
(2000) 09 MP CK 0052
In the Madhya Pradesh High Court
Case No : Civil Revision No. 27 of 2000

Anand Singhal

APPELLANT

Vs

Smt. Ramkatori Devi

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 1, Order 6 Rule 2, Order 6 Rule 2(1), Order 6 Rule 9
Registration Act, 1908 — Section 17, 17(2)

Citation : (2001) 1 MPHT 321 : (2001) 1 MPJR 150

Hon'ble Judges : Mr. A.K. Mishra, J

Bench : Single Bench

Advocate : Shri A.M. Naik, for the Appellant; Shri P.C. Jain, for the Respondent

Final Decision : Partly Allowed

Judgement

A.K. Mishra, J.

This revision has been preferred by the defendant petitioner aggrieved by the order dated 20-12-1999 passed by IXth Addl. District Judge, Gwalior in Civil Suit No. 14-A/96.

Plaintiff/respondent has instituted a suit for declaration of title and permanent prohibitory injunction restraining dis-possession of her at the hands of her son; Anand Singhal, the defendant. She prayed that she be declared the owner of the disputed house bearing municipal No. 26/937 situated at Maharani Laxmi Bai Road and is in possession of the same and defendant be restrained from interfering in her possession of the suit house. In the plaint it was pleaded that she had obtained the house on partition between the deceased Battotal, Anand Singhal and her other son Mahesh Chand @ Mahesh Babu. There was partition on 1-1-1975 which was acted upon between the parties. Mutation was done based thereon and parties also entered the possession on the basis of the partition dated 1-1-1975. After the partition none of the parties raised any objection. In the ground-floor there are certain tenants from whom the plaintiff is

recovering the rent. In the upper-floor the plaintiff is residing alongwith her son Mahesh Babu. In the first-floor and in the one room of the second-floor defendant Anand Singhal is residing, he started quarreling with the plaintiff and was trying to take forcible possession. It was further pleaded that no family arrangement was entered into between the parties in December, 1992. The partition had already taken place on 1-1-1975. In the written statement, the defendant denied the plaint allegation and contended that no partition took place on 1-1-1975. If any partition shown to have taken place that does not bear the signature of the defendant nor he had assented to it. The same was not acted upon. The document showing partition dated 1-1-75 is a forged document and was ineffective.

On the basis of the pleadings of the parties the Trial Court has framed the following issues :

"2 (a) Whether in the partition dated 1-1-1975 the disputed portion was given to the plaintiff ?

(b) Whether the partition dated 1-1-1975 is forged and has been filed by Mahesh Babu Singhal and plaintiff in collusion to usurp the disputed house ?"

Along with the plaint a document in the shape of memorandum of partition reached on 1-1-1975 between the parties has been filed which was notarized on 27-3-1975. Though the oral partition took place between the parties on 1-1-1975 and memorandum was reduced in writing subsequently it was agreed to be acted upon with effect from 1-4-1975.

A Commission was issued appointing a Commissioner to record the statement of plaintiff Smt. Ramkatori Devi. During the course of her deposition when the plaintiffs counsel wanted to put an exhibit on the document; memorandum of partition notarised on 27-3-1975, objection was raised about admissibility of the document which was referred to by the Commissioner for the decision to the Court.

The Trial Court overruled the objection and held the document to be admissible in evidence and Trial Court also held that the document could be exhibited as it is a memorandum of partition and bar of its admissibility for want of registration is not attracted. Owing to the objection being raised by the defendant Commission could not completely executed. Hence, the Trial Court directed the parties to bear 50% of the Commission fee., Aggrieved by the order passed by the Trial Court, present revision has been preferred before this Court.

Learned counsel for the petitioner Shri A.M. Naik has raised threefold submissions. His first submission is that the plaintiff could not be allowed to exhibit the document as the same is not forming the part of the pleadings in the plaint as required under Order 6 Rule 2 of the C.P.C. and by conjoint reading of Order 6 Rule 2 and Order 6 Rule 9 his submission is that if the effect of a document is not stated nor the document is pleaded evidence cannot be adduced

in that regard. He has placed reliance on a decision of this Court in case of Kamarji Vs. Raghunath and others 1983 RN 248, rendered by Hon'ble Justice Faizan Uddin (as he then was). In Kamarji (supra) according to provision of Rule 2 of Order 6 of the C.P.C. material fact was not pleaded as to with whom the plaintiff had entered into contract of sub-tenancy and had obtained land. In these circumstances, it was held that no amount of evidence adduced in that behalf should be looked into or considered. Thus, in other words evidence in variance of the pleadings cannot be taken into consideration. Counsel has also pressed into service the decision in case of Allam Gangadhara Rao Vs. Gollapalli Gangarao, to contend that no relief can be granted on facts and documents not disclosed in plaint. Reliance is also placed on a decision in case of Moinuddin Vs. Ch. Mohammad Imam-Uddin Ashraf, for the same proposition.

The second part of submission raised by learned counsel for the petitioner is that the document in question could not be held to be admissible as it cannot be termed to be a memorandum of partition. He has placed reliance on the decisions of Apex Court in case of Tek Bahadur Bhujil Vs. Debi Singh Bhujil and others AIR 1996 SC 292, and case of Dr. Nilkanth Krishnarao Apte Vs. Dr. Ramchandra Krishnarao Apte and another, AIR 1991 Bombay 10,

The third and last submission raised by learned counsel for the petitioner is that the commission fee could not be ordered to be shared as it is the right of the defendant to raise the objection as to admissibility of a document and the order of sharing the Commission fee amounts to imposition of penalty.

Learned counsel for the plaintiff/respondent has urged that the document in question has been filed with the plaint and there is reference of the partition dated 1-1-1975 which is recorded in the document. His submission is that the material facts are pleaded. Evidence is not required to be pleaded. In the written statement, the plea about the document to be forged has been raised by the defendant petitioner. Thus, it cannot be said that any prejudice has been caused. Since the document which is forming the record of the case from the day one and is a plaint document, it has to be exhibited. His further submission is that the first objection was not raised before the Court-below and has been taken before this Court in the revision. As to the second part of the submission, learned counsel contends that the document is a memorandum of partition. The partition had reached earlier. Same can be given effect to from a future date. The document in question is clearly admissible and is not hit by Section 17 of the Registration Act and as the delay has been occasioned and the Commission has to go again, the Trial Court is right in directing the sharing of the Commission fee by the parties equally.

Coming to the question in first submission whether in view of Order 6 Rule 2 of the C.P.C. read with Order 6 Rule 9 it is not open for the Court-below to have allowed a document to be exhibited and evidence adduced as the document dated 27-3-1975 has not been pleaded in the plaint. Order 6 Rule 2 of the C.P.C. reads thus:

"O. 6 K. 2. Pleading to state material facts and not evidence.-- (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words."

Order 6 Rule 9 of C.P.C. provides thus :

"O. 6 R. 9. Effect of document to be stated.-- Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material."

Thus, only concise statement of fact is required to be pleaded. Evidence is not required to be pleaded under Order 6 Rule 2 of the C.P.C. Sub-rule (1) of Rule 2 of Order 6 prohibits pleading the evidence. Pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be. Order 6 Rule 9 states that wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material. But, Rule 9 has application only when contents of any document are material. That has to be seen in the fact situation obtainable in a given case i.e., what is the nature of the document, whether it is material ? Whether its contents are so much material which are required to be pleaded.

Rule 9 does not apply in every situation, but, only in the condition specified in Rule 9 of Order 6 of the C.P.C. Nature of every document and its concise statement is not required to be pleaded invariably.

Pleading of the instant case points out that the plaintiff has averred the material fact that there was partition on 1-1-1975. It is true that the factum of partition on 1-1-1975 is neither shown to be oral nor in writing in the plaint. However, it is clear from the reading of the plaint that the said partition had already been acted upon between the parties and parties entered into the possession based on such a partition at a subsequent point of time, the document has not been pleaded in the plaint. However, in the written statement the defendant/petitioner with respect to the document in question has raised the plea that the document evincing the partition on 1-1-1975 is a forged and fictitious document and ineffective. Thus, it is clear that the parties are alive to the document evincing partition which allegedly took place on 1-1-1975. More over the Trial Court has framed the issue based on the pleadings of the parties with respect to the

document evidencing the partition on 1-1-1975. Issue No. 2 (b) has been framed in that regard. Thus, the submission raised by learned counsel for the petitioner that evidence cannot be adduced with respect to the document in question on the ground that same has not been pleaded specifically in the plaint is not acceptable. Reliance of learned counsel on the decision in case of Moinuddin (supra) is of no avail. Allahabad High Court in case of Moinuddin (supra) has laid down that "It is settled law that though liberal consideration to pleading is to be given in Indian Courts so as to allow every question to be raised and discussed in the suit yet a plaintiff cannot be entitled to relief upon facts and documents neither stated nor referred to in the pleadings." Partition in the instant case has been pleaded. It is evident by the memorandum of partition which is evidence of factum of partition which had taken place between the parties on 1-1-1975. Thus, it cannot be said that the plaintiff cannot adduce the evidence with respect to the document in question. Andhra Pradesh High Court in case of Allam Gangadhara Rao (supra) has laid down that a party should not be permitted to change his case or set up a case which is inconsistent with what he had himself alleged in his pleading. In the instant case, I find no inconsistency of the pleading with the evidence adduced in the case in the shape of memorandum of partition. The date of partition shown in the plaint as well as in the document in question is the same. Hence, it cannot be said that the evidence is at variance from the pleading, hence, not acceptable. The decision in Kamarji (supra) also turns on its own facts. In the case of Kamarji (supra) also the evidence was allowed to be adduced, but, later on it was not considered being at variance for want of such pleading. In the instance case material facts are there in the pleadings of the parties, issue has been framed. Thus, the evidence cannot be shut. The first submission raised by learned counsel for the petitioner sans merit, hence, is rejected.

The second limb of the argument of learned counsel for the petitioner is that the document in question is a document which effects the property worth more than Rs. 100/-. It cannot be termed to be memorandum of partition, but, it is a document though styled of memorandum of partition, but, partition has to take effect from a future date, not from 1-1-1975, but, from 1-4-1975. Hence, the document is compulsorily registrable. Learned counsel has relied on the decision of the Apex Court in case of Tek Bahadur Bhujil (supra) wherein in para 12 the Apex Court has laid down in the context of whether the agreement required registration ? Para 12 of the said decision reads thus :

" (12) Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document

would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess. The document Exhibit 3 does not appear to be of such a nature. It merely records the statements which the three brothers made, each referring to others as brothers and referring to the properties as joint property. In fact the appellant, in his statement, referred to respondents 1 and 2 as two brother co-partners; and the last paragraph said :

"We, the three brothers, having agreed over the above statement and having made our own statements in the presence of the Panch called by us, and signed and kept a copy of each of this document as proof of it."

The document would serve the purpose of proof or evidence of what had been decided between the brothers. It was not the basis of their rights in any form over the property which each brother had agreed to enjoy to the exclusion of the others. In substance it records what had already been decided by the parties. We may mention that the appellant and respondent No. 1, even under this arrangement, were to enjoy the property in suit jointly and it is this agreement of theirs at the time which has later given rise to the present litigation between the two. The document, to our mind, is nothing but a memorandum of what had taken place and, therefore, is not a document which would require compulsory registration u/s 17 of the Registration Act."

Memorandum need not be prepared for the purpose of being used as a document on which future title of the party be founded. It is usually prepared to record of what had been agreed upon in the past. A reading of the document in question in the instant case shows that the parties to the document possessed of an ancestral house. Battolal obtained it on partition in the year 1956. Thereafter Battolal's family was united. They had decided to partition the property and had partitioned it on 1-1-1975 which shall be acted upon with effect from 1-4-1975. Parties had entered into possession in accordance with the partition dated 1-1-1975 which was oral. The document further records the details of the property which had fallen to the share of the respective parties in the partition dated 1-1-1975. Thus, the document in question is clearly a memorandum of a partition. It records what had happened on 1-1-1975 in the partition. It has been reduced as a memorandum of partition, mere fact that future title is to base, on the basis of this document, cannot make it registrable document. Learned counsel for the petitioner's submission based on decision in case of Dr. Nilkanth Krishnarao Apte (supra) that caption given to document is not decisive of what it amounts to. Its contents have to be read as a whole to determine true nature of transaction it incorporates. There is no dispute with the proposition laid down, but, the entire reading of the document goes to show that the document in question is memorandum of partition. Hence, does not require registration.

Learned counsel for the respondent has relied on a decision of the Apex Court in case of Bhoop Singh Vs. Ram Singh Major and others, , wherein it has been laid down that "The exception under clause (vi) of Section 17(2) is meant to cover

that decree or order of a Court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order. It would, therefore, be the duty of the Court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable." It cannot be said that the document in question created a right in praesenti in immovable property. The memorandum records what was agreed upon between the parties and what rights were created under the oral partition dated 1-1-1975. Thus, the second limb of submission raised by learned counsel for the petitioner also fails being devoid of merit.

The last submission raised by the counsel for the petitioner is that the Commission fee has been ordered to be shared equally by the parties as objection as to the admissibility of the document was raised. As a matter of fact the Commission was issued at the instance of the plaintiff, but, it appears that the Commissioner stopped the cross-examination on the objection being raised as to the admissibility of the document and referred the matter to the Court for which the defendant cannot be faulted. Thus, the part of the order directing the costs of the Commission fee to be borne by the parties which is passed in the circumstances mentioned above, cannot be sustained. However, if there is any further protraction of the Commission or any other frivolous objection is raised and Commission is not allowed to be completed, it would be open to the Trial Court to impose further costs to be incurred on account of Commission fee on the defendant petitioner.

Thus, the revision is partly allowed to the extent mentioned above. Parties are directed to bear their own costs as incurred in the revision.

Civil Revision partly allowed.