affect' any immovable property comprised therein. The expression 'affect' has been explained by the full bench judgment of the Madras High Court in Muruga Mudallar and Ors. v. Subba Reddiar9. We may notice only the following discussion in the judgment of Satyanarayana Rao,J.:

> "As pointed out by Spencer J. in Saraswathamma v. Paddayya, 46 Mad. 349 : (A. I. R. 1923 Mad. 297) the verb "affect" in Section 49 is only a compendious term employed by the Legislature to express the meaning of the longer phrase "purporting or operating to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent to" (See also Kanjee & Moolji Bros, v. Shanmugham Pillai, 56 Mad. 169 : (A. I. R. 1932 Mad. 734), where the view of Spencer J. was accepted)."

> 25. Section 49(c) of Registration Act prohibits the admitting of compulsorily registrable documents which are unregistered as evidence of any transaction affecting immovable property unless it has been registered. In the very same Judgment, we notice the following discussion:

> "The other consequence of non-registration is to prohibit the document from being received not "in" evidence, but "as" evidence of any transaction affecting such 9 AIR 1951 Madras 12 property. The emphasis on the word "as" was, in my opinion, rightly laid by Venkatasubba Rao J. in Saraswathamma v. Paddayya, 46 Mad. 349 : (A. I. R. 1923 Mad. 297), where the learned Judge observed:
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> "What is prohibited by the section is receiving a document as evidence of a transaction, not merely receiving it in evidence, i.e., as a piece of evidence having a bearing on the question to be ultimately decided."

In other words, the prohibition is to prevent a person from establishing by the use of the document in evidence a "transaction, affecting Immovable property". A person should not be permitted to establish indirectly by use of the document what he is prevented from doing directly under Clause (a)." (Emphasis supplied)

26. The proviso carves out two exceptions. We are only concerned, in this case, with only one of them and that is contained in the last limb of the proviso. The unregistered document can be used as evidence of any collateral transaction. This is however subject to the condition that the said collateral transaction should not itself be one which must be effected by a registered document. It is this expression contained in the proviso which leads us to ask the question as to what would constitute a collateral transaction. If it were collateral transaction, then an unregistered document can indeed be used as evidence to prove the same. Would possession being enjoyed or the nature of the possession on the basis of the unregistered document, be a transaction and further would it be a collateral transaction? We pose this question as the contention of the appellants is that even if the Khararunama dated 15.4.1986 cannot be used as evidence to prove the factum of relinquishment of right which took place in the past, the Khararunama can be looked into to prove the conduct of the parties and the nature of the possession which was enjoyed by the parties.

27. In N. Varada Pillai v. Jeevarathnammal10, the Privy Council Court took the view that though unregistered, the document could be used to explain the nature of the possession of a person. In the said case, in fact, two widows, who were in possession of the property in equal shares applied to the Collector that they had given away the property as Stridhan to a lady and that the orders may be issued for transferring 10 AIR 1919 P.C. 44 the property to her. The property was so transferred on the basis of the petition. On the question whether the transferee had obtained title by adverse possession while finding the unregistered petition before the Collector could not be admitted to prove a gift, the fact that transferee was continuing as a donee and owner was gleaned from the said petition to support the case of adverse possession.

28. An attempt to derive support from the said judgment was refused on a different set of facts by this court in Kirpal Kaur v. Bachan Singh and Ors.11. In the said case the court was dealing with the following facts. The widow of a Hindu upon the death of her husband came by possession of the plaint schedule properties. She even got the property mutated. A gift was made by her. The reversioners thereafter approached her and an unregistered document was entered into with her wherein she purported to acknowledge that she had only a life estate. Thereafter the suit came to be

filed. The widow set up the case of adverse possession. On the 11 AIR 1958 SC 199 other hand, the plaintiffs placed reliance on the unregistered document and relied upon the judgment of the N. Varada Pillai (supra). This Court repelled the case of the plaintiffs and held as follows in Kirpal Kaur (supra):

> "15. We cannot agree that on the authority of Varatha Pillai's case (1918) 46 I.A. 285, the agreement of February 6, 1932, can be admitted in evidence in the case in hand to show the nature of Harnam Kaur's possession of the lands subsequent to its date. In Varatha Pillai's case (1918) 46 I.A. 285, Duraisani had got into possession only after the petition and claimed to retain possession only under the gift mentioned in it. The petition was therefore admissible in evidence to show the nature of her possession. In the present case Harnam Kaur had been in possession before the date of the document and to admit it in evidence to show the nature of her possession subsequent to it would be to treat it as operating to destroy the nature of the previous possession and to convert what had started as adverse possession into a permissive possession and, therefore, to give effect to the agreement contained in it which admittedly cannot be done for want of registration. To admit it in evidence for the purpose sought would really amount to getting round the statutory bar imposed by Section 49 of the Registration Act." (Emphasis supplied)
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> 29. This is significant for the reason that the law is not that in every case where a party sets up the plea that the court may look into an unregistered documents to show the nature of the possession that the court would agree to it. The cardinal principle would be whether by allowing the case of the party to consider an unregistered document it would result in the breach of the mandate of the Section 49 of the Registration Act.
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> 30. We may also usefully refer to the views expressed by the Division Bench of the Madras High Court in K. Panchapagesa Ayyar and Ors. v. K. Kalyanasundaram Ayyar and Ors.12:
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> "25. To sum up it is well settled in a long series of decisions which have since received statutory recognition by the Amending Act of 1929 (vide the concluding words of the new proviso to Section 49 of the Registration Act) that a compulsorily registrable but an unregistered document is admissible in evidence for a collateral purpose that is to say, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

12 AIR 1957 Madras 472 The expression "collateral purpose" is no doubt a very vague one and the Court must decide in each case whether the purpose for which it is sought to use the unregistered document is really a collateral one or is to establish directly title to the immovable property sought to be conveyed by the document. But by the simple device of calling, it a "collateral purpose" a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if registered.

To quote Sir George Lowndes in James R. R. Skinner v. Robert Hercules Skinner ILR 51 All 771: MANU/PR/0091/1929 : AIR 1929 PC 269 (Z 22) the collateral purpose to which the document is put should be nothing else than an evasion of the statute and render almost nugatory the hitherto well-established rule relating to the limited uses to which an unregistered partition deed can be put to." (Emphasis supplied)

31. In Roshan Singh and Others v. Zile Singh and Others13, the question arose whether Exhibit P12 in the said case was an instrument of partition and therefore inadmissible for want of registration under Section 49 of the Registration Act or whether it was merely a AIR 1988 SC 881 memorandum of family arrangement. This Court after referring to the document held as follows:

> "8. According to the plain terms of the document Exh. P-12, it is obvious that it was not an instrument of partition but merely a memorandum recording the decision arrived at between the parties as to the manner in which the partition was to be effected. The opening words of the document Exh. P-12 are: 'Today after discussion it has been mutually agreed and decided that....' What follows is a list of properties allotted to the respective parties. From these words, it is quite obvious that the document Exh. P-12 contains the recital of past events and does not itself embody the expression of will necessary to effect the change in the legal relation contemplated. So also the Panch Faisla Exh. P-1 which confirmed the arrangement so arrived at, opens with the words 'Today on 31-1-1971 the following persons assembled to effect a mutual compromise between Chaudhary Puran Singh and Chaudhary Zile Singh and unanimously decided that....' The purport and effect of the decision so arrived at is given thereafter. One of the terms agreed upon was that the gher marked B2 would remain in the share of Zile Singh, representing the Plaintiffs.
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> 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 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 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." (Emphasis supplied) Thereafter, the Court also approved of the use of the said document for a collateral transaction and observed as follows:

> "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, (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."

32. In SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. Private Ltd.14, the question arose whether an arbitration agreement contained in a compulsorily registrable document which was not registered could be used to prove the collateral transaction, namely, the provision for arbitration. This court held as follows:

> "11. Section 49 makes it clear that a document which is compulsorily registerable, if not registered, will not (2011) 14 SCC 66 affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance.

Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily registerable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to Section 49 of the Registration Act.

16. An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of the Registration Act read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registerable document can be acted upon and enforced for the purpose of dispute resolution by arbitration." (Emphasis supplied)

33. If we apply the test as to whether the Khararunama in this case by itself 'affects', i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it

merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(1)(a) of the Registration Act.

34. As far as Section 49(1)(c) of the Registration Act is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used 'as' evidence of the transaction, which 'affects' immovable property. If the Khararunama by itself, does not 'affect' immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent [See Muruga Mudallar (supra)]. Thus, the transaction or the past transactions cannot be proved by using the Khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the Khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question.

35. As far as stamp duty goes, on our finding regarding the nature of the document, viz., Khararunama, being record of the alleged transactions, it may not require to be stamped. We notice the following conclusion of the Division Bench of the Madras High Court in A.C. Lakshmipathy and others v. A.M. Chakrapani Reddiar and others15:

> "42. To sum up the legal position xxx xxx xxx (V) However, a document in the nature of a Memorandum, evidencing a family arrangement already entered into and had been prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, it need not be stamped or registered."

36. No doubt, when there has been a partition, then, there may be no scope for invoking the concept of antecedent right as such, which is inapposite after a disruption in the joint family status and what is more an outright partition by metes and bounds. In this regard, it is to be noticed that the appellants and the respondents, admittedly, partitioned their joint family properties. This is clear from the Khararunama 15 AIR 2001 Madras 135 wherein it is stated that they have divided the joint family properties. The properties, which are mentioned in the Khararunama, became the separate properties of the respondent.

37. Resultantly, the Appeal is allowed. The impugned Judgment is set aside subject to the observations as contained in this Judgment. There will be no Order as to costs.

.....J. (K.M JOSEPH) .....J. (S. RAVINDRA BHAT) NEW DELHI;

OCTOBER 1, 2021.