REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2564 OF 2012

K. ARUMUGA VELAIAH **APPELLANT(S)**

VERSUS

P.R. RAMASAMY AND ANR. **RESPONDENT(S)**

J U D G M E N T

NAGARATHNA J.

The plaintiff in Original Suit No. 101 of 2004 has assailed the judgment and decree passed in Second Appeal No. 92 of 2007 by the Madurai Bench of the High Court of Judicature of Madras dated 6th August, 2007 by which, the judgment and decree passed in Appeal Suit No. 38 of 2005 by the First Appellate Court i.e. Court of the Subordinate Judge, Devakottai, affirming the dismissal of the aforesaid suit by the District Munsiff Court, Devakottai has been sustained.

2. For the sake of convenience the parties herein shall be referred to in terms of their rank and status before the Trial Court.

3. The case of the Plaintiff in a nutshell is stated as under :

(i) Periyaiya Servai and Muthu Servai, were the sons of Marimuthu Servai. Periyaiya Servai had three sons, being the first and second defendants and Marimuthu, who is no longer alive and whose wife Poomayil has also died. The plaintiff, first and second defendants and late Marimuthu have one-fourth share each in the joint family properties. That Periyaiya Servai through his first wife, Veeramakali Ammal (since deceased) had four daughters and a son, being the first defendant, namely, P.R. Ramasamy. Through his second wife, Kaliammal, Periyaiya Servai had two sons, being second defendant, namely, P.R. Kasilingam and Marimuthu. Second defendant's son, K. Arumuga Velaiya is the plaintiff.

(ii) According to the plaintiff, Periyaiya Servai had executed a registered will dated 26th January, 1994, in favour of the plaintiff in relation to his share of the properties of the joint family. Thus, the joint family properties had to be divided into four shares of which the plaintiff was entitled to one share, bequeathed in his favour by his grandfather, Periyaiya Servai

under the will. Further, Poomayil, on the death of her husband Marimuthu had bequeathed his share in the property to the first defendant. Hence the first defendant has become entitled to half share in the joint family property and the remaining half has to be equally divided between the second defendant and the plaintiff. That the first defendant sent a legal notice objecting to plaintiff's share in the suit schedule properties, which are joint family properties. Therefore, the plaintiff has been constrained to file a suit for partition and separate possession.

(iii) Plaintiff has averred that he has a right to one-fourth share of Periyaiya Servai under the will dated 26th January, 1994, which came into operation on 25th March, 2003, on the demise of Periyaiya Servai. With the aforesaid averments the plaintiff has sought partition and separate possession of his one-fourth share in the suit schedule properties.

4. In response to the plaint, first defendant filed his written statement which is encapsulated as under:-

(i) First defendant has admitted that the suit schedule properties were joint family properties but they had since been divided. The fact that Periyaiya Servai had executed a

will dated 26th January, 1994 (the written statement filed by the first defendant before the Trial Court mentions the date of the will as 24th January, 1994) in a good state of mind and health has been denied. It is averred that late Periyaiya Servai had a share in the suit properties but the fact that they were bequeathed to the plaintiff by a will, is false. It is averred that Periyaiya Servai and his brother Muthu Servai were living as a joint family and Periyaiya Servai was the Karta of the family. That from the income of the undivided ancestral properties, several properties were purchased in the name of Periyaiya Servai as he was the Karta of the family. There was a partition between the brothers under a registered partition deed. The coparcerners then became divided. That in 1964 Periyaiya Servai in turn partitioned his share of the joint family properties in three parts, i.e. between the first and second defendants and late Marimuthu and they have been enjoying the properties since then. In that partition, no share was allotted to Periyaiya Servai. An agreement for maintenance of Periyaiya Servai during his life was also made. Marimuthu died suddenly and his share in the properties was being enjoyed by his wife Poomayil.

(ii) Periyaiya Servai was 93 years old in 1991 and was not in a position to take decisions on his own due to his old age. He was acting according to the will of the second defendant and Kaliammal who was Periyaiya Servai's second wife. The second defendant, taking advantage of the age and ill health of his father tried to acquire properties of late Poomayil. O.S. No. 347 of 1991 was filed in the name of Periyaiya Servai, on the file of the District Munsiff Court, Devakottai, on false and frivolous grounds. In that suit he had shown joint family properties as independent properties of late Periyaiya Servai and stated that the said properties were purchased out of the personal income of Periyaiya Servai. In that suit, the possession and enjoyment of the joint Hindu family ancestral properties by late Periyaiya Servai and his brother, as also the partition between them was suppressed. It was further suppressed in the said suit that in the year 1964 a partition took place before the panchayatdars and the partitioned properties were enjoyed by late Periyaiya Servai, the first and second defendants and Marimuthu. In the aforementioned suit, the widow of Marimuthu, Poomayil also contested but the District Munsiff Court, without taking into consideration the said partition held that the properties were undivided

ancestral joint family properties. Aggrieved by the same the second defendant preferred an appeal in A.S. No. 37 of 1993. Late Poomayil had also filed a cross appeal in A.S. No. 37 of 1993. The said suit was remanded to the lower court in the year 1995.

(iii) Against the order of remand a second appeal was filed before the High Court of Madras which remanded the matter to the Sub-court, Devakottai, by restoring A.S. No. 37 of 1993. The said appeal was disposed on 23rd March, 1999 by giving a finding that the suit properties were ancestral properties which were partitioned between the first and second defendants herein and late Marimuthu and they were enjoying the same separately. That after the death of Marimuthu, Poomayil was in possession of the properties. The said judgment has attained finality.

(iv) It was also contended that since the suit properties had been partitioned equally between the first and second defendants and late Marimuthu in 1964, they also had the right of prescription against each other and were in adverse possession. That Poomayil had died bequeathing her husband's properties to the first defendant under a will and he was enjoying the properties after her death.

(v) That on 26th December, 1988 Periyaiya Servai wrote two Inam settlement deeds in respect of properties in Sr. No. 181/1 and 181/3 in Sathyamangalam Village. That O.S. No. 376 of 1991 was filed by the plaintiff herein against the settlement deed, on the file of the District Munsiff Court, Devakottai. The said suit was dismissed and the judgment and decree in the said suit was confirmed in A.S. No. 38 of 1994.

(vi) That since the plaintiff herein had not benefited under the said suit, he prepared the disputed will with the help of the second defendant as if it was the will of Periyaiya Servai. That during the period when the will is said to have been executed, Periyaiya Servai was bed ridden and was not sane and was a prisoner. That Periyaiya Servai was disqualified by virtue of the doctrine of ouster, from making the will in respect of ancestral properties, particularly after the judgment in O.S. No. 347/1991. That the suit had been filed vexatiously when the first defendant raised objection for the transfer of the Patta on the basis of a concocted will.

(vii) As late Periyaiya Servai was not sane and healthy and he was treated as a prisoner by the family of the plaintiff and the second defendant a habeas corpus petition in HCP No. 457 of

2003 was filed by the first defendant before the Madras High Court. Before the petition was heard, Periyaiya Servai died and the same was dismissed as not pressed by the first defendant.

(viii) That the plaint in the instant suit was filed with a view to extort monies from the first defendant. The first defendant prayed before the Trial Court that the suit for partition and separate possession filed by the plaintiff be dismissed.

5. The District Munsiff Court, Devakottai by its judgment and decree dated 7th April, 2005 dismissed the suit being O.S. No. 101 of 2004. The salient findings of the Trial Court are as under:

(i) The Trial Court noted that the defendant had filed O.P. No. 7 of 1992 on the file of the District Munsiff Court, Devakottai praying for a declaration that the partition deed stated to be executed in the year 1964 between Periyaiya Servai, the defendants and Marimuthu was invalid. The said suit was decreed as prayed for, with a declaration to the effect that the partition deed stated to be executed in the year 1964 was an unregistered document and therefore, invalid.

(ii) The Trial Court also noted that in O.S. No. 347 of 1991 filed by Periyaiya Servai, the District Munsiff Court, Devakottai decreed that out of the properties belonging to Periyaiya

Servai, his three sons, being the defendants therein and late Marimuthu, would each be entitled to one-third share. In an appeal from the judgment and decree in O.S. No. 347 of 1991, the first appellate court in A.S. No. 37 of 1993 held that a valid partition had been carried out in the year 1964 whereby it was decided that no share was to be retained by Periyaiya Servai and each of his sons was entitled to one-third share in the suit properties.

Given the contradictory decrees passed in O.P. No. 7 of 1992 and in A.S. No. 37 of 1993, the Trial Court held that the latter decree would alone be enforceable.

(iii) That the partition deed executed in the year 1964 was valid in the eye of law and such validity was confirmed by the Sub-Court, Devakottai in A.S. No. 37 of 1993. Since questions surrounding the validity of the partition deed were finally settled, the suit was barred by the principle of *res judicata*.

(iv) According to the decision in A.S. No. 37 of 1993, Periyaiya Servai had not been allotted any share in the property and the same was divided in three equal parts in favour of the two defendants and Marimuthu. That Periyaiya Servai, following the partition in the year 1964 had no right over the said

property and consequently had no right to execute a will in respect of the suit properties, in favour of the Plaintiff.

(v) That the plaintiff is not entitled to one-fourth share in the suit properties as prayed by him. That the defendants were entitled to enjoy their share of the suit properties without any restraint by virtue of the partition effected in 1964.

6. Being aggrieved, the plaintiff preferred A.S. No. 38 of 2005 before the first appellate court. By Judgment dated 17th February, 2006, the appeal and cross appeal were dismissed and the judgment of the Trial Court referred to above was affirmed. The relevant findings of the first appellate court are encapsulated as under:

i) The first appellate court considered the evidence of the first defendant as DW-1. In his cross-examination DW-1 had stated that a partition had been effected in the year 1964, wherein the suit properties were divided among the three sons of Periyaiya Servai i.e., the first and second defendants and Marimuthu. That the patta was not obtained individually by the sons of Periyaiya Servai following the execution of the partition deed, however they had been paying *kist* in connection with their respective properties. In the circumstance, the first appellate court held that the fact that

the defendants had not obtained pattas individually for their respective shares in the suit properties, could not result in a conclusion that Periyaiya Servai had not partitioned the suit properties in favour of his sons.

ii) That the *kist* receipts paid by the first defendant from the year 1964, in relation to his share of the suit properties led to the conclusion that the first defendant was enjoying the properties allotted to him by way of the partition effected in the year 1964.

iii) Since partition was effected between Periyaiya Servai and his sons in the year 1964, whereby the suit schedule properties were divided among the first and second defendants and late Marimuthu, and no property was apportioned in favour of Periyaiya Servai, he had no right to execute a will subsequently, in relation to the suit properties. Therefore the will dated 26th January, 1994 is not a valid document.

iv) That the plaintiff could not claim title over one-fourth share of the suit properties on the basis of the will dated 26th January, 1994 and therefore the Trial Court rightly dismissed the suit filed by the plaintiff.

7. Being aggrieved, the plaintiff preferred second appeal No. 92 of 2007 before the Madurai bench of the Madras High Court. By

judgment dated 6th August, 2007, the second appeal was dismissed by holding that the following substantial questions of law sought to be raised by the Plaintiff could not be considered:

i) Whether the Courts below are justified in holding that the suit is barred in view of the decision in Appeal Suit No. 37 of 1993 dated 23.03.1999 in as much as there was a specific direction by the High Court, Madras in the order of remand to the subordinate judge to consider only whether the properties are joint family properties or self acquisitions of Periyaiah Servai?

ii) Whether the courts below are justified in holding that the suit is barred in view of the decision in Appeal Suit No. 37 of 1993 on the file of Sub-Court, Devakottai without considering whether the principles laid down in section 11 of the Code of Civil procedure are applicable?

iii) Whether the courts below are justified in not considering the decision in Original Petition No. 7 of 1972 on the file of the Sub-Court, Devakottai where under original of exhibit B-10 was held to be invalid and unenforceable?

iv) Whether the courts below are justified in not considering the admissions of DW-1 that Periyaiah

Servai was entitled to a share in the joint family properties?

v) Whether the findings of courts below which are perverse and not supported by any materials and against available materials on record can be sustained?

The following findings were recorded by the High Court in the impugned judgment:

(i) That it had already been held in Appeal Suit No. 37 of 1993 that all the joint family properties had been divided into three shares in favour of the sons of Periyaiya Servai. Against the said decision, no appeal had been preferred and hence the finding regarding the partition had attained finality. Therefore, the instant suit was barred by the principle of *res judicata*.

(ii) The second appeal was dismissed at the stage of admission on the ground that the substantial questions of law raised by the plaintiff were not legally tenable.

The unsuccessful plaintiff has approached this Court challenging the three judgments referred to above.

8. We have heard Sri. V. Prabhakar, learned advocate for the appellant and Sri. K.K. Mani, learned advocate for respondents and perused the material on record.

9. Learned counsel for the appellant-plaintiff at the outset contended that the High Court as well as the courts below were not right in dismissing the suit filed by the appellant-plaintiff by holding that there was a prior partition between the parties in the year 1964 and hence the instant suit for partition and separate possession was not maintainable. Elaborating the said contention it was submitted that the so called partition of the suit schedule properties in the year 1964 was as per an award. The said award was not registered as per section 17 (1) (e) of the Registration Act, 1908 (hereinafter referred to as "the Act" for the sake of brevity). Section 49 of the Act was also pressed into service to contend that in the absence of registration of the arbitration award effecting the partition between members of the family, the award does not have any validity in the eye of law and hence it is not binding on the parties. Since the said award had no effect in law, the family continued to remain joint and the suit schedule properties were joint ancestral properties. Hence, the suit for partition filed by the appellant was maintainable.

10. In this context it was brought to our notice that O.S. No. 347 of 1991 was filed by Periyaiya Servai, the grandfather of the plaintiff seeking declaration of title and consequential relief and the said suit was dismissed against which A.S. No. 37 of 93 was

filed. In the said appeal there was an order of remand to the Trial Court. The remand order was challenged before the High Court. The High Court remanded the matter to the first appellate court to decide the appeal and to give a finding only on the nature of the properties. Reliance was placed on the finding given by the first appellate court on remand from the High Court to the effect that the suit schedule properties are joint ancestral properties. However, the first appellate court even in the absence of any mandate of the High Court being given in the remand order went ahead to hold that there was a partition between the members of the family in the year 1964 and hence the suit for partition was not maintainable. Learned counsel for the appellant contended that such a finding could not have been given by the first appellate court transgressing the contours of the order of remand made by the High Court which was to determine only the nature of the suit schedule properties and not whether there was a partition of the same between the members of the family. That the decision of the first appellate court in A.S. No. 37 of 1993 was erroneous in so far as it travelled beyond the scope of the remand made to it by the High Court and hence the said finding is not binding on the parties.

11. It was contended that the High Court in passing the impugned judgment, could not have dismissed the second appeal on the basis of an erroneous finding given by the first appellate Court as the said finding was also not binding on the High Court. It was contended that the principle of *res judicata* does not apply in the instant case. Hence, the judgments of the High Court and the Courts below may be set aside and the suit may be decreed.

12. Learned counsel for the appellant relied upon the following judgments in support of his submissions:

a) ***Shiromani and Ors. v. Hem Kumar and Ors.*, [1968] 3 SCR 639.**

b) ***Satish Kumar and Ors. v. Surinder Kumar and Ors.*, [1969] 2 SCR 244**.

c) ***Lachhman Dass v. Ram Lal*, [1989] 3 SCC 99.**

d) ***Asrar Ahmed v. Durgah Committee, Ajmer*, AIR 1947 PC 1.**

13. Per contra, learned counsel for the respondents supported the impugned judgment of the High Court to contend that registration of the arbitral award making a partition between the parties was not compulsory. It was urged that partition of joint family properties is not a transfer inter vivos. A partition only crystallises the share of the coparceners in the joint family or

ancestral properties. That so long as the parties are not allotted shares pertaining to specific assets under a partition deed such a document does not create any right, title or interest in any specific property as such. Therefore, registration of the arbitral award in the instant case as such is not a mandatory requirement.

14. Alternatively, it was contended that the finding of the first appellate court in A.S. No. 37 of 1993, regarding the partition and division of the ancestral joint family properties in the year 1964 has attained finality. The said finding is binding on the parties. Hence a fresh suit seeking partition and separate possession of the properties was not at all maintainable. This is because the aforesaid finding shall be presumed to be accepted by the parties as there has been no challenge to the same and hence principle of *res judicata* would apply.

15. It was further contended that even if it is assumed for the sake of argument that, on remand, the first appellate court had passed an erroneous judgment by giving a finding on a point beyond the scope of remand, i.e., on the aspect of the arbitral award having partitioned the suit schedule properties, such a finding is binding on the parties as it has not been interfered with by the High Court. That nothing prevented the appellant from

assailing the said finding before the High Court by filing a second appeal. Instead the appellant filed a fresh suit for partition which is an instance of abuse of process of law as it is hit by the principle of *res judicata*.

16. In the above backdrop it was contended that the High Court was right in dismissing the second appeal as well as the suit filed by the appellant plaintiff and there is no merit in this appeal. Hence the same may be dismissed.

Learned counsel for respondents relied upon the following three decisions to buttress his submissions:

a) ***Kale and Ors. v. Deputy Director of Consolidation*, [1976] 3 SCC 119**.

b) ***Bhoop Singh v. Ram Singh Major and Ors.*, [1995] 5 SCC 709.**

c) ***Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.*, [2020] 9 SCC 706.**

d) ***Ripudaman Singh v. Tikka Maheshwar Chand*, [2021] 7 SCC 446.**

17. Having heard learned counsel for respective parties the only point which arises for our consideration is, whether, the suit filed by the plaintiff is barred in view of the judgment and decree

passed in A.S. No. 37 of 1993 dated 23rd March, 1999, wherein it was held that a partition had been affected in relation to the joint family properties between the first and second defendants and late Marimuthu in the year 1964.

18. The following undisputed facts may be noted:-

(a) The relationship between the parties is not in dispute. Periyaiya Servai through his first wife had begotten the first defendant, P.R. Ramaswamy and through his second wife had two sons, namely, P.R. Kasilingam - second defendant and late Marimuthu. The appellant-plaintiff is the son of P.R. Kasilingam.

(b) Appellant has also claimed that his grandfather Periyaiya Servai had executed a will in his favour and therefore he had one-fourth share in the suit property.

(c) It is also not in dispute that O.S. No. 347 of 1991 was filed on the file of the District Munsiff Court, Devakottai by Periyaiya Servai for declaration of title and permanent injunction, wherein all the suit properties had been shown as joint family properties. Against the dismissal of the said suit a preliminary decree was passed granting one-fourth share to the plaintiff therein in A.S. No. 37 of 1993 preferred against the dismissal of the suit.

(d) In A.S. No. 37 of 1993 it was held that the suit properties were joint family properties and in the year 1964 there was a partition between the members of the joint family. The said judgment was not assailed by any of the parties.

(e) However, the appellant herein instituted a fresh suit being O.S. No. 101 of 2004 on the file of the District Munsiff Court, Devakottai which was dismissed, against which A.S. No. 38/2005 was filed before the Subordinate Judge, Devakottai wherein it was observed that the finding given in A.S. No. 37 of 1993 to the effect that there was a partition in the family in the year 1964, had attained finality.

(f) Aggrieved by the dismissal of the appeal, second appeal being S.A. No. 92 of 2007 was filed before the Madurai Bench of the Madras High Court, which has also dismissed the same by the impugned judgment.

19. The main plank of argument of the appellant is that the suit filed by the plaintiff-appellant herein could not have been dismissed on the principle of *res judicata* by holding that in A.S. No. 37 of 1993 there was already a clear finding to the effect that there was a partition of the suit properties between the members of the joint family and hence a fresh suit for partition and separate possession vis-a-vis the same properties could not have

been filed by the plaintiff as it is not maintainable. In this regard the contention of the appellant-plaintiff is that the aforesaid finding was contrary to the mandate of remand and hence was not binding on the parties. Contrarily, respondents have contended that the finding that the suit properties were joint family properties which had been partitioned by the parties in the year 1964, not having been challenged at all by the plaintiff, had attained finality and hence the plaintiff was estopped from filing a fresh suit claiming partition and separate possession.

20. In the aforesaid context another contention raised by the learned counsel for the appellant was that the so-called partition which took place in the year 1964 was by virtue of an award passed by the panchayatdars (arbitrators) and the same, not having been registered, was not made a rule of the court and hence had no validity in the eye of law. The counter to the aforesaid argument by learned counsel for the respondent is that the said award did not require registration at all.

21. We shall at the outset consider the following judgments relied upon by the learned counsel for the appellant:

a) In ***Shiromani and Ors. v. Hem Kumar and Ors.*, [1968] 3 SCR 639**, one of the questions raised was whether the validity

of a partition deed could be challenged as being inadmissible in evidence on the ground that it had not been registered as mandated under Section 17 (1) (b) of the Act. In that case it was held that under the recitals of exhibit D-4 considered therein, there was allotment of specific properties to individual coparceners and the document therefore fell within the mischief of Section 17 (1) (b) of the Act as it required registration. Hence, the said document was not admissible in evidence to prove the title of the coparceners to any particular property or to prove that any particular property had ceased to be joint property. However, document exhibit D-4 considered therein was held to be admissible to prove an intention on the part of the coparceners to become divided in status; in other words, to prove that the parties ceased to be joint from the date of the instrument vide ***Nanni Bai v Gita Bai*, [1959] 1 SCR 479**. The said judgment is not applicable to the facts of this case.

b) In ***Satish Kumar and Ors. v. Surinder Kumar and Ors.*, [1969] 2 SCR 244**, a similar question on registration of an award for partition of joint family property being compulsory under Section 17 (1) (b) read with section 49 of the Act was emphasised. In that case an award for partition was made

under the Arbitration Act, 1940 and the question was whether such an award on a private reference required registration if the award effected partition of immovable property exceeding the value of Rs. 100. The majority (2:1) held that an award made by an arbitrator which affected right, title or interest of the value of more than Rs. 100 in immovable property would require registration. However, it was held that the filing of an unregistered award under Section 49 of the Act is not prohibited; what is prohibited is that it cannot be taken into evidence so as to affect right, title or interest in immovable property as per Section 17 of the Act. For this proposition reliance was place on ***Champalal vs. Mst. Samarth Bai***, **[1960] 2 SCR 810**.

Also reliance was placed on ***Kashinathsa Yamosa Kabadi v. Narsinga Bhaskarsa Kabadi,*** **[1961] 3 SCR 792** wherein this court had observed as under:

> "The records made by the Panchas about the division of the properties, it is true, were not stamped nor were they registered. It is however clear that if the record made by the Panchas in so far as it deals with immovable properties is regarded as a non-testamentary instrument purporting or operating to create, declare, assign, limit or extinguish any right, title or interest in immovable property, it was compulsorily registrable under Section 17 of the

> Registration Act, and would not in the absence of registration be admissible in evidence."

The minority opinion voiced through K.S. Hegde J. in the aforesaid case was that an arbitrator's award does create rights in property but those rights cannot be enforced without further steps. For the purpose of Section 17(1) (b) of the Act, all that is to be seen is whether the award in question purports or operates to create or declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property. If it does, it is compulsorily registerable.

c) In ***Lachhman Dass v. Ram Lal*, [1989] 3 SCC 99,** the issue was that the arbitrator's award had not been properly stamped and as such could not be made the rule of the Court. It was also contended that the award was unregistered and as such it could not be made the rule of the Court as it affected immovable property of more than Rs. 100. The said contention was accepted by the Trial Court but in second appeal the High Court observed that the award was stamped properly and it did not require any registration as the award did not create any right as such in the immovable property; it only admitted

the already existing rights between the parties and hence registration was not required. Hence the question considered was whether the Court could have looked into the award for the purpose of pronouncing judgment upon the award. On a construction of the award questioned therein the decision of the High Court was reversed. In doing so, this Court took into consideration section 17 (1) (e) of the Act as well as sections 23, 25 and 49 of the Act. Further, reliance was placed on a decision of the Division Bench of the Madras High Court in ***Ramaswamy Ayyar and Anr. v. Tirpathi Naik*, ILR 27 Mad 43**, wherein it was observed that it is necessary to read a document in order to ascertain, not what the document intends to convey really but what it purports to convey. In other words, it is necessary to examine not so much what it intends to do, but what it purports to do. It was further observed in paragraph 14 as under:

> "14. The real purpose of registration is to secure that every person dealing with the property, where such document requires registration may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected. Section 17 of the said Act being a disabling section, must be construed strictly. Therefore, unless a document is clearly brought within the provisions of the section, its non-registration would be no bar to its being admitted in evidence."

Reliance was also placed on ***Ratan Lal Sharma v. Purushottam Harit*, [1974] 3 SCR 109** to hold that the arbitration award in the said case did not just seek to assign a share of the respondent to the appellant therein, but made an exclusive allotment of the partnership assets including the factory and liabilities to the appellant therein. Therefore, the award in express words purported to create rights in immovable property worth a sum above Rs. 100/- in favour of the appellant therein. It was accordingly held that it would mandatorily require registration under section 17 of the Act.

22. We shall now consider the citations relied upon by the respondents:

a) ***Kale and Ors. v. Deputy Director of consolidation*, [1976] 3 SCC 119**, is a case which had a checkered history in which a discussion on the effect and value of family arrangements entered into between the parties with a view to resolve disputes once and for all, came up for consideration. It was observed that in the case of a family settlement, usually there would be an agreement which is implied from a long course of dealing, but such an agreement would be embodied or effectuated in a deed to which the term "family arrangement" is applied. Such a family arrangement is not applicable to

dealings between strangers but is in the context of maintaining the interest and peace of the members of the family. In paragraph 10 of the said judgment, this Court has adumbrated on the essentials of a family settlement which could be usefully extracted as under:

> "10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions:
>
> (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;
>
> (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
>
> (3) The family arrangements may be even oral in which case no registration is necessary;
>
> (4) It is well settled that registration would be necessary only if 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 immoveable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) 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."

After reviewing several judgments of this Court, the Privy Council and other High Courts, this Court in paragraph 20 indicated the following propositions:

> "We would, therefore return the reference with a statement of the following general propositions:
>
> (1) A family arrangement can be made orally.
>
> (2) If made orally, there being no document, no question of registration arises.
>
> (3) If though it could have been made orally, it was in fact reduced to the form of a "document" registration (when the value is Rs. 100 and upwards) is necessary.
>
> (4) Whether the terms have been "reduced to the form of a document" is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.
>
> (5) If the terms were not "reduced to the form of a document", registration was not necessary (even though the value is Rs. 100 or upwards); and, while the writing cannot

> be used as a piece of evidence for what it may be worth, e.g. as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.
>
> (6) If the terms were "reduced to the form of a document" and, though the value was Rs. 100 or upwards, it was not registered, the absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement embodied in the document."

Ultimately, this Court held that the family arrangement in the nature of a compromise which was considered in that case did not require registration. It was further held that since the existence of the family arrangement was admitted in that case, the same was binding on the principle of estoppel. Also, even if the family arrangement could not be registered it could be used for collateral purpose, i.e. to show the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties, who, having taken benefit under the settlement for seven years, later tried to resile from the settlement.

b) In ***Bhoop Singh v. Ram Singh Major and Ors.*, [1995] 5 SCC 709**, this Court stated the legal position in the context of registration of documents under section 17 (2) (vi) of the Act in the following words, so as to distinguish the same from section 17 (2) (v):

> "18. The legal position qua Clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:
>
> (1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.
>
> (2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100 or upwards in favour of any party to the suit the decree or order would require registration.
>
> (3) If the decree were not to attract any of the clauses of Sub- section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.
>
> (4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.
>
> (5) If the property dealt with by the decree be not the "subject- matter of the suit or proceeding", Clause (vi) of Sub-section (2) would not operate, because of the amendment of this Clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original Clause would have been attracted, even if it were to encompass property not litigated."

c) In ***Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.*****, [2020] 9 SCC 706** considering both the aforesaid judgments, this Court opined that when a family settlement arrived at between the parties has been acted upon then it is

not open to resile from the same and the parties are estopped from contending to the contrary.

d) The facts in ***Ripudaman Singh v. Tikka Maheshwar Chand*, [2021] 7 SCC 446** were that, the parties being brothers, had entered into a compromise in respect of a land dispute. Plaintiff, therein, on the basis of the compromise decree applied for mutation of land in his favour, which was allowed. In appeal there was a direction to Naib Tehsildar to decide the mutation afresh. Subsequently, the Divisional Commissioner dismissed the appeal filed against the said order. A suit was filed which was dismissed but the appeal preferred by the appellant was allowed. However, the High Court in the second appeal, set aside the judgment of the first appellate court and dismissed the suit on the ground that the land, even though was a subject matter of compromise, was not the subject matter of the suit and therefore, the compromise decree required registration under the provisions of the Act. This Court while allowing the appeal and setting aside the decree of the High Court held that when a pre-existing right in the property is being recognised by way of a settlement in a Court proceeding and no new right is created for the first time when the parties entered into a compromise

in the civil court, there is no requirement of compulsory registration. In other words, a compromise recognising a pre-existing right in a property amongst heirs does not require registration under the Act. In this case the distinction between section 17 (2) (v) and (vi) was brought out by referring to the aforementioned judgments.

23. In order to answer the aforesaid twin questions, at the outset we have to consider the award dated 13th June, 1964 passed by the panchayatdars which has been produced as Annexure P-10 by learned counsel for the appellant. The award is in the form of a resolution on the strength of the statement given by Periyaiya Servai and the consent statement given by P.R. Ramaswamy and P.R. Kasilingam, the two major sons of Periyaiya Servai. There are details as to how the properties had to be dealt with. The parties had also stated that they had read the above resolution and had agreed wholeheartedly to obey the provisions thereof. For a better appreciation of the nature of the award passed by the panchayatdars, it would be useful to extract Annexure P-10 as under:

> "**RESOLUTION PASSED BY THE PANCHAYATDARS ON 20TH DAY OF THE MONTH OF PANGUNI OF TAMIL SOBAKRITHU YEAR IN REGARD TO PARTITION BETWEEN THE THREE SONS OF M. PERIYAYYA SERVAI VIZ. (1) RAMASAMY, (2) KASILINGAM AND (3) MARIMUTHAN**.

DETAILS

The said M. Periyayya Servai had two wives

1) Veerayakli – First Wife
2) Kaliyamma – Second Wife

The Son born through first wife is Ramasamy. The Sons born through second wife are Kasilingam and Marimuthan.

We have passed the following Resolutions on the strength of the statement given by the said M. Periyayya Servai in front of us and the consent statement given by Ramasamy and Kasilingam, after perusal of the above statement.

DETAILS OF RESOLUTIONS

1. The nanjai, punjai and accessories viz Thitthuthidal, cattle, chickens, vessels and all other household articles are to be divided into three equal shares.

2. As the Panchayatdars unanimously decide that the three acres of land out of the total common Nanjai lands are to be left to the care of Ramasamy, the eldest Son, the said three acres of Nanjai Lands are to be accordingly given away to Ramasamy.

3. We, the Panchayatdars RESOLVE to cancel the expenses incurred in connection with the actions revolving round partition as per the amount contained in the statements given by both the parties, besides cancelling the difference in expenses of the marriages of Ramasamy and Kasilingam, and the marriage of one Ms. Patharammal is to be performed from out of the amounts from the share of both Kasilingam and Marimuthan, on the statement made by Kaslingam that a Minor Chain weighing about 3 his marriage and the same could not be traced out, in spite of search, Kasilingam shall give the expenses amounting to Rs.300/- in common.

4. It was RESOLVED that Marimuthan shall conduct his marriage on his own from his share and Marimuthan shall have no responsibility towards either amounts receivable, payable or loans concerning the common family.

5. It was RESOLVED that the PANCHAYATDARS having decided that on the approval of Kasilingam, Bangalore M. Sethuraman, for having taken limestone valued at Rs.20,000/- in regard to kiln for bricks, since Kasilingam permitted the above person to take Rs.340/- (Rupees three hundred forty only) on his own volition without the approval of his father, it was RESOLVED that Kasilingam shall bear the said sum of Rs.340/- from out of his pocket.

6. The school at Bangalore shall be valued for sale, taking into account all the goods/things and accessories available in the said school and the said school shall be taken over either by Ramasamy or Kasilingam depending upon the one coming out successful in the paper token to be tossed over and both of them agree to the above proposal. The value of the said school has been unanimously arrived at Rs.3,000/- (Rupees three thousand only) by the Panchatdars. The person who takes up the responsibility of the said school shall pay the above sum of Rs.3000/- to their father M. Periyayya with liberty to be spent by him as he wishes, for his personal use. It is RESOLVED by the Panchayatdars, the three sons shall not have any right over the aforesaid sum of Rs.3,000/-.

7. It is further RESOLVED that the Savukkai house along with the fenced compound shall be given to Periyayya and to leave the two properties viz one comprised in S.No.181/1 measuring 1.40 cent and another house comprised in giving him the right to deal with the properties as he may desire. It is also RESOLVED to give him a cart and two bullocks for his use besides a cow for meeting his requirement for milk.

8. In his statement Periyayya had stated that a sum of Rs.1,000/- or land equal to its value shall be given to his sister Lakshmi. We, the Panchayatdars, have today RESOLVED that a sum of Rs.1,000/- or land equal to its value ought to be given to the said Lakshmi.

9. As is found in the statement that in order to give a house to Karuvarividan of Sathamangalam, it is RESOLVED that the lower layer of the first farm shall be given to the above person. There is no time for performing charitable activities for the three partners. It has been decided that the

three shares in the same can hereafter be done together under the supervision of Ramasamy.

10. As found in the statement of Sri Periyayya Servai, wherein it has been written that considering the value of all the Kalluppatti properties at Rs.800/- shall be sold to his daughter Segappi, it has been decided that the said properties shall be sold for the above said value itself and the said decision has been endorsed by us, the Panchayatdars.

11. The house may be divided into two by using coconut matai and shall be taken by Kasilingam and Marimuthan. For the share going to Marimuthan the vacant site also is to be added. The Nattavali house shall be held and used in common. It has been decided as above.

12. It has been RESOLVED as regards the common family honour of Lance, that in line with the age old customs, after the life time of Periyayya Servai, his eldest Son, Ramasamy is considered to be due for the said honour.

13. All the above have been unanimously RESOLVED by us, the Panchayatdars.

PANCHAYATDARS

1. S. Appasamy Servai, Unchanai
2. Bhootha Thiru Muthaiyyan Servai, Ethappadivayal
3. M. Muthiah Servai of Umbiyur Iruppukkudi
4. Ana. Anamugappan
5. S.V. Durai Servai, Sathamangalam.

We have read the above RESOLUTIONS. We agree with the above. We shall wholeheartedly obey the above.
Sd/- M. Periyayya Servai
Sd/- Ramasamy
Sd/- Kasilingam

Resolution written by and I am also one of the Panchayathars.

Sd/-
(illegible)"

On a perusal of the award which is in the form of a resolution, it is clear that there was no right created in any specific item or asset of the joint family properties in any person but the parties resolved to take certain actions in pursuance of a family arrangement. Therefore under Annexure P-10 (Ex. B-13) there was no right created in favour of any party in any specific item of joint family property. The said document which has been styled as an award is, in our view, only a memorandum of understanding/family arrangement to be acted upon in future. Hence, in our considered view, the said document did not create rights in specific properties or assets of the family, in favour of specific persons. Therefore, the same did not require registration under section 17 (1) (e) of the Act. The said document was in the nature of a document envisaged under section 17 (2) (v) of the Act. For a better understanding of the same it would be useful to refer to section 17 (1) (e) and 17 (2) (v) as under:

> "17. Documents of which registration is compulsory.—(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—
>
> xxx xxx xxx
>
> (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, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
>
> xxx xxx xxx
>
> (2) Nothing in clauses (b) and (c) of sub-section (l) applies to:—
>
> xxx xxx xxx
>
> (v) any document other than the documents specified in sub-section (1A) 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 immovable 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."

24. Having regard to the aforesaid provisions of law it can be safely concluded that the said award was a mere arrangement to divide the properties in future by metes and bounds as distinguished from an actual deed of partition under which there is not only a severance of status but also division of joint family properties by metes and bounds in specific properties. Hence it was exempted from registration under Section 17 (2) (v) of the Act. A document of partition which provides for effectuating a division of properties in future would be exempt from registration under section 17 (2) (v). The test in such a case is whether the document itself creates an interest in a specific immovable property or merely creates a right to obtain another document of title. If a document does not by itself create a right or interest in immovable property, but merely creates a right to obtain another

document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence vide ***Ranjangam Iyer v. Ranjangam Iyer*, AIR 1922 PC 266**.

25. In the instant case exhibit B-13 award is more in the nature of a memorandum of understanding, a mere agreement of the steps to be taken in future for the division of the properties. Hence, the said document did not require registration under Section 17 (1) (b) of the Act as under the said document no creation of rights in any specific joint family property was effected. Hence the second limb of the contention of the appellant is accordingly answered.

26. Thus, in our view the judgment in O.P. No. 7 of 1972 which was a petition filed under Section 17 of the Arbitration Act, 1940 praying to receive the award passed by the arbitrators and to pass a judgment thereon, wherein it was held that the award was not registered as mandated under Section 17 (1) (b) of the Act and hence could not be made a rule of the Court, is wholly incorrect. In our view, the award was not a document of title to the property hence it did not require registration. Therefore, the Order dated 22nd August, 1975 passed in O.P. No. 7 of 1972 holding that

the award was inadmissible in evidence as it was not registered and hence a decree could not be passed, is incorrect.

27. In our view, exhibit B-13 did not require registration.

28. The next question that arises for our consideration is whether, the finding of the first appellate court in A.S. No. 37 of 1993 that the suit properties were partitioned in the year 1964 is binding on the parties and hence a fresh suit filed by the Plaintiff seeking the very same relief was not maintainable. In A.S. No.37, on considering the oral and documentary evidence on record it was opined as under:

> "From his evidence it is clear that there is a partition in the year 1964 and the list of the apportionment and they have also written a Muchallikka before the panchayat. It is undoubtfully known that since there was a joint possession, the partition was effected to the plaintiff's 3 sons in 1964 by plaintiff by accepting that the suit properties were joint properties, it is not right on the part of the plaintiff to claim that the properties are his individual, self-acquired properties and it is also unbelievable."

This finding is sought to be questioned before us by placing reliance on a judgment of the Apex Court in ***Asrar Ahmed v. Durgah Committee, Ajmer*, AIR 1947 PC 1** to contend that the plea of *res judicata* does not arise in the instant case. We have perused the same. Learned Counsel for the appellant placed heavy reliance on this judgment contend that when a finding has been

given by a lower court based on sufficient evidence, if erroneous, is not binding between the parties to the said proceeding on the principle of *res judicata*. The said judgment is not applicable to the present case.

29. Having regard to the fact that in the instant case there has been no challenge to the finding of partition between the parties till date and the same has attained finality we do not think that the appellant can seek to rely on the judgment in ***Asrar Ahmed (Supra)***. Hence, the partition of the ancestral/joint family properties having found to have taken place in the 1964 and the same having been acted upon, a fresh suit for partition and separate possession of the suit properties was not at all maintainable. The principle of *res judicata* squarely applies in the present case.

30. In this context, following judgments could be cited with regard to the operation of the principles of *res judicata* in respect to the previous proceeding and judgment: -

a) In ***Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy (AIR 1971 SC 2355)***, it was observed as under:

> "10. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the

> same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."

b) In ***Mohanlal Goenka v. Benoy Kishna Mukherjee (AIR 1953 SC 65),*** the second round of litigation was admittedly in respect of same property and between the same parties, after the earlier litigation had attained finality even up to the stage of execution. It was held that later on the judgment debtor was precluded from raising the plea of jurisdiction in view of principles of constructive *res judicata*. In Paragraph 23 it was as under :-

> ""23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata."

c) In ***State of West Bengal v. Hemant Kumar Bhattacharjee (AIR 1966 SC 1061)***, the main issue related to the Special Court to try a Criminal offence, in asmuch as an incorrect decision cannot be equated with a decision rendered without jurisdiction. Even a wrong decision can be superseded only through appeals to higher tribunals or Courts or through review, if provided by law.

31. We accordingly hold that the High Court was justified in affirming the judgments of the First Appellate Court as well as the Trial Court dismissing the suit filed by the appellant herein. We have no reason to interfere with the impugned judgment.

The appeal is accordingly dismissed.

Having regard to the relationship between the parties, they shall bear their own costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
27TH JANUARY, 2022.