



HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 4561/2025

1. Mohammad Salim S/o Jamaluddin, aged about 57 years, R/o Pani Ki Tanki Lagnasya Road Makrana.
2. Moinuddin S/o Jamaluddin, aged about 55 years, R/o Peer Ki Darga Makrana.
3. Mohammad Hasan S/o Jamaluddin, aged about 53 years, R/o Peer Ki Darga Makrana.

----Petitioners/Defendants

Versus

1. Abdul Kayyum S/o Jamaluddin, R/o Makrana Tehsil Makrana District, Nagaur, Rajasthan.
2. Municipal Board Makrana, Through Chairperson Makrana.
3. Executive Officer, Municipal Board, Makrana.

----Respondents

For Petitioner(s) : Mr. Mansoor Ali Siddiqui.
For Respondent(s) : Mr. Avin Chhangani (through video conferencing) with Ms. Prenal Lodha.

HON'BLE DR. JUSTICE NUPUR BHATI

ORDER

RESERVED ON : 04/03/2025
PRONOUNCED ON : 26/03/2025

1. The instant writ petition has been filed by the petitioners/defendants under Articles 226/227 of the Constitution of India challenging the order dated 29.01.2025 (Annex-6) passed by the learned Additional District & Sessions Judge, Makrana District Nagaur ('Trial Court') in Civil Original No.120/12 CIS No.111/19, whereby application filed by the petitioners under Order VIII Rule 1A (3) read with Section 151 of 'CPC', was partly allowed. The petitioners have filed this writ petition with the following prayers:-



"It is, therefore, most respectfully prayed that this writ petition may kindly be allowed, and the impugned order dated 29.01.2025 (Annex-6) may kindly order to be quashed and set aside qua the extent of reject of application to take on record the family partition deed and further direction may kindly be issued to take on record the said partition deed for collateral purposes.

Any other appropriate writ order or direction, which this Hon'ble Court deems fit and proper may kindly be passed in the favour of the petitioner."

2. Succinctly stated facts of this petition are that the private respondent/plaintiff filed a suit for Perpetual/Permanent Injunction (Annex-1) before the learned Trial Court while praying that the Municipal Board, Makrana be restrained from issuing any *Patta* of the land situated in Khasras Nos. 388, 388/1 and 388/2 in favour of the present petitioners or any other person(s). A written statement was filed by the present petitioners (Annex-2) while denying the averments made in the suit and urged for its rejection. During pendency of the suit, the present petitioners filed an application (Annex-3) under Order VIII Rule 1A (3) read with Section 151 of the Civil Procedure Code ['CPC'] in order to bring on record certain documents including the partition deed (Annex-4) dated 01.08.2011 along with *Nikahnama* and certificate of *Shijra Khandan* (Family Pedigree) for exhibiting the same in the evidence of the defendants to which, reply dated 19.12.2024 (Annex-5) was filed by the private respondent.

3. After hearing the parties, the learned Trial Court vide order dated 29.01.2025 (Annex-6) partly allowed the application filed by the present petitioners under Order VIII Rule 1A (3) read with Section 151 of 'CPC' and refused to take on record the partition deed of the present petitioners; and aggrieved by the order



impugned to the extent, it refused to take on record the partition deed, the petitioners have filed this present petition.

4. Mr. M.A. Siddiqui, the learned counsel representing the petitioners submitted that the learned Trial Court, while deciding the application filed by the petitioners under Order VIII Rule 1A (3) read with Section 151 'CPC' for taking on record the partition deed, has failed to consider the scope of Order VIII of 'CPC' which empowers the court to take on record the documents at the least for collateral purposes. He further submitted that the learned Trial Court has committed an error while not allowing the application filed by the petitioners in *toto* while observing that the partition deed is not a registered deed and, therefore, the same cannot be taken on record in view of the provisions enshrined under Indian Registration Act, 1908. He further submitted that un-registered document having value of more than Rs.100/- is not admissible in the evidence, until and unless the same is registered with the competent authority, but the learned Trial Court failed to take this aspect into consideration that the partition deed, which is not a registered deed, though is not admissible in evidence but the same can be used for collateral purposes. Learned counsel for the petitioner for these submissions have placed reliance on *Korukonda Chalapathi Rao and Anr. v. Korukonda Annapurna Sampath Kumar* [LL 2021 SC 530].

5. Mr. Avin Chhangani, the learned counsel representing the respondents opposed the submissions made by the learned counsel for the petitioner and submitted that it is the duty of the defendant to timely produce documents, which he ought to produce in Court and if he fails to do so, he shall only produce it



after receiving the leave of the Court. Counsel for the respondents have placed reliance on [S.B. Civil Writ Petition No. 17315/2024 Lrs of Shri Dhulichand and others v. Laxman Singh and others.] ; [(2014) 01 DEL CK 0435 Ramesh Kumar and others v. Sangeeta Khanna.

6. He further submitted that the petitioner preferred the aforesaid under Order 8 Rule 1A (3) with unexplained delay of 12 years. He also submitted that an un-registered document having value of more than Rs.100/- is not admissible in the evidence and, therefore, the learned Trial Court was justified in refusing to take the document i.e. partition deed on record.

6. I have considered the submissions made by the counsel for the parties and have perused the material available on record.

7. Order VIII Rule 1A (3) 'CPC' has been reproduced hereunder:

"[1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]"

8. Keeping in view the above mentioned Order under sub-rule (3), if such documents are not presented in the list at the time of presenting the written statement, then in such a situation, the document cannot be received in evidence without the leave of the



court and at the time of hearing of the suit, they shall not be taken into evidence on behalf of the defendant.

9. This Court finds that, the defendants have produced and mentioned about notarized partition deed dated 01.08.2011 in their written statements, and have stated that pursuant to the said partition deed, they are in possession of the respective shops.

The defendant have also mentioned in their written statement that the notarized partition deed's photocopy is attached and they have showed their willingness to produce the said partition deed in original at the demand of the court, if required, which the defendant vide their application dated 12.12.2024 now wants to produce in original by stating that it being a necessary document, essential for just and proper adjudication of the suit the leave of the Court may be granted to produce the original of the partition deed.

10. The learned Trial Court has observed that the family partition deed dated 01.08.2011, wherein map of the site plan is also attached, mentions that the said document is a family partition deed, vide which the said properties mainly 8 shops are being partitioned between brothers of the family. The said document demonstrates that who will receive which shop. After careful examination of the document the Trial Court observed that the said partition deed is unregistered one, being stamped with Rs. 100/-.

11. The learned Trial Court in order to determine that whether the said partition deed being unregistered can be produced in evidence has considered Section 17 of the Registration Act, 1908.



The relevant extract of which has been relied upon by the learned Trial Court is reproduced hereunder:

"17. Documents of which registration is compulsory.—(1) 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:—

*(a) instruments of gift of immovable property;
(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"*

12. After consideration of various legal precedents and Section 17 of the Registration Act, the learned Trial Court came to the conclusion that the document, through which a right is created in respect of immovable property, must be registered and stamped and the document through which a right in immovable property is created cannot be placed on record even for collateral purpose. The document which the defendant want to place on record is a partition deed between the parties regarding the partition of 8 shops. *Prima facie*, the eight shops mentioned in the said document are immovable property and in that regard, rights or entitlements of the parties mentioned in the document are created and in such a situation, the provisions of judicial precedents presented by the defendants are not applicable in the case at hand.

13. In view of the above discussion, facts and circumstances the learned Trial Court was not satisfied in taking the said partition deed presented by the defendant along with the application on record and exhibit the same.



14. This Court finds that Hon'ble Apex Court in the case of *Sita Ram Bharna v. Ramavtar Bharna* : Civil Appeal No. 3171 of 2018 decided on 23.03.2018, held that a document being a family settlement deed and a relinquishment document, is not admissible in evidence being inadequately stamped and not being registered, as it should have been compulsorily registered. Further the Hon'ble Apex Court also pondered on the aspect that whether a document which is inadmissible in evidence could have been used for any collateral purpose and held that 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 by placing reliance on a two-Judge Bench of Hon'ble Apex Court in *Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others*, (2015) 16 SCC 787, provided that appellant-defendant therein was directed to pay the stamp duty together with the penalty and get the document impounded. In paragraphs 16 and 17 the following has been laid down which is reproduced hereunder:

"16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Pedu Mutyala Reddy v. Chinnappareddigari Venkata Reddy : AIR 1969 AP 242 has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. 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. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for



collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the civil appeal is partly allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy."

15. Taking into consideration the law laid down by Hon'ble Apex Court in the above case, this Court is, therefore, of the view that the partition deed dated 01.08.2011 can be relied upon to the extent of collateral purpose, subject to payment of stamp duty, penalty, and proof of relevancy. Hence, if the defendants-petitioners want to mark the partition deed for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the learned Trial Court is at liberty to mark the partition deed for collateral purpose subject to proof and relevance.

16. In view of the above discussion, the writ petition succeeds and the same is, therefore, allowed. The order impugned dated 29.01.2025 passed by the learned Additional District and Session Judge, Makrana, District Nagaur in Civil Original No. 120/12 C.I.S. No. 111/19 is quashed and set aside qua the extent of rejection to take on record the partition deed subject to payment of stamp duty, penalty, proof and relevancy. Stay Petition also stands disposed of. No order as to cost.

(DR. NUPUR BHATI),J

24-/Devesh Thanvi/-